



**Confronting “Indivisibility” in the History of Economic and Social Rights:
From Parity to Priority and Back Again.**

By Roland Burke

Indivisible Human Rights. By Daniel Whelan. Philadelphia: University of Pennsylvania Press. 2010. 269pp.

In the past fifteen years, the historical study of human rights has seen an exceptional efflorescence. Around the time of the fiftieth anniversary of the 1948 Universal Declaration of Human Rights, the post-war human rights movement, and the apparent transformation it wrought, has been documented and narrated with ever-growing precision and inclusion. Pioneering monographs from Johannes Morsink (1999), William Korey (1998), Mary Ann Glendon (2001), and Paul Gordon Lauren (2003) have recorded the road to 1948 and, to a somewhat lesser extent, the evolution that followed it. These broad surveys on the post-war emergence of the modern human rights order have been complemented by a rich constellation of related studies on rights NGOs, transnational networks, and area-specific histories. Other works, notably from Lyn Hunt, have cast back much further still, to the deeper origins of human rights in the intellectual milieu of early modern and revolutionary Europe (Hunt 2007). In the academic investigation of human rights, history has found its place as one of the premier modes of inquiry, alongside law, political science, and philosophy.

During the establishing phases of human rights history in the 1990s and early 2000s, the field was characterized by strikingly little contention when compared to its legal, anthropological, philosophical, and political scientific peers.¹ Consumed by the task of recording and explaining the rise of rights, the histories that proliferated with somewhat remarkable speed had few opponents to write against, and little by way of orthodoxies to contest. They were works that chronicled the gradual, often halting, but ultimately successful birth of the twentieth century human rights idea, and the organizations, individuals, and contexts that produced it. Self-conscious reflection on what constituted rights history, and how it should be approached, was generally submerged beneath the imperative to construct a story and a provisional set of explanations. This peaceful infancy now appears exhausted. The historiographic tranquility that prevailed for a decade has become progressively more fractured and disrupted, first by Reza Afshari (2007), and more recently with the explicitly revisionist enterprise of Samuel Moyn (2010). Moyn’s critique of human rights historiography, in his work The last utopia: human rights in history, as a “church history” is certainly the most provocative and sweeping claim of the newer scholarship, but it is only part of a wider-ranging trend toward greater skepticism about some of the foundational elements of human rights history (Moyn 2010: 5–9).

¹ These fields have seen an impressive array of serious and substantial reflections on rights and scholarship; see, for example, Tony Evans (2001) and Michael Freeman (2002).

Daniel Whelan's Indivisible Human Rights precedes Moyn's wholesale re-interpretation of the rights story by several months and, although more modest in its ambition, represents many of the best features of the new human rights history. Whelan revisits one of the most cherished precepts of the human rights discourse, the notion of the indivisibility of human rights (1-3). Where many previous histories tended to pass over this term with little analysis, Whelan subjects it to meticulous historical scrutiny—charting its provenance across the debates that gave birth to the key legal and political texts of the human rights system.

Indivisibility serves as a superb vector for tracking the tensions and contradictions within the human rights idea. The concept was useful precisely because of its evasiveness and ambiguity, a wonderfully parsimonious answer to competing arguments about the nature of human rights, and the relationships between economic and social, and civil and political, sets of rights. It was sufficiently vague to accommodate the international ideological fault lines of both the Cold War and the North-South antagonism, and the domestic political philosophies of American liberalism, British trade unionism, and European Christian Democracy. It was sufficiently flexible to survive huge shifts in the geopolitical order, first by decolonization, and later by the waves of democratization in the 1980s and 1990s. When confronted with assertions of the primacy of economic development on the one hand, or denigrations of social rights on the other, metronomic recitations of indivisibility remain the principal weapon in the armamentarium of rights advocates. There is no priority in the family of rights, only the umbrella of parity.

This essay explores and, where appropriate, amplifies and critiques Whelan's account of the shifting shape of indivisibility—from its origins in the late 1940s, through its postcolonial "revisionist" transformation in the 1960s, and finally its apparent restoration in the 1990s. Although the shape of Whelan's history is compelling, it is partial and, at times, seems to slightly overstate the support for economic and social rights—notably in the case of the United States. This objection aside, much of my contribution seeks not to contest his characterizations, but to complement them with further historical examples and wider contextualization. The essay will commence with an assessment of the early years of the human rights debate, when the Universal Declaration established the notion of unity amongst human rights. It will then shift to the first great split, the division of human rights covenant into two. This was intuitively the most striking example of the fractured relationship between the economic and social, and civil and political rights, but Whelan's fine analysis brings out a much more nuanced assessment of its place in the history of indivisibility.

