

ANCIENT ROOTS AND MODERN OFFSHOOTS: THE
DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS

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I. INTRODUCTION

“International human rights” is an oxymoron which has developed almost entirely in the post-World War II era. Decades of feel-good political posturing have resulted in conferences, conventions, charters, declarations, and agreements by numerous international organizations with almost no actual effect on the actions of the signatory nations. The problems associated with international human rights are many, but lie primarily in the gap between endorsement and enforcement.

Nations may make agreements with others within the framework of an international organization, but the principle of sovereignty allows each nation the freedom to determine and pursue its own agenda. When national rulers violate human rights, the degree of their accountability to their people varies from immediate to none, depending on the form of government. A ruler’s accountability to international bodies is even more variable. In practical terms, rulers answer only to their consciences or to those who can affect their rule.

Human rights, properly understood, do not rise from treaties and declarations, but are merely recognized by them. Attempts to bypass this truism have invariably led to a denigration of human life and human rights, as demonstrated by Jacobins, Nazis, Communists, and other tyrants.

This note will discuss the evolution of human rights and briefly survey some of the political, religious, and philosophical documents outlining the stages of its development. It will examine some of the factors contributing to the failure of human rights agreements. It will touch upon the dilemmas posed by these aspirational and often unenforceable documents, including the assertions of obligations disguised

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as rights, the issue of collective rights, and the principle of national sovereignty.

II. HISTORICAL SURVEY

A. *The Roots of Human Rights*

Human rights are deeply entwined with moral and ethical values. They are assertions that being human entitles one to certain treatment by others. Many apologists for human rights have relied on the idea that there are extra-human sources of morality and law which transcend time, place, and culture.

In *The Abolition of Man*, C. S. Lewis illustrated that principles such as beneficence, justice, honesty, mercy, magnanimity, and duties to parents, the elderly, and children have found expression in nearly every society.¹ Ancient Babylonian, Egyptian, Hindu, Chinese, Roman, Jewish, Norse, and Greek philosophers, religious teachers, law-makers, and moralists have all endorsed various elements of the foundations for what are now known as human rights.² An example of one of these elements is the prohibition against murder, which is expressed in the *Torah* as “Do not murder,” in the Egyptian *Book of the Dead* as “I have not slain men,” and in the Norse *Volospa* as “In . . . [h]ell . . . I saw murderers.”³

These ancient writings commonly incorporate the duties to others within the framework of sacred duties, but this is not always the case. The Hebrew Ten Commandments includes respect for the life and property of others in the same list as religious obligations.⁴ Aristotle, however, appealed solely to the “unwritten laws of justice.”⁵ Centuries later, Cicero combined the two in his discussion of the *jus*, or “universal law of justice.”⁶ Confucius did not clearly differentiate between the

¹ C. S. LEWIS, *THE ABOLITION OF MAN* 84-101 (HarperCollins 2001) (1944).

² *Id.*

³ *Id.* at 84.

⁴ *Exodus* 20:1-17.

⁵ ARISTOTLE, *RHETORIC* bk. I, ch. 14, §1375a, 82 (W. Rhys Roberts trans., Random House 1954) (n.d.).

⁶ 1 MARCUS TULLIUS CICERO, *Treatise on the Commonwealth*, in *THE POLITICAL WORKS OF MARCUS TULLIUS CICERO*, bk. III, ¶ 689 (Francis Barham trans., 1841).

There is a true law, a right reason, conformable to nature, universal, unchangeable, eternal, whose commands urge us to duty, and whose prohibitions restrain us from evil. Whether it enjoins or forbids, the good respect its injunctions, and the wicked treat them with indifference. This law cannot

religious and the temporal, but admonished humans to live according to external standards of virtue and harmony.⁷

There is a difference, however, between ancient morals and modern human rights. Although the conceptual distance between “thou shalt not kill” and “right to life” may appear small, it took centuries, if not millennia, to cross. Perhaps one of the most famous steps on the journey was the recognition of freeman and noble rights in Magna Carta.

B. The Birth of Constitutionalism

By 1215, King John—formerly Prince John of “Robin Hood” fame—had incensed his barons sufficiently that they rebelled and forced him to sign a Great Charter.⁸ Several of its articles provide protection for basic freedoms. These include the independence of the English Church,⁹ limits on excessive criminal punishments,¹⁰ the protection of personal property,¹¹ a freeman’s recourse to a trial by jury or due process, with a prohibition against bribery and without delay by officers who know the law,¹² and freedom to travel.¹³ To a great extent, this claim of rights against the Crown was restorative, in that it forbade the King from continuing his trespasses against privileges that already existed.¹⁴

be contradicted by any other law, and is not liable either to derogation or abrogation. Neither the senate nor the people can give us any dispensation for not obeying this universal law of justice. It needs no other expositor and interpreter than our own conscience. It is not one thing at Rome and another at Athens; one thing to-day and another to-morrow; but in all times and nations this universal law must for ever reign, eternal and imperishable. It is the sovereign master and emperor of all beings. God himself is its author,—its promulgator,—its enforcer. He who obeys it not, flies from himself, and does violence to the very nature of man. For his crime he must endure the severest penalties hereafter, even if he avoid the usual misfortunes of the present life.

Id.

⁷ See CONFUCIUS, *THE ANALECTS* bk. I, paras. 9, 13 (D.C. Lau trans., Penguin Books 1979) (n.d.).

⁸ WILLIAM SHARP MCKECHNIE, *MAGNA CARTA: A COMMENTARY ON THE GREAT CHARTER OF KING JOHN* 22-23, 38 (2nd ed. 1914).

⁹ *MAGNA CARTA*, cl. 1.

¹⁰ *Id.* cl. 20.

¹¹ *Id.* cl. 28 I.

¹² *Id.* cls. 30, 31, 38-40, 45.

¹³ *Id.* cl. 41, 42.

¹⁴ 1 EDWARD COKE, *THE SECOND PART OF THE INSTITUTES OF THE LAWS OF ENGLAND* 8 (William S. Hein & Co. 1986) (1797) (“Lastly, this chapter of Magna Carta is but a restitution and declaration of the ancient common law . . .”).

There is debate as to how long, or to what extent the existence of Magna Carta influenced the rule of British monarchs.¹⁵ Some historians assert that it was largely forgotten over successive centuries.¹⁶ To theorists such as Samuel Rutherford, however, Magna Carta ultimately represented the great admission that the ruler was subject to a law greater than himself.¹⁷ Nevertheless, by the reign of William and Mary, many of the rights found in Magna Carta were renewed and amplified in the English Bill of Rights.¹⁸

The English Bill of Rights, (titled “An Act Declaring the Rights and Liberties of the Subject, and Settling the Succession of the Crown”) was signed by the sovereigns in 1689.¹⁹ It declares the “ancient rights” of Englishmen, and included among them an enumeration of the right to bear arms for self-defense (for Protestants), the right to free elections, and the right of free speech.²⁰ Like Magna Carta before it, the English Bill of Rights does not purport to invent any new rights, but merely enjoins the monarchs to recognize and swear to uphold the existing rights of Englishmen.²¹

This recognition/invention dichotomy is significant in light of modern arguments about what constitutes a human right. If a right belongs to all humanity, then by definition it cannot be limited to a particular people in a specific time or place – the point made by Cicero in *De Republica*.²² It follows that the invention of new rights is problematic and should be subject to extreme scrutiny.

In the Anglo-American tradition, most human rights are inalienable freedoms for the individual from interference by others, or more

¹⁵ MCKECHNIE, *supra* note 8 at 123.

¹⁶ *Id.* at 120

¹⁷ SAMUEL RUTHERFORD, LEX, REX 43 (Springkle Publ'n 1982) (1644) (“[F]or *lex regni* (the law reigns), this law of the kingdom is the law of the people, tying the crown to such a royal family; and this law of the people is more ancient than the king, or the right of reigning in the king . . .”) (translation added).

¹⁸ MCKECHNIE, *supra* note 8, at 123-24; 1 WILLIAM BLACKSTONE, COMMENTARIES *126-29.

¹⁹ An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, 1689, 1 W. & M. 2, c. 2 (Eng.), available at http://www.constitution.org/eng/eng_bor.htm.

²⁰ *Id.*

²¹ *Id.* (“the rights and liberties asserted and claimed in the said declaration are the true, ancient and indubitable rights and liberties of the people of this kingdom”).
Id.

²² CICERO, *supra* note 6.

specifically, by the government.²³ To Locke, society was a social contract devised to protect individual liberties.²⁴ To Blackstone, laws and rights were not created or invented, but discovered through the interaction of reason and nature.²⁵ Blackstone developed and popularized the idea that English common law revealed and rested on the “natural” rights of life, personal security, personal liberty, and private property.²⁶

Much of the impetus behind the Patriot cause in England’s American colonies came from the perception that the Crown had ignored colonists’ pre-existing rights.²⁷ Patriots believed that the Stamp Act and Quartering Acts violated the terms of the English Bill of Rights.²⁸ This perception led a vocal faction of colonists to declare that men are “endowed by their Creator with certain inalienable rights.”²⁹ “Life, Liberty and the Pursuit of Happiness” (admittedly not Locke’s “life, liberty and estate”³⁰) became one of the rallying cries of the Patriots. Given this historical context, the forthcoming Declaration of Independence may be understood as a natural outgrowth of Magna Carta and the English Bill of Rights rather than a truly revolutionary document (pun intended). Among the things which made it enduring, however, was the assertion within a political instrument of natural or divinely-given rights which could not rightly be abridged by any government.

The Virginia Declaration of Rights which preceded the Declaration of Independence by mere weeks had expressed this sentiment in a more explicit way:

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest

²³ See EDWARD S. CORWIN, THE “HIGHER LAW” BACKGROUND OF AMERICAN CONSTITUTIONAL LAW 60 (Liberty Fund, 2008) (1928).

²⁴ See JOHN LOCKE, TWO TREATISES OF GOVERNMENT bk. II, ch. VII (Peter Laslett ed., Cambridge Univ. Press 1960) (1690).

²⁵ JULIUS STONE, HUMAN LAW AND HUMAN JUSTICE 89 (2d prtg. 1968).

²⁶ *Id.*

²⁷ LEONARD W. LEVY, SEASONED JUDGMENTS: THE AMERICAN CONSTITUTION, RIGHTS AND HISTORY 293 (1995).

²⁸ *Id.*

²⁹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

³⁰ LOCKE, *supra* note 22, at bk. II, ch. VII, para. 87. “Man . . . hath by nature a power, not only to preserve his property, that is his life liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others” *Id.* The oft-quoted “Life, Liberty and Property” appears to be a paraphrase of this passage.

their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.³¹

The Virginia Declaration recalled several clauses from Magna Carta and the English Bill of Rights.³² It proclaimed several of the rights later incorporated into the First, Second, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States, rendering it a prototype of sorts for the Bill of Rights to follow.³³

The 1789 French Declaration of the Rights of Man and of Citizens, however, is more ambiguous. It began, “[m]en are born and remain free and equal in rights.”³⁴ The next phrase, however, indicates the true flavor of the rest of the document: “[s]ocial distinctions may be founded only upon the general good.”³⁵ Where the Americans espoused inalienable rights, the French paid lip service to them³⁶ by reserving to “the general will” of the people the authority to abridge any right through the law, which essentially nullifies the preceding clause.³⁷

Article 11 of the Declaration of the Rights of Man and the Citizen provides an example of this compromised ideal: “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.”³⁸ Similarly, Article 10 allows for religious freedom “provided [its] manifestation does not disturb the public order established by law.”³⁹ Even more clearly, Article 6 begins, “[l]aw is

³¹ VIRGINIA DECLARATION OF RIGHTS § 1 (1776).

³² *Id.* §§ 6-9, 11.

³³ *Id.* §§ 6, 8-13, 16.

³⁴ DECLARATION OF THE RIGHTS OF MAN AND OF CITIZENS art. 1 (France 1789).

³⁵ *Id.*

³⁶ *Id.* art. 2 (“The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”).

³⁷ *Id.* art. 4 (“hence the exercise of the natural rights of each man has no limits except those . . . determined by law”).

³⁸ *Id.* art. 11.

³⁹ *Id.* art. 10. Among the many parallels between the French Revolution of 1789 and the Russian Revolution of 1917 was the existence in both countries of official churches which were part of the monarchical power structure. *See France*, in ENCYCLOPEDIA BRITANNICA ONLINE, <http://0-search.eb.com.library.regent.edu:80/eb/article-40372> (last visited Mar. 30, 2009); *see also Russia*, in ENCYCLOPEDIA BRITANNICA ONLINE, <http://0-search.eb.com.library.regent.edu:80/eb/article-40372>

the expression of the general will.”⁴⁰ It follows logically then, that should it have been the general will of the French people to abrogate any right, the Declaration of the Rights of Man and the Citizen would not have placed any restrictions on that abrogation.