Whelan also places great emphasis on the transformation in rights discourse that emerged in the era of decolonization, and it is here that my discussion will linger. The years of peak decolonization serve as the paradoxical point of pivot in his narrative. This was the moment when the assertion of "indivisibility" first emerged as a serious rallying cry, while being defined in such a way that human rights were more divisible than ever before. A clear statement of the relationship between the two sets of rights was made, notably at Tehran in 1968, but in terms that invited division, hierarchy, and partition. Indivisibility as a rhetorical device was most insistently asserted at the very moment when civil and political rights were being cleaved from their economic and social siblings. Urgent claims on the necessity of development cast civil and political rights to the periphery of the human rights project, and did so with considerable success. Economic and social rights were upgraded through indivisibility—not because the concept required it, but because the specific formulations of indivisibility were asymmetrical, and the balance of forces within the UN emphatic on which came

first. This rupture has only recently started to close, with the modest progress of the 1993 Vienna Conference and the ongoing effort to restore the fragile unity of rights that was established in 1948.

All human rights are created equal? The unity of the Universal Declaration and the division of the Covenants

The relationship between the two sets of human rights—the economic and social, and the civil and political—has long been contested. From the 1789 and 1793 Declarations of the French Revolution, through Marx’s “rights of bourgeois man,” to the debates of the UN human rights program, the nature of the connection has been the source of conflict. To the advocates of social and economic rights most immediately the right to basic subsistence but, in more evolved formulations, the right to work, the right to housing, clothing, health services, and to recreation leave, these material rights are essential for the enjoyment of political and civil freedoms. In its briefest form, the case for economic and social rights is encapsulated in the phrase of the authoritarian, but bluntly eloquent Colonel Ignatius Acheampong of Ghana who asserted “one man, one vote is meaningless unless accompanied by the principle ‘one man, one bread’” (Umozurike 1997: 42). To the skeptics, social and economic rights were merely aspirational and not “real” rights at all. In the equally blunt phrase of US Ambassador to the UN, Jeane Kirkpatrick, they were nothing more than “a letter to Santa Claus” (Evans 1997: 32; Beyer 2004: 19). Neither extremity is particularly compelling, for the nature of both rights “sets” is immensely more complex (Donnelly 2003: 27-30; Howard-Hassmann 1983: 488-489). Economic and social rights are surely more than aspirations, and civil and political freedoms do have some, albeit vastly compromised, meaning even in conditions of relative deprivation, and asymptote toward zero as deprivation becomes more severe. Even the apparent dichotomy between “expensive” economic rights and “free” political rights is unsatisfying, given the monetary and organizational cost of realizing a trained judiciary, sustaining a democracy, and building a professional police force.

For many in both academic and diplomatic realms, the solution has involved the desperate embrace of imprecision, hiding in vague and often interchangeable formulations of interdependence and indivisibility, terms that Whelan aptly compares to a collection of nested TV cables (2). Interdependence implies that enjoyment of the economic and social rights relies on the civil and political, and the civil and political are contingent on the enjoyment of the economic and social. It is a model of symmetrical reliance—the absence of one fatally curtails the other. Indivisibility suggests a stronger species of interdependence, where no right can be decoupled from the others without the catastrophic diminution of all. Both terms are somewhat coarse; presumably some rights can be enjoyed to some extent without others, while the absence of some, like subsistence, would practically nullify all. In the absence of gradations, and matrices of paired rights covering the full event space, the shorthand of these blanket relationships is seemingly the best the politics of the UN could manage.²

² Scholarship has managed considerably more nuance, see for example, Craig Scott, “Reaching beyond (Without Abandoning) the Category of ‘Economic, Social and Cultural Rights,’” *Human Rights Quarterly* 21 (3) (1999): 633-660.

In both the academic realm of undergraduate human rights law courses, and the political battleground of General Assembly resolutions, the answer to the problem of the two dimensions of rights relies on a level of evasive ambiguity. Since the 1950s, much of this conciliatory work has been performed through the invocation of parity-suggestive terms, but during the preparation of the Universal Declaration the need for these was much less pressing. Its very nature as a Declaration, with decidedly ethereal obligations, attenuated the conflict. Throughout the drafting of the Universal Declaration, the relationship between the two categories of rights was vigorously debated, but never appeared to threaten the successful completion of the text. Its treatment in Whelan's study is accordingly more limited than the exhaustive coverage given to the human rights covenant that followed.³ Yet the limited conflict of 1947 and 1948 deserves further scrutiny, not least because it in part demonstrates why the recourse to more insistent use of indivisibility and interdependence developed only a few years later. The problematic nature of how to incorporate economic and social rights was already visible in the late 1940s, but the aspirational inflection of the Declaration allowed a way forward—an avenue that was foreclosed when it came time to consider the Covenants (60-61).