Despite its name, the Declaration of the Rights of the Man and the Citizen did not enumerate many actual rights. Significantly absent was any right of the individual to possess or bear arms, or to petition the government for redress of grievances. The citizen was left powerless in the hands of the political leadership, a motif that would be repeated over the centuries in many human rights documents. Perhaps most importantly, by stating that all rights owed their existence to nothing more than the will of the people, this Declaration became not a guarantee of rights, but rather a guarantee of their repudiation. “The notion that ‘Anything society does is right because *society* chose to do it,’ is not a moral principle, but a negation of moral principles and the banishment of morality from social issues.”⁴¹

The French tried to implement the rule of the common man. What they got instead was the rule of successive demagogues who were able to sway a majority for a brief time before falling to the next faction.⁴² The Reign of Terror stands as one of the first great benchmarks for the failure of human-centered philosophy to preserve human rights despite high-sounding verbiage. It would not be the last.

By contrast, the Amendments to the United States Constitution collectively known as the Bill of Rights enumerate many fundamental freedoms. They include the freedoms of speech, religion, peaceful assembly, and the press; the freedom to petition the government for a redress of grievances;⁴³ the freedom to possess and bear arms,⁴⁴ and

edu:80/eb/article-38602 (last visited Mar. 30, 2009). In France, the clergy formed the *Premier État*, a tax-exempt class with reserved seats in the Estates-General. The Russian Orthodox Church held similar status. In both countries, the rejection of the monarchy extended somewhat to a rejection of the Churches which supported them. This may be intrinsically linked with the atheism which sprouted in each country during its revolutionary period. *Id.*

⁴⁰ DECLARATION OF THE RIGHTS OF MAN AND OF CITIZENS, *supra* note 33, at art. 6.

⁴¹ AYN RAND, THE VIRTUE OF SELFISHNESS: A NEW CONCEPT OF EGOISM 101 (1964).

⁴² MARY BERRY, A COMPARATIVE VIEW OF THE SOCIAL LIFE OF ENGLAND AND FRANCE: FROM THE RESTORATION OF CHARLES THE SECOND, TO THE FRENCH REVOLUTION 427 (London, A & R Spottiswoode 1828).

⁴³ U.S. Const. amend. I.

⁴⁴ *Id.* amend. II.

more.⁴⁵ Many of these specified rights parallel clauses from Magna Carta and the English Bill of Rights. The founders of the United States apparently believed that the right to petition the government and the right to keep and bear arms are potential mechanisms by which a free people might maintain their freedoms.⁴⁶

That the United States Bill of Rights did not address the issue of slavery resulted in decades of tensions which culminated in the American Civil War. Midway through the conflict, President Lincoln signed the two executive orders which are now commonly known as the Emancipation Proclamation. While modern critics are correct in pointing out that the Proclamation failed to free any slaves immediately,⁴⁷ it nonetheless led to freedom from slavery for all. The post-Civil War Thirteenth Amendment of 1865 finally abolished slavery,⁴⁸ and corrected the omission in the United States Constitution that had led abolitionists to call it an “agreement with hell” and a “covenant with death.”⁴⁹

While much of the modern edifice of human rights thought appears to have been built on English and American foundations, an entirely Anglo-centric view would ignore the significant contributions from other sources in the interim between ancient and modern human rights development. Aquinas labored to synthesize Roman and Greek precepts of natural law with Christian doctrine.⁵⁰ Francisco de Vitoria,⁵¹

⁴⁵ *Id.* at amends. I-X.

⁴⁶ See LEONARD WILLIAM LEVY, ORIGINS OF THE BILL OF RIGHTS 133-49 (1999) (describing the American development of the right to keep and bear arms); see also BERNARD SCHWARTZ, THE GREAT RIGHTS OF MANKIND: A HISTORY OF THE AMERICAN BILL OF RIGHTS 127-42 (1977) (describing inter alia the American development of the right to petition). The right of the people to arm themselves may be of debatable value in curbing tyranny. Nevertheless, many of the founders—Madison, Jefferson, Adams, Henry, Lee, and others—viewed it as essential, and included it among the enumerated rights.

⁴⁷ The slaves that were declared free were in areas not controlled by the Union. Slaves in loyal Union states were not freed by the Proclamation. See RANDALL G. HOLCOMBE, FROM LIBERTY TO DEMOCRACY: THE TRANSFORMATION OF AMERICAN GOVERNMENT 119 (2002).

⁴⁸ U.S. CONST. amend. XIII.

⁴⁹ SANFORD LEVINSON, CONSTITUTIONAL FAITH 66 (1988).

⁵⁰ See Peter Kreeft, *A Summa of the Summa: The Essential Philosophical Passages of St. Thomas Aquinas' Summa Theologica Edited and Explained for Beginners*, in IS HIGHER LAW COMMON LAW? 20-22 (Jeffrey A. Brauch ed., 1999).

⁵¹ THOMAS E. WOODS, JR., HOW THE CATHOLIC CHURCH BUILT WESTERN CIVILIZATION 139 (2005).

Suárez,⁵² Grotius,⁵³ and Calvin⁵⁴ all mused on the existence of natural law and correlated this philosophical notion to real-world politics. Great portions of Montesquieu's *De l'Esprit des Lois* were given over to the topic of natural law.⁵⁵ Samuel Pufendorf's *Law of Nature and Nations* influenced Alexander Hamilton.⁵⁶ Nevertheless, overstating the effect of Anglo-American human rights thought remains difficult, if for no other reason than the overwhelming cultural impact of the two linked societies on the rest of the world for the last two hundred years.⁵⁷

C. Socialism

A different trend in human rights thought began to emerge in the nineteenth century. One of its sources was George Hegel, whose ideas were shaped by the French Revolution.⁵⁸ Hegel proposed that human knowledge and development had increased over time through the dialectic process and would continue to do so.⁵⁹ Darwin's theory of evolution appeared to offer scientific support for a similar biological progression.⁶⁰ Feuerbach argued that matter was the only reality.⁶¹ Marx and Engels borrowed elements from Hegel's speculation and Feuerbach's materialism⁶² in their development of the "scientific theory" of Communism.⁶³ Where the Anglo-American common law approach

⁵² EDWIN DEWITT DICKINSON, THE EQUALITY OF STATES IN INTERNATIONAL LAW 36-37 (1920).