Across the debates of the Human Rights Commission, its drafting subcommittee, and the General Assembly's Third Committee, the inclusion of social and economic rights in the Declaration was more or less accepted by the full spectrum of representatives. As the draft text took form in Lake Success and Geneva, there were varying levels of enthusiasm for the "newer" social and economic rights—with the Latin American and communist states typically most enthusiastic, and the other delegations supportive or, rarely, ambivalent. Western trade union representatives, who participated in the drafting meetings, lent further vocal endorsement to the "new" rights, which weren't especially new to their traditions in any case. For the Western states, then expanding their welfare systems, the substance of social rights was essentially unexceptional and uncontroversial—provided they were set within a document that offered no hope of them being subject to international enforcement.⁴

Of the eight states that abstained on the final vote to approve the Universal Declaration, none based their arguments on objections intrinsically related to economic and social rights. South Africa, then in the formative phases of National Party rule, found both sets of rights incompatible with the nascent apartheid vision. Its representatives, Mr. Eric Louw and Mr. C.T. Te Water repudiated the document more or less wholesale (Morsink 1999: 26-28).⁵ The Soviet bloc, intuitively regarded as

³ Whelan also observes that the historiography of the Declaration is now quite exhaustive and, accordingly, the need for detailed documentation of this phase is somewhat less pressing.

⁴ This point remains the subject of some dispute—one led in part by Whelan's research. See Daniel J. Whelan and Jack Donnelly, "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight," *Human Rights Quarterly* 29 (2007): 908-49; Alex Kirkup and Tony Evans, "The Myth of Western Opposition to Economic, Social, and Cultural Rights? A Reply to Whelan and Donnelly," *Human Rights Quarterly* 31 (2009): 221-37; Whelan and Donnelly, "Yes, a Myth: A Reply to Kirkup and Evans," *Human Rights Quarterly* 31 (2009): 239-55; Susan K. Lang, "The Unsettled Relationship of Economic and Social Rights and the West: A Response to Whelan and Donnelly," *Human Rights Quarterly* 31 (2009): 1006-1029; Whelan and Donnelly, "The Reality of Western Support for Economic and Social Rights: A Reply to Susan L. Kang," *Human Rights Quarterly* 31 (2009): 1030-1054.

⁵ The later evolution of apartheid into its new guise of "Separate Development" suggests that the National Party may actually have found more sympathy with economic and social rights, insofar as they could be set within its strategy to purchase African political quiescence through the provision of social services and the creation of a conservative African middle class. Even this cynically cosmetic level of compliance was frankly unsalable with the civil and political rights, as

the champion of these rights, was at odds with the whole philosophy of the text. Even a Declaration that upgraded social rights was seemingly incompatible with their view, insofar as social rights were still freedoms exercised by individuals, and presupposed an entirely different model of the relationship between the citizen and the state than that advocated by its delegation. The Saudi Arabian representative, Jamil Baroody, advanced a cultural relativist critique of the Declaration, one broadly comparable to the infamous American Anthropological Association statement of 1947. His statement passed over the social rights with little interest, and instead singled out the provisions that held implications for religion and marriage.

Although the inclusion of economic and social rights was not a major site of controversy, the practical and philosophical problems of their status in relation to civil and political rights was extensively discussed and, at times, bitterly fought. As the deliberations approached their concluding phases between December 1947 and June 1948, the character of social rights and their “priority” were visited and revisited with the same questions emerging. Foremost among these were the considerable material requirements upon which respect for social and economic rights relied. Lord Dukeston (UK), for instance, sought the inclusion of qualifications on some social rights, accounting for the resources that enabled them. On the rights to food, clothing, housing, and medical care, he argued for the addition of the phrase “which the resources of the State or community can provide” as recognition that such rights were bound by real constraints.⁶ The very nature of economic and social rights encouraged deeper consideration of how they were to be realized, which in turn provoked problems about their position in relation to civil and political rights. This was especially so for those like René Cassin (France) and Hansa Mehta (India), who took the Declaration as something that would have to be implemented in some future form. There was a price to be paid for being serious about human rights, which was greater restraint when it came to soaring rhetorical statements on social and economic rights.

Efforts to acknowledge this difference in the character of the rights only heightened division about their relationship. René Cassin, one of the principal architects of the text, sought to clarify the place of the social and economic rights with an “umbrella” clause on how they might be realized. Far from resolving the conflict, this proposal precipitated even more emphatic argument. When Cassin’s “umbrella” proposal came up for debate on June 14, 1948, the British delegation instantly dismissed it as elevating the social rights as more privileged:

To introduce into a covering article on social and economic rights the question of the method of applying those rights gave them priority... It would be unfortunate were such an important text to give priority to those rights, thus placing them before all others... In a question of such importance the Commission should proceed circumspectly, and should avoid giving the impression that the fulfillment of social and economic was more important than that of the other human rights. It was his delegation’s view that no distinction should be made between the rights and freedoms enumerated in the Declaration.⁷

shown by the catastrophic diplomatic failure of the Bantustans’ policy, and the overt authoritarianism that characterized National Party rule even for its privileged white citizens.