⁵³ I HUGO GROTIUS, THE LAW OF WAR AND PEACE 20-22 (Louise R. Loomis trans., Walter J. Black, Inc. 1949) (1625).

⁵⁴ William Klempa, *John Calvin on Natural Law*, in JOHN CALVIN AND THE CHURCH: A PRISM OF REFORM 88-90 (Timothy George ed., 1990).

⁵⁵ See CHARLES DE SECONDAT BARON DE MONTESQUIEU, THE SPIRIT OF LAWS 20 (Thomas Nugent trans., Batoche Books 2001) (1748).

⁵⁶ WILLARD STERNE RANDALL, ALEXANDER HAMILTON: A LIFE 254 (2004).

⁵⁷ See, e.g., JOHN HAGAN, JUSTICE IN THE BALKANS 94-95 (2003).

⁵⁸ Tom Rockmore, *G.W.F. Hegel*, in THE COLUMBIA HISTORY OF WESTERN PHILOSOPHY 533-534 (Richard Henry Popkin ed., 1999).

⁵⁹ See EDWARD M. COLLINS, MYTH, MANIFESTO, MELTDOWN: COMMUNIST STRATEGY, 1848-1991, at 9 (1998).

⁶⁰ STEPHEN K. SANDERSON, THE EVOLUTION OF HUMAN SOCIALITY: A DARWINIAN CONFLICT PERSPECTIVE 144-45 (2001) ("Marx read The Origin of Species in 1860 and in early 1861 said to Engels in a letter that 'Darwin's book is very important and serves me as a natural-scientific basis for the class struggle in history.'").

⁶¹ COLLINS, *supra* note 56.

⁶² *Id.*

⁶³ *Id.* at 12.

looked backward (to ancient rights and privileges externally granted by God or nature), the new philosophies sought to embrace a scientific, materialistic future.

These socialist/communist theories found fertile ground among the intelligentsia and working poor of Russia. The Bolshevik Party outlined in its 1903 "Programs for the Russian Social Democratic Workers' Party" several goals for the future, which included proposals for safeguarding the "[i]nviolability of person and dwelling . . . [u]nrestricted freedom of conscience, speech, press, and assembly; freedom to strike and to form trade unions . . . [f]reedom of movement and occupation . . . [and] . . . complete equality of all."⁶⁴ The Bolshevik Party also introduced as *rights* the obligations on society to provide all citizens with social security as well as free and compulsory education.

These proposed obligations symbolized a significant ideological shift that would color human rights discussions for the next century and beyond. In its simplest form, it is the difference between, "You may not take from me" (my freedom of speech, religion, and so on), and "You must give me" (education, work, resources, and the like). This represents a fundamental failure in understanding what constitutes a human right. Ayn Rand said it masterfully:

If some men are entitled *by right* to the products of the work of others, it means that those others are deprived of rights and condemned to slave labor. Any alleged "right" of one man, which necessitates the violation of the rights of another, is not and cannot be a right. No man can have a right to impose an unchosen obligation, an unrewarded duty or an involuntary servitude on another man. There can be no such thing as "*the right to enslave.*"⁶⁵

Claims of right to the property of others form the basis of socialism, leaving the entire theory founded upon an injustice. As the next sections of this note will show, most of the ensuing human rights documents progressively introduced more and more obligations on others under the guise of rights.

⁶⁴ 1 THE RUSSIAN SOCIAL DEMOCRATIC LABOUR PARTY, 1898-OCTOBER 1917, at 39, 42 (Ralph Carter Elwood, ed., 1974).

⁶⁵ AYN RAND, CAPITALISM: THE UNKNOWN IDEAL 324-25 (Signet 1967) (1946).

In contrast with its name, which means “majority,”⁶⁶ the Bolshevik Party only achieved its first majority in any elected assembly in Petrograd in 1917.⁶⁷ Almost immediately thereafter, the Bolsheviks decided to launch a coup.⁶⁸ After the Bolsheviks seized power and formed the Soviet Union, they adopted a constitution in 1918 which provided almost no protection for individual rights.⁶⁹ The 1918 Constitution was replaced in December 1936.⁷⁰

Given its lengthy list of protections for individual rights, it is one of history’s ironies that the 1936 Constitution was sponsored and pushed through by Josef Stalin,⁷¹ whose legacy includes some of history’s most egregious human rights violations.⁷² Stalin’s hand in its making was evident; even his former training as a seminary student showed through in an odd passage.⁷³ The document used a quotation (without attribution) from the Bible, albeit a somber one: “He who does not work, neither shall he eat.”⁷⁴ “Stalin’s Constitution”⁷⁵ used this reference to scripture to justify imposing work as “a duty and a matter of honor for every able-bodied citizen.”⁷⁶

Chapter 10 of the 1936 Constitution, entitled the “Fundamental Rights and Duties of Citizens,” held out at least some hope that life in the Soviet Union would not be “all work and no play”: Article 119 averred that the citizenry had a right to rest and leisure, with a seven-hour work day and annual vacations.⁷⁷ The rest of the Articles of Chapter 10 promised the right to work,⁷⁸ social security,⁷⁹ free medical

⁶⁶ TERENCE GARVEY, *BONES OF CONTENTION* 41 (Routledge 1978). The Bolsheviks chose the name after they took over the Russian Social Democratic Party.

⁶⁷ ADAM B. ULAM, *STALIN: THE MAN AND HIS ERA* 151 (1989).

⁶⁸ *Id.* at 151-55.

⁶⁹ ARYEH L. UNGER, *CONSTITUTIONAL DEVELOPMENT IN THE USSR: A GUIDE TO THE SOVIET CONSTITUTIONS* 9 (1982).

⁷⁰ *Id.* at 80.

⁷¹ *Id.* at 79-80.

⁷² See generally 3 ALEKSANDR I. SOLZHENITSYN, *THE GULAG ARCHIPELAGO, 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION* (H.T. Willetts & Thomas P. Whitney, trans., Westview Press 1997) (1973).

⁷³ See MIKLÓS KUN, *STALIN: AN UNKNOWN PORTRAIT* 22 (2003) (describing Stalin’s early years as a seminary student).