⁶ Commission on Human Rights, Summary Record of the 40th meeting, 17 December 1947, E/CN.4/SR.40, 11, 15.

⁷ Commission on Human Rights, Summary Record of the 71st meeting, 14 June 1948, E/CN.4/SR.71, 4.

Charles Malik, the Lebanese Thomist philosopher, also perceived the problem of Cassin’s “umbrella.” Greater detail on the means by which these rights would be implemented, while leaving such details out for the civil and political rights, inevitably introduced an implied hierarchy. According to Malik, the French amendment “would mean that economic and social rights, the importance of which none could deny, would be given preferential treatment over other rights of equal importance.”⁸ Neither Dukeston, representing a Britain then undertaking the creation of a fully-fledged welfare state (Kynaston 2008), nor Malik, an anti-communist but communitarian philosopher, was opposed to social rights—the problem was how to account for their different characteristics and locate them in relation to the others.

Recognition of the different means for realizing economic and social rights was intuitively necessary, but any such acknowledgment was liable to set them apart as either more or less important, with the potential to break the organic unity of the text. Cassin defended his proposal by arguing that his “umbrella” achieved not priority, but parity. The text on civil rights like life and liberty was less specific because such rights “were unconditional.” This was not strictly the case with the others, which entailed more substantial state intervention:

The realization of economic and social rights, on the other hand, involved material assistance on the part of the State, and therefore required a guarantee. There was no intention to place undue emphasis on such rights; the intention was merely to recognize their importance.⁹

Eleanor Roosevelt, grappling with the same problem and restrictive instructions from the Department of State, urged caution on the social and economic rights. The more resource-intensive of these articles could not be fully secured immediately, and the Commission needed to remain mindful of the differences. “What would be the good,” she warned, “of passing laws to punish countries for failing to supply what they did not have and could not get?”¹⁰ It was a reasonable question, but one the delegates were rescued from by the decision to prepare a Declaration, which stated normative principles, as opposed to specific legal obligations. The Declaration was passed on December 10, 1948, in a momentous night session of the General Assembly. The reprieve was short-lived.

When work resumed in 1949 on the human rights covenant, the different character of the social and economic rights was a problem that could not be deferred, and ultimately saw the Covenant divided in two. What was possible to accommodate within a single Declaration was simply incompatible with the more ambitious and specific demands of the Covenant. The split itself, as Whelan observes, is often lamented as evidence of growing Cold War tension, an explanation that makes reflexive sense given the notional correspondence of the two Covenants to the two sides of the global ideological conflict (62-66).

⁸ Commission on Human Rights, Summary Record of the 72nd meeting, 14 June 1948, E/CN.4/SR.72, 4-5.

⁹ Commission on Human Rights, Summary Record of the 72nd meeting, 14 June 1948, E/CN.4/SR.72, 5.

¹⁰ Commission on Human Rights, Summary Record of the 76th meeting, 16 June 1948, E/CN.4/SR.76, 12.

Yet Whelan's close examination of the process by which the division occurred amply demonstrates the flaws in that elegantly incorrect account. Whelan reveals that the division had at least as much to do with the interlocking challenges of implementation, anti-colonial demands, and Cold War influence. While acknowledging the Cold War dynamic and some, albeit limited, resistance to social and economic rights in the West, Whelan dismisses the reductionism of the orthodox explanation:

...What is patently untrue is the simplistic assumption that the debates about one or two Covenants were primarily, or solely, the result of clashing ideologies on human rights. More important was the attachment of economic, social, and cultural rights to broader political goals within the UN system, most notably the cause of self-determination and economic development (134).

The complex consequences that flowed from one of the most decisive resolutions, Resolution 421 (V), are charted and unraveled with immense care (67-111). The account of the origins of the two Covenants that emerges is vastly more complicated and persuasive than the shorthand of "two sides, two covenants." While much of this has been recognized already in works from Roger Nomand and Sarah Zaidi (2008), and the earlier archival study from Matthew Craven (1995), Whelan adds a vital strand to the literature through the remarkable precision of his account.

One of Whelan's most powerful arguments is the central role of implementation in the process of the Covenant's division. The nature of economic and social rights was such that virtually no state was prepared to accept a set of implementation measures that treated these rights as identical to their civil and political siblings. In fairness, most states were deeply uneasy about any serious implementation measures at all, but the problem was more acute when it came to economic rights. It was not an effort to diminish economic and social rights as lesser, but rather an inability to set them within a legally binding instrument:

The division of the Covenants was clearly not about the denigration of economic and social rights. It was about the practical implications of taking on international and national obligations and being truly accountable for meeting those obligations in good faith (214).