⁷⁴ *Konstitutsiia SSSR* (1936) art. 12 [hereinafter *Konst. SSSR* (1936)] (referring to 2 *Thessalonians* 3:10).

⁷⁵ UNGER, *supra* note 65, at 79.

⁷⁶ *Konst. SSSR* (1936), *supra* note 70, art. 12.

⁷⁷ *Id.* art. 119.

⁷⁸ *Id.* art. 118.

⁷⁹ *Id.* art. 120.

service,⁸⁰ compulsory education,⁸¹ equal rights for women (including paid maternity leave),⁸² separation of church and state,⁸³ as well as the freedoms of speech, press, assembly, and demonstration,⁸⁴ freedom from arrest without court or procurator approval,⁸⁵ and “inviolability of the home” and “privacy of correspondence.”⁸⁶

While the United States Constitution was designed to separate the judicial, legislative and executive branches in a system of checks and balances to guard against consolidation of power in a single government branch, “Stalin’s Constitution” took a different approach. Article 3 contained the same sort of double-speak previously found in the French Declaration of the Rights and Duties of Man. It began by stating that “[i]n the U.S.S.R. all power belongs to the working people of town and country,”⁸⁷ but ended with, “as represented by the Soviets of Working People’s Deputies.”⁸⁸ “Stalin’s Constitution” recognized no power or source of power other than the existing political system controlled by Stalin.

Judicial review did not exist, nor could it, under the 1936 Constitution. “Control over the observance of the Constitution of the U.S.S.R.” rested with the legislature, the Supreme Soviet.⁸⁹ Interpretation of the laws was reserved to that body’s Presidium, which could dissolve the Supreme Soviet at will and held all “executive” authority.⁹⁰

The 1936 Constitution made, of course, no mention of either a right to keep and bear arms or any means by which the people might petition the government for redress of grievances. Instead, it imposed on the people the duties to “abide by the Constitution of the Union of Soviet Socialist Republics, to observe the laws, to maintain labor discipline, honestly to perform public duties, and to respect the rules of

⁸⁰ *Id.*

⁸¹ *Id.* art. 121.

⁸² *Id.* art. 122. The text includes no provision for paternity leave. As such, this article is self-contradictory, in that it claims equality of the sexes, but accords women additional rights not accorded to men.

⁸³ *Id.* art. 124.

⁸⁴ *Id.* art. 125.

⁸⁵ *Id.* art. 127.

⁸⁶ *Id.* art. 128. The degree to which some of these ideas have become incorporated into modern American political discourse is uncanny.

⁸⁷ *Id.* art. 3.

⁸⁸ *Id.*

⁸⁹ *Id.* art. 14.

⁹⁰ *Id.* art. 49. “[T]he Presidium consist[ed] of the President of the Presidium of the Supreme Soviet of the U.S.S.R., sixteen Vice-Presidents, a Secretary of the Presidium and twenty-four members of the Presidium.” *Id.* art. 48.

socialist intercourse.”⁹¹ It also made “[t]reason to the country—violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state, espionage . . . punishable with all the severity of the law as the most heinous of crimes.”⁹²

The vagaries of the range of those duties, the strictness with which they could be enforced, and the grant of absolute political power to the single-party leadership made all the other articles essentially moot and reduced the average citizen of the Soviet Union to a slave of tyranny and fear.⁹³ The 1936 Soviet Constitution combined the errors of the French Declaration of 1797—the lack of enforceability and the absence of restraint on the lawmaker’s power—with the socialist error of identifying material obligations placed on others as rights. As such, “Stalin’s Constitution” is one of the high-water marks for a national document which promised extensive individual rights but delivered—by design—complete oppression.

D. The Advent of International Human Rights

“Before World War II, human rights were systematically violated but rarely discussed in international politics.”⁹⁴ A nation’s treatment of its own people was regarded as an internal matter, protected from intervention by others through the principle of sovereignty.⁹⁵ The Holocaust and other horrors of World War II, however, led many nations to form multinational organizations, such as NATO, the Warsaw Pact, and the United Nations.⁹⁶ The post-war era saw a corresponding shift toward international involvement on many issues, including human rights.⁹⁷

The American Declaration of the Rights and Duties of Man (“American Declaration”), adopted in 1948 by the Organization of American States (“OAS”), was the first substantial product of this international cooperation on human rights.⁹⁸ The Preamble states that “[t]he fulfillment of duty by each individual is a prerequisite to the

⁹¹ *Id.* art. 130.

⁹² *Id.* art. 133.

⁹³ *See generally* SOLZHENITSYN, *supra* note 68.

⁹⁴ JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 3 (3d ed. 2007).

⁹⁵ *Id.*

⁹⁶ *Id.* at 4-5.

⁹⁷ *Id.*

⁹⁸ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, OEA/Ser.L.V/II.82 doc.6 rev.1, (1948) [hereinafter American Declaration].

rights of all.”⁹⁹ Chapter 1 endorses an extensive list of rights, including life, liberty, personal security, equality before the law, religion, expression, reputation, family, residence, and privacy of communications.¹⁰⁰ Echoing the Soviet error, Chapter 1 of the American Declaration places financial or other property obligations on the rest of society by proclaiming a “right to work . . . and receive . . . remuneration . . . [to] assure him a standard of living suitable for himself and his family,”¹⁰¹ as well as a “right to leisure time,”¹⁰² and a “right to social security.”¹⁰³

One of the problems with the “receive suitable remuneration” terminology (which flows from socialist ideology) is that it begs the question, “Suitable according to whom?” The implementation of such a right would necessitate an independent review of each employment situation. Wages, like all prices, are informative, reflecting current needs and wants in light of available resources.¹⁰⁴ Government interference with pricing distorts the informative process and results in an inefficient use of resources, creating shortages, “bubbles,” and black markets.¹⁰⁵

Chapter 2 of the OAS Declaration calls for the imposition of duties on the individual, including that he “conduct himself in relation to others that each and every one may fully form and develop his personality.”¹⁰⁶ How that might be accomplished remains undefined. Among the other duties called for in chapter 2 are caring for one’s children and parents¹⁰⁷ (which appears in Lewis’s list from *The Abolition of Man*),¹⁰⁸ receiving elementary education,¹⁰⁹ voting,¹¹⁰ obeying the law and authorities,¹¹¹ serving the nation,¹¹² paying in to social security and welfare,¹¹³ paying taxes,¹¹⁴ and working.¹¹⁵

⁹⁹ *Id.* pmbi.