As a result, those states that sought a legally meaningful Covenant were inclined to hesitate when incorporating economic and social rights into a single text. This reluctance extended to the advocates of a single text, who were equally opposed to uniform implementation provisions (113, 135). From the historical sidelines, it is easy to speculate on ways of devising a single covenant with differentiated implementation measures. In fact, such configurations were debated, but in the increasingly fractious atmosphere of the early 1950s, one covenant was simply too difficult to realize. Nevertheless, the debate record (and Whelan's account) makes it abundantly clear that the two sets of rights, and the two Covenants, were conceived as deeply intertwined and remained so even after the split—at least for a time.

Whelan's account here is persuasive, but partial. The prospect, however weak, of international enforcement may have sharpened the challenge of incorporating economic and social rights in a single covenant and determined the split, but it was far from the only challenge to indivisibility. Questions of international enforcement and implementation obviously made the anxiety more

pronounced, but any enforcement or implementation—even at the regional or domestic level—tended to be approached in a manner that suggested economic and social rights were both different and probably “lesser” in the minds of even the more sympathetic governments. This was apparent at the very time the Covenant debates were taking place.

In the foundational years of the post-war welfare state, the governments of Europe drafted a convention on human rights that held no provisions for social and economic rights: the 1950 European Convention.¹¹ Simultaneously, most of these Western European states enacted welfare measures that would go a long way to realizing the substance of many economic and social rights—often while studiously avoiding the term “right.” That same year, the 1950 Indian Constitution consigned them to a section of “Directive Principles” guiding state policy, with a textual and conceptual tourniquet between these economic and social rights and the civil and political ones, which found their home in an enforceable part of the Constitution. A serious aspiration for the material realization of social and economic rights did not automatically equate to their wholesale embrace as justiciable “rights.”

The upward revision in economic and social rights: Kabul, Dakar, and Tehran.

While the completion of the Declaration, and later the draft Covenants, established an interrelationship between the two sets of rights, the relative weight of each grouping was far from resolved. The period from the mid-1960s saw the progressive disruption of the vague equilibrium between the economic and social on the one hand, and the civil and political on the other. Whelan identifies this shift as part of a wider project of post-colonial “revisionism”—a constellation of changes in the human rights agenda driven by the newly independent Asian and African states that joined the UN across the 1950s and early 1960s (136-143). These new members of the General Assembly transformed the human rights project, foremost through their emphasis on self-determination (defined as anti-colonialism), anti-racism, and the more nebulous goal of global economic justice and development (Burke 2010). It was this final element that had the most profound impact on the relationship amongst the two sets of rights. The landmark in this process was the First World Conference on Human Rights, held in Tehran in 1968. It was here, Whelan argues, that the upward revision in the position of economic and social rights became manifest.

The Tehran Conference has only recently been rediscovered by human rights scholarship, and Whelan is amongst the first to investigate its implications (c.f. Moyn 2010, Burke 2010). He focuses on the agenda and documentary outcomes of the conference, and the model of indivisibility it inaugurated (Whelan 2010: 144-153). The Proclamation of Tehran registers a profound alteration in the balance between the economic and social, and the civil and political—one that corresponds to the “revisionist” agenda of the confident post-colonial majority. It declared that “full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.”¹² However, this proposition was not counter-balanced by an equivalent statement on

¹¹ For the most comprehensive history of the ECHR’s drafting process and its context, see A.W. Brian Simpson (2001).

¹² Article 13, United Nations Conference on Human Rights, Proclamation of Teheran, 13 May 1968, A/CONF.32/41. Reproduced in “United Nations Conference on Human Rights, Teheran, 22 April to 13 May, 1968: Proclamation of Teheran,” *American Journal of International Law* 63 (1969): 674–677.

the necessity of civil and political rights. It was a deeply asymmetrical notion of interdependence, and an obviously fissile version of indivisibility. Respect for human rights was absolutely dependent on securing the economic and social rights, but the place of civil and political freedom was opaque (8). Whelan parses the meaning of Tehran's resolutions superbly and exhaustively, though he devotes less attention to the debates of the conference.

Although not subjected to detailed examination in his text, the rhetoric of the conference proceedings merely serves to underscore Whelan's view on the meaning of Tehran. From the inaugural session on April 22, 1968, the emphasis on development and the social rights it would supposedly deliver was apparent. Shah Reza Pahlavi, in his opening address to the assembled delegations, made an unvarnished exhortation not for balance, but for a revision in priorities. While noting the importance of the provisions of the Universal Declaration, the Shah claimed it was "necessary to adjust them to the requirements of our time." His readjustment located economic and social rights in the premier position:

The conditions of man's political and material life have been changing throughout these two decades, and the very notion of human rights should consequently be regarded in a new light. As I have said repeatedly in the last few years, human rights until not very long ago meant first and foremost the political and juridical equality of individuals. In our day, however, political rights without social rights, justice under law without social justice, and political democracy without economic democracy no longer have any true meaning. Viewed in this light, the real progress of our time consists in breaking daily some more of the chains which privileged minorities have for centuries imposed on the less fortunate masses.¹³

It was a speech that exemplified not only the new tenor of the General Assembly, but the domestic program of the Shah's government, then consumed with a technocratic modernization, the "White Revolution" (Pahlavi 1961: 170-171).

Fellow "White Revolutionary," Princess Ashraf Pahlavi, the conference president, wasted little time in reiterating her twin brother's demand for revision. The Universal Declaration, she asserted, was now outmoded—it "corresponded to a certain moment in the evolution of ideas about human rights," which had now been superseded by the global transformation of decolonization.¹⁴ A rising chorus of voices endorsed the revised hierarchy and the elevation of economic and social rights it brought. Ato Solomon Tekle, from Haile Selassie's Ethiopia, was the most frank about the reformulated version of "interdependence" and "indivisibility." Economic and social rights, he stated baldly, "formed the basis for all other human rights."¹⁵ This was not interdependence or indivisibility, but outright and total dependence.

¹³ Verbatim text of address by His Imperial Majesty the Shahinsha Aryamehr, International Conference on Human Rights, 3, S-0883-018-008, UN Archives.

¹⁴ Official records of the International Human Rights Conference, Teheran, 1st plenary meeting, 22 April 1968, A/CONF. 32/SR. 1, Conference President Ashraf.

¹⁵ Official records of the International Human Rights Conference, Teheran, 5th plenary meeting, 24 April 1968, UN document A/CONF.32/SR.5, Ethiopia.

Tehran was certainly a landmark and is deservedly singled out in Whelan's analysis, but the trend toward privileging of economic and social rights was becoming apparent in lower level forums several years earlier in the mid-1960s.¹⁶ The regional seminars on human rights in developing countries, held under the auspices of the UN's advisory services program, saw repeated and highly explicit demands for increased priority on development and the social and economic rights it would notionally secure. Platitudes about indivisibility and interdependence were politely mouthed by many. By 1966, some of the more ardent "revisionists" had dispensed with even the ritualized show of deference to the equality of rights contained in the Universal Declaration. The early drafts of Tehran's "revisionist" logic were discernible in the UN seminars at Kabul (1964) and Dakar (1966). Economic and social rights were elevated, and their very conceptualization as "rights" began to recede, replaced by a collective, state-centered lexicon of development and modernization.

These regional seminars were arguably a more accurate reflection of governmental attitudes toward economic and social rights. Unmoderated by the publicity of the high diplomatic realm, and with participants drawn from government, the judiciary, and the civil service, the seminars were a less mediated indication of state attitudes. Created as part of the 1953 US advisory services initiative, the seminars had been embraced by the chief of the human rights division, John Humphrey, who desperately sought an avenue to "keep the human rights flag flying in a period when UN rights activity was at its lowest ebb" (Green 1956: 703–705, 713–715; Humphrey 1984: 251). From 1964 onward, the seminars began to confront the challenge of realizing human rights in the developing world, with the priority of economic and social rights a central topic for debate. Even those freedoms in this category were beginning to lose their character as rights, instead being collapsed with the quite different concept of development.

At the Kabul seminar, held in May 1964, there were clear expressions on the primacy of economic development, even if this meant the outright violation of other human rights in the process. According to some participants, "there could be no meaningful exercise of many human rights in a country where economic resources were scarce and the bulk of the population lived on the margin of subsistence."¹⁷ Where these austere conditions prevailed, "the primary duty of the State was to promote the economic growth of the country and raise the standard of living of the population."¹⁸ Nation building and state-led planning "might at times lead to restrictions upon the exercise of certain human rights" in the pursuit of these larger objectives.¹⁹ Although many defended the organic, symmetrical relationship implied by the Universal Declaration, there was obvious evidence of the rising mood for greater insistence on economic development, including an endorsement of forced labor in support of national reconstruction.

Two years later, in Dakar, Senegal, the revisionist mood was unmistakable, with an unalloyed critique of the Universal Declaration. For Humphrey, this was a decisive moment. In his diary entry for February 20, 1966, he observed that he could not recall "any discussion of human rights in a UN

¹⁶ Whelan's work fully acknowledges the shifting mood of the 1960s and other key landmarks, notably the 1960 Declaration on Colonialism (Resolution 1514).