¹⁰⁰ *Id.* arts. I-VI, VIII, X.

¹⁰¹ *Id.* art. XIV.

¹⁰² *Id.* art. XV.

¹⁰³ *Id.* art. XVI.

¹⁰⁴ See MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT 13-24 (1990).

¹⁰⁵ See *Id.*

¹⁰⁶ American Declaration, *supra* note 93, art. XXIX.

¹⁰⁷ *Id.* art. XXX.

¹⁰⁸ LEWIS, *supra* note 1, at 91-92.

¹⁰⁹ American Declaration, *supra* note 93, art. XXXI.

¹¹⁰ *Id.* art. XXXII.

¹¹¹ *Id.* art. XXXIII.

¹¹² *Id.* art. XXXIV.

¹¹³ *Id.* art. XXXV.

This first great international human rights document reveals some of the causes for failure typical to the genre. First, the parallels to the rights and duties in the 1936 Soviet Constitution are apparent: neither mentions a freedom to keep and bear arms, although the OAS Declaration does provide for petition of grievances to authority.¹¹⁶ Second, like the 1797 French Declaration of the Rights of Man and the Citizen, the American Declaration subordinates all human rights to local laws.¹¹⁷ Third, the American Declaration introduces material obligations disguised as “rights.” Most of these causes for failure are probably attributable to the fact that international agreements commonly arise out of committee-based negotiation which necessitates compromise, as various nations bring their own political leaderships’ perspectives and agendas to the drafting process. Absolutes and compromise often mix poorly.

Six months after the adoption of the American Declaration by the OAS, the United Nations’ first Human Rights Commission, led by Eleanor Roosevelt, finished a two-year effort to produce the Universal Declaration of Human Rights, which was quickly adopted by the General Assembly.¹¹⁸ The Universal Declaration was not purely “Western” in origin;¹¹⁹ rather, “[a]ll effective cultures in the world had a creative hand in the shaping of the document”¹²⁰ through its drafting and approval process.

In an effort to stave off burgeoning arguments about the philosophical basis for human rights, the drafters of the Universal Declaration of Human Rights deliberately avoided any exploration of the subject.¹²¹ The drafters agreed instead to attribute the basis for human rights on a new catchphrase, something everyone could agree upon, a sort of lowest common denominator platitude: human “dignity.”¹²² Though the term “dignity” may have been acceptable to the General

¹¹⁴ *Id.* art. XXXVI.

¹¹⁵ *Id.* art. XXXVII.

¹¹⁶ *Id.* art. XXIV.

¹¹⁷ *Id.* art. XXVIII (“The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.”).

¹¹⁸ Mary Ann Glendon, *International Law: Foundations of Human Rights*, in RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW 317 (Michael A. Scaperlanda & Teresa Stanton Collett eds., 2007).

¹¹⁹ *See id.* at 320-23.

¹²⁰ *Id.* at 321.

¹²¹ *Id.* at 317-18.

¹²² *Id.* at 319.

Assembly, the various ways in which it was used—as a foundational principle (coupled with “inalienable rights”),¹²³ as an alternative class of protected privilege (with “rights”),¹²⁴ and as an aspirational goal to be reached through “indispensable . . . economic, social and cultural rights.”¹²⁵—make it clear that the drafters’ ideologies were muddled. One of the drafters admitted that the document was “based on no philosophy whatsoever” and was an amalgam from other constitutions of “every conceivable right which the Drafting Committee might want to discuss.”¹²⁶

The format of the Universal Declaration of Human Rights betrays its heterogeneous origins. The first twenty-one articles endorse the sort of freedoms developed through the Anglo-American common law and constitutional process.¹²⁷ Articles 22 through 27 kept with the erroneous mores of socialism and materialism by proposing obligations on others at the local or national level.¹²⁸

Article 28 states: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”¹²⁹ This assertion implicates an international obligation to the individual to develop a world system of order. While this certainly appears to throw the weight of civilization behind supporting individual rights, devising such an order lies fully outside the bounds of the document.

Article 29 expresses the belief that only through the community can an individual freely and fully develop his personality, and calls on the individual to honor his duties to the community, the law, the rights and freedoms of others, “morality, public order, and the general welfare in a democratic society.”¹³⁰ The development of the personality

¹²³ Universal Declaration of Human Rights, G.A. Res. 217A, pmbl., U.N. GAOR, 3d Sess., U.N. Doc A/810 (Dec. 10, 1948).

¹²⁴ *Id.*

¹²⁵ *Id.* art. 22.

¹²⁶ Glendon, *supra* note 113, at 318.

¹²⁷ Universal Declaration of Human Rights, *supra* note 118, arts. 1-21. For example, according to article 5, “[n]o one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.” *Id.* art. 5. It is similar to the United States Constitution, which forbids “cruel and unusual punishments.” U.S. CONST. amend. VIII. According to article 10, everyone has a right to “a fair and public hearing” for any criminal charge against him, Universal Declaration of Human Rights, *supra* note 118, art. 10, which is also similar to the American right to a speedy and public trial. U.S. CONST. amend. VI.

¹²⁸ Universal Declaration of Human Rights, *supra* note 118, arts. 22-27.

¹²⁹ *Id.* art. 28.

¹³⁰ *Id.* art. 29.

emerges late in the document, therefore, as the penultimate goal of the Universal Declaration of Human Rights. The drafters not only followed the centuries-old trend of subjecting all freedoms to local laws, which first surfaced in the French Revolution, but they took that principle further. They concluded that “[t]hese rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.”¹³¹ In essence, the drafters reserved the highest of all authority in matters of human rights to the United Nations.

In 1959, the United Nations General Assembly issued the Declaration of the Rights of the Child, a call for protection and provision for children and their mothers.¹³² After stating that “[m]ankind owes the child the best that it can give,”¹³³ the Declaration mandates “social security,” “adequate nutrition, housing, recreation and medical services,”¹³⁴ special care for handicapped children,¹³⁵ “free and compulsory” education to develop “moral and social responsibility,”¹³⁶ protection from “neglect, cruelty and exploitation,” and protection from dangerous or premature work.¹³⁷ Principle 10 reads:

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.¹³⁸

The Declaration of the Rights of the Child may be the clearest and best example of a purely aspirational declaration, made entirely on behalf of others with neither an assertion of those rights by the intended beneficiary nor a means of enforcement or appeal.