¹⁷ Report of the Seminar on Human Rights in Developing Countries, Kabul, Afghanistan, 12–25 May 1964, ST/TAO/HR/21, para 20.

¹⁸ Report of Kabul, ST/TAO/HR/21, para 20.

¹⁹ Report of Kabul, ST/TAO/HR/21, para 21.

body which was as frank, animated, or so revealing.” The revelations pivoted on a single “big issue,” which Humphrey identified as “the conflict between individual human rights and the ‘necessities’ of development in an underdeveloped continent—collective rights” (Humphrey 1995: Vol. 5, 188).²⁰ Those rights that had been conceived as an interdependent whole were being pulled to pieces, some to be pursued at the expense of others. The Declaration that had proclaimed them in unity was the first casualty.

Three days into the proceedings, the legitimacy of the Universal Declaration was attacked. The immediate issue at hand was on the right to property, a potential obstacle to national development, and a concept that sat uneasily with some elements of African communal land holding. This soon escalated into a more fundamental questioning of the document and its relevance:

The Universal Declaration of Human Rights of 1948 was itself challenged. Some speakers wondered whether the Declaration corresponded with the present state of society in the Third World. After raising doubts about this, one speaker expressed the view that the economic and political requirements of Africa could not be set within the legal framework of the Declaration...²¹

Because the Declaration was drafted in 1948, “it did not therefore take into account the problems raised by the independence of the African countries,” which had “radically different” social and economic systems. One speaker proposed that in light of the potential problems it would pose for development, the seminar should “call for a revision of the 1948 Declaration in order to adapt it to African realities.”²²

Political rights were framed by some as holding merely instrumental value for the achievement of development. The most extreme proponents of this claim argued that “the fundamental right to take part in political activities should be regarded as... [the] right to participate in the efforts of society to achieve development.”²³ Far from holding an intrinsic value as ends of themselves, political rights were nothing more than means to the transcendent goal of development. For the hardline revisionists at Dakar, “the idea of freedom of association was... practically meaningless to the citizen, unless the specific purpose of such association was to obtain better living conditions.”²⁴ For Humphrey, who had done so much to salvage the UN’s human rights program in its weaker moments, Dakar must have been as dispiriting as it was revealing.

Post-colonial revisionism flagrantly divided what it declared indivisible but, more disturbingly, it was becoming ever more disengaged with the core concept of rights. The post-colonial effort to repartition economic and social rights into a special, privileged category occurred alongside a diminution of the conventional view of all rights as individual claims against the state. Instead, there

²⁰ For further reference, see John Humphrey to C.V. Narasimhan, Memorandum on Dakar, 16 February 1966, S-0198-003-09, UN Archives.

²¹ Report of the Seminar on Human Rights in Developing Countries, Dakar, Senegal, 8-22 February 1966, ST/TAO/HR/25, para 92.

²² Report of Dakar, ST/TAO/HR/25, para 92.

²³ Report of Dakar, ST/TAO/HR/25, para 153.

²⁴ Report of Dakar, ST/TAO/HR/25, para 154.

were state claims against the global community—for economic justice, generally defined as wealth transfer from the developed to the developing world. This campaign, waged under the banner of the New International Economic Order (NIEO), saw the rights of the individual recede as the object of concern. The central plank of the NIEO, the 1974 Charter of the Economic Rights and Duties of States, sought to redistribute wealth between states—essentially granting a right for underdeveloped states to claim resources (156-160).

In this way, even the upward revision in the status of economic and social rights was more of a means than an end, at least for the more cynical Third World governments, which, by the 1970s, was the majority of them. Whelan explains the logical sequence by which the upgraded economic and social rights interacted with the NIEO agenda:

...the rhetoric of indivisibility was deployed to prioritize economic, social, and cultural rights over civil and political rights, and the only way for economic, social and cultural rights to be achieved was to link them directly to demands for development resources (155).²⁵

Once such resources were secured, there was precious little to ensure that they would strengthen the hand of the individual against a newly hypertrophied state. Almost certainly there would be some significant economic and social rights gained from development, but the guiding objective was development, not rights. By 1977, this rationale was officially consecrated in General Assembly Resolution 32/130, a text which Whelan asserts “recast global economic injustice as a massive violation of human rights” (177).²⁶ Economic and social rights ended up as little more than a waypoint in a campaign that was foremost about national development and state building.²⁷

Conclusions

The greatest strength of Whelan’s study is its longitudinal frame, tracing indivisibility and interdependence over the formative early and middle decades of the UN’s human rights enterprise. Its novelty lies mostly in its vast scope; many of the constituent debates have been addressed thoroughly, and the literature on the covenants, one of the flagship sections of the monograph, is quite voluminous. Equally, the philosophical, legal, and conceptual debates on indivisibility and interdependence are extensive, though less historical in approach. In many ways, Whelan’s study is best thought of as “indivisible,” an important and unparalleled survey work. If divided into its individual components, its innovation is markedly weaker, but as a whole it is a very significant contribution to human rights history. Whelan trades static resolution of each milestone event for an

²⁵ Whelan identifies the nascent arguments of the 1970s all the way back in the early 1950s, when the question of resources for economic and social rights were first raised by Third World representatives, admittedly in much milder terms.