In 1969, the OAS adopted the American Convention on Human Rights during the Specialized Conference on Human Rights.¹³⁹ This document also commits signatory states to “undertake to respect the

¹³¹ *Id.*

¹³² Declaration of the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (Nov. 20, 1959).

¹³³ *Id.* pmb1.

¹³⁴ *Id.* princ. 4.

¹³⁵ *Id.* princ. 5.

¹³⁶ *Id.* princ. 7.

¹³⁷ *Id.* princ. 9.

¹³⁸ *Id.* princ. 10.

¹³⁹ American Convention on Human Rights, Nov. 21, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

rights and freedoms" contained therein.¹⁴⁰ The list of its enumerated rights includes most of the freedoms provided for in the United States Constitution. What sets this convention apart from most international human rights agreements is that it allows for the creation of both the Inter-American Commission on Human Rights¹⁴¹ and a court to try cases alleging violations of its enumerated rights.¹⁴²

The court established by the American Convention on Human Rights has two great drawbacks from a practical standpoint. The first is that the Convention allows each signatory nation the option of recognizing as binding the rulings of the court.¹⁴³ The second is that only states or the Inter-American Commission can bring cases before the court. An individual has no such recourse.¹⁴⁴ The court's functional efficacy is therefore left to the will of each signatory state.

E. The Emergence of International Social/Economic Rights

There is no such thing as "a right to a job"—there is only the right of free trade, that is: a man's right to take a job if another man chooses to hire him. There is no "right to a home," only the right of free trade: the right to build a home or to buy it. There are no "rights to a 'fair' wage or a 'fair' price" if no one chooses to pay it, to hire a man or to buy his product. There are no "rights of consumers" to milk, shoes, movies or champagne if no producers choose to manufacture such items (there is only the right to manufacture them oneself). There are no "rights" of special groups, there are no "rights of farmers, of workers, of businessmen, of employees, of employers, of the old, of the young, of the unborn." There are only *the Rights of Man*—rights possessed by every individual man and by *all* men as individuals.

Property rights and the right of free trade are man's only "economic rights" (they are, in fact, *political* rights)—and there can be no such thing as "an *economic* bill of rights." But observe that the advocates of the latter have all but destroyed the former.¹⁴⁵

¹⁴⁰ *Id.* art. 1.

¹⁴¹ *Id.* art. 33.

¹⁴² *Id.*

¹⁴³ *Id.* art. 62.

¹⁴⁴ *Id.* art. 61.

¹⁴⁵ RAND, *supra* note 39, at 97.

The Universal Declaration of Human Rights and the Declaration of the Rights of the Child expanded the United Nations' brief on human rights into the realm of economic, social, and cultural obligations masquerading as rights. For the next three decades, lengthening that list of purported rights became a mainstay of the international human rights agenda.

In 1969, the United Nations General Assembly expressed its regret at the inadequacy of world social progress.¹⁴⁶ The 1969 Declaration on Social Progress and Development outlines a series of principles, objectives and means intended to promote "progress" on entitlements—such as the right to work,¹⁴⁷ food,¹⁴⁸ and universal access to culture¹⁴⁹—through world disarmament¹⁵⁰ and redistributing income within nations,¹⁵¹ while somehow impelling each member nation to maintain its sovereignty in the face of "colonialism."¹⁵²

The 1974 Charter on Economic Rights and Duties of States echoes a similar support for sovereignty: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights."¹⁵³ At the same time, this charter introduces a number of new obligations for nations. Among them are the duties to coexist in tolerance¹⁵⁴ and share revenues and resources from seafloor and drilling development in international waters.¹⁵⁵

The 1986 United Nations Declaration on the Right to Development suggested that protecting human rights would require a "new international economic order."¹⁵⁶ The Declaration on the Right to Development promulgates the new "right to . . . economic, social, cultural and political development."¹⁵⁷ While this declaration does not define "development" *per se*, it pronounces all human rights "indivisible and

¹⁴⁶ Declaration on Social Progress and Development, G.A. Res. 2542, U.N. GAOR, 24th Sess., Supp. No. 30, U.N. Doc. A/RES/2542 (Dec. 11, 1969).

¹⁴⁷ *Id.* art. 10.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* arts. 26-27.

¹⁵¹ *Id.* art. 16.

¹⁵² *Id.* art. 3.

¹⁵³ Charter of Economic Rights and Duties of States, G.A. Res. 3281, art. 32, U.N. GAOR, 29th Sess., Supp. No. 31, U.N. Doc. A/RES/29/3281 (Dec. 12, 1974).

¹⁵⁴ *Id.* art. 26.

¹⁵⁵ *Id.* art. 29.

¹⁵⁶ Declaration on the Right to Development, G.A. Res. 41/128, pmb., U.N. GAOR, 41st Sess., 97th mtg., U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

¹⁵⁷ *Id.* art. 1.

interdependent.”¹⁵⁸ This document appears to be an attempt to level the playing field between the ancient fundamental freedoms and the new materialist obligations and claims.

F. Group Rights

A group, as such, has no rights. A man can neither acquire new rights by joining a group nor lose the rights which he does possess. The principle of individual rights is the only moral base of all groups or associations.

Any group that does not recognize this principle is not an association, but a gang or a mob.

....

The notion of “collective rights” (the notion that rights belong to groups, not to individuals) means that “rights” belong to some men, but not to others—that some men have the “right” to dispose of others in any manner they please—and that the criterion of such privileged position consists of numerical superiority.¹⁵⁹

A second new set of rights that began to develop in international human rights flowed from the notion that groups of people had claims to special protection. Often these claims were a result of local governments’ failures to uphold existing freedoms. For example, Article 19 of the 1981 African Charter on Human and People’s Rights states that “[a]ll peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”¹⁶⁰ Article 1 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples affirms that “[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms.”¹⁶¹ If a nation protects the equality of rights for the individual, however, there is no need for a corporate claim to group rights.

Nevertheless, “peoples’ rights” documents have continued the deluge of claims of “rights” which have become part and parcel of international human rights thought. The Declaration on the Rights of Indigenous Peoples added the right of indigenous peoples to traditional

¹⁵⁸ *Id.* art. 6.

¹⁵⁹ RAND, *supra* note 39, at 102.

¹⁶⁰ African Charter on Human and Peoples’ Rights, art. 19, June 26, 1981, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58.

¹⁶¹ Declaration on the Rights of Indigenous Peoples, art. 1, G.A. Res. 61/295, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

medicines,¹⁶² the right to lands and resources they have traditionally owned,¹⁶³ the right to financial and technical assistance from national governments,¹⁶⁴ and the right to control and protect their cultural heritage.¹⁶⁵ All of these rights would appear to violate the will of the sovereign nation in which those indigenous people, their lands, or their culture may be found.

Children are another focus of group rights. In most nations, the legal status of children is somewhat ambiguous. Children may enjoy many of the protections of the law without participating in the full range of liberties accorded to adults. Traditionally, this policy results from the recognition of children's comparatively diminished physical and mental capacity and was instituted to protect the child¹⁶⁶ as well as the right of parents to exercise freedom of conscience in raising their offspring.¹⁶⁷

The United Nations issued the 1989 Convention on the Rights of the Child to augment the 1959 Declaration of the Rights of the Child.¹⁶⁸ Like its predecessor, the Convention on the Rights of the Child endorses a range of protections for children in signatory nations. However, it expands the scope of a minor's fundamental freedoms to encompass the right to expression,¹⁶⁹ communication,¹⁷⁰ religion,¹⁷¹ association,¹⁷² assembly,¹⁷³ privacy,¹⁷⁴ and reputation.¹⁷⁵

The extension of adult freedoms to children may easily clash with national sovereignty and seems to contravene the protections for cultures and social values accorded in other human rights agreements. More importantly, it impinges on the rights of parents to raise their children as they choose, a privilege recognized by ancient custom and

¹⁶² *Id.* art. 24.

¹⁶³ *Id.* art. 26.

¹⁶⁴ *Id.* art. 39.

¹⁶⁵ *Id.* art. 31.

¹⁶⁶ Children are often protected from the legal consequences of their actions. *See* 42 AM. JUR. 2D *Infants* § 138; *see also* 47 AM. JUR. 2D *Juvenile Courts and Delinquent and Dependent Children* § 103 (2008).

¹⁶⁷ *See* Declaration of the Rights of the Child, *supra* note 127, princ. 6.

¹⁶⁸ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁶⁹ *Id.* art. 13.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* art. 14.

¹⁷² *Id.* art. 15.

¹⁷³ *Id.*

¹⁷⁴ *Id.* art. 16.

¹⁷⁵ *Id.*

modern laws and treaties, including several articles of the Convention on the Rights of the Child.¹⁷⁶

The urge to extend the boundaries of obligations on others through human rights agreements has extended even to the international discussion of protection for the environment. The 1994 United Nations Draft Declaration of Human Rights and the Environment creates the "right" to an "adequate" environment¹⁷⁷ free from pollution,¹⁷⁸ to protection and preservation of nature, biological processes, and adequate living conditions.¹⁷⁹ A clean environment is a laudable goal, but the Draft Declaration of Human Rights and the Environment provides no mechanism for enforcing its provisions. Pollution of one's environment is nothing more than a violation of one's personal bodily integrity or of one's private property. Any claim beyond those basic freedoms, such as the demand for adequate living conditions to be provided by another, slips into the realm of socialist error by demanding the property of others under the auspices of human rights.

III. CONCLUSION

By their very origins, international human rights agreements are top-down rather than grassroots solutions. They are negotiated and adopted by nation-states within multi-state organizations. For the most part, the parties entrusted with the task of implementing checks against violations of rights are the governments of the signatory nations themselves.

The principle of sovereignty—nearly inviolable in international politics—provides considerable protection for governments that choose to violate human rights within their own borders. Many international human rights agreements are effectively unenforceable,¹⁸⁰ rendering them purely aspirational at best. At their worst, they can be self-serving exercises in publicity and hypocrisy, an opportunity for oppressive governments to pose as defenders of rights without changing

¹⁷⁶ *Id.* arts. 5, 7, 18.

¹⁷⁷ U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm'n. on Prevention of Discrimination & Prot. of Minorities, *Review of Further Developments in Fields with which the Sub-Commission has Been Concerned: Human Rights and the Environment*, annex I, art. 4, U.N. Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994) (prepared by Fatma Zohra Ksentini).

¹⁷⁸ *Id.* art. 5.

¹⁷⁹ *Id.* arts. 6, 10.

¹⁸⁰ *See, e.g.*, GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 378-81 (1998).

any of their own practices. The widespread misunderstanding about what constitutes human rights has perverted the process of protecting personal freedoms. Material entitlement programs disguised as rights have pervasive negative effects on their societies, ranging from discouraging achievement¹⁸¹ to creating financial crises.¹⁸²

The hope that international communities could help curb human rights abuses through treaty-like agreements rose out of the ashes of the Second World War. The sixty years since the drafting of the United Nations Universal Declaration of Human Rights have seen no lack of bloodshed and oppression, and no nation in that time has been successfully stopped from abusing its people through diplomacy alone. Unfortunately, despite all the good intentions of those involved, a review of the history and literature reveals that “international human rights” is three lies for the price of one.

¹⁸¹ See KATHLEEN MULLAN HARRIS, *TEEN MOTHERS AND THE REVOLVING WELFARE DOOR* 108-09 (1997).

When welfare recipients work, they lose a dollar in benefits for each dollar earned, leaving a woman economically no better off if she is employed. If her earnings rise above the maximum AFDC grant, which averages about 40 percent of the poverty line, then she is ineligible for cash assistance and loses health care benefits as well. Thus, welfare mothers who work but remain poor risk worsening their situation. On the other hand, as an entitlement program, welfare cash assistance is guaranteed to those in poverty without any societal obligations in return. It therefore appears that our welfare policies discourage work and send the wrong message to the poor about individual responsibility in the economic support of children.

Id.

¹⁸² See generally Peter J. Wallison, *Cause and Effect: Government Policies and the Financial Crisis*, FINANCIAL SERVICES OUTLOOK, Nov. 2008, http://www.aei.org/publications/pubID.29015/pub_detail.asp (arguing that “the underlying cause of the [2007/08] financial meltdown” was caused by “the housing, tax, and bank regulatory policies of the U.S. government” which were undertaken in an effort to “increase homeownership . . . through hidden financial subsidies rather than direct government expenditures”).