²⁶ Whelan’s discussion of Resolution 32/130 is very compelling, though many of its implications had already been discussed earlier by Jack Donnelly; see “Recent trends in UN human rights activity: description and polemic,” *International Organization* 35 (4) (1981): 633-655; “The human rights priorities of the UN: a rejoinder to Alston,” *International Organization* 37 (3) (1983): 547-550.

²⁷ Louis Henkin has previously argued that this tendency was always one of the defining features of the post-colonial states’ engagement with the human rights program, with any individual rights, even for the supposedly privileged economic and social group, being little more than accessories to national development; see Henkin (1979): 111-112.

evaluation of evolution over time—losing detail from the former, but gaining insight into the dynamic process by which indivisibility and interdependence were reshaped.

Beyond the meta-arguments of the book, there does remain some residual sense that Whelan has not fully pursued the differences between the economic and social, and the civil and political rights. The centuries-old effort to synthesize these two sets of rights is the question around which all analysis of interdependence and indivisibility necessarily orbits. While the text provides an impressively broad description of a changing relationship, the treatment of how these two sets of rights differ, and the implications of those differences, could have been more extensively discussed. The assessment that is provided is typically mediated through the voices of the historical actors involved; a fine strategy for historical writing, but less satisfying for those seeking hard, normative claims. For the most part, Whelan eschews any deeper discussion of how social rights operate as rights, and how they differ (or not) from their civil and political counterparts. In the process, his discussion carefully walks around, admittedly with great elegance, the important contributions from Jack Donnelly, Henry Shue, Rhoda Howard-Hassmann, and the influential polemic of Maurice Cranston. It is a work primarily for historians, not lawyers, philosophers, or human rights advocates.

As history, selections and emphases have to be made, but Whelan's omission of any substantial discussion of the opposition to economic and social rights in the US is perplexing. A detailed discussion of those generally supportive voices, stemming from labor, Roosevelt's New Deal coalition, the Commission to Study the Organization of Peace, and the Universities Committee, is provided, but little mention of the countervailing trends is given. This is unfortunate, principally because the opponents of any recognition of social and economic rights clearly carried great influence in the early 1950s, precisely the period when the relationship between the two sets of rights was being crystallized, and one of the most important exhibits in the book. Frank Holman, the influential president of the American Bar Association, was vehement in his rejection of economic and social rights and denounced attempts at an international New Deal as a road to "state socialism."²⁸ Senator John Bricker, who was directly responsible for American disengagement with the covenants process, was just as forthright. Recognition of social rights, he declared in 1951, "would make it obligatory for the Government to try to satisfy the unlimited economic and social wants of all its citizens."²⁹ The absence of any significant mention of Brickerism and its consequences tends to understate the hostility to social rights held by powerful forces in the US, a hostility that persists into the present.³⁰ Part of this absence can be explained by the weight of previous literature on Bricker (Tananbaum 1988; Davies 1993) and the 1953 decision to withdraw from the covenants (Green 1956; Anderson 2003), but the result is a narrative that seems to slightly oversell the durability of US support for social rights, and its adherence to an interdependent view of human rights. If the supportive trends were so strong, then the domestic situation of the present day becomes so profoundly anomalous as to be beyond explanation.

²⁸ Gladwin Hill, "Rights Drafts Held Socialistic," *New York Times*, 18 September 1948, 4.

²⁹ Jesse Solomon, "Human Rights Covenant," *Washington Post*, November 20, 1951, 24

³⁰ Other critics point to the lack of US ratification of the International Covenant on Economic, Social, and Cultural Rights, a critique that is, perversely, undercut by the almost meaningless form by which the US ratified the International Covenant on Civil and Political Rights. Symbolism aside, the relatively weak purchase of economic and social rights in US practice is so amply demonstrated as to be almost irrefutable; see, for example, the discussion in Howard-Hassmann (2010).

Whelan's Indivisible Human Rights shows that human rights were eminently divisible and, paradoxically, that the points of maximal division occurred precisely as terms like indivisible became a pro-forma incantation in the General Assembly. In his treatment of the 1970s, he reveals precisely why they should be indivisible in fact, not rhetoric. Had Whelan's narrative ceased in the 1980s, when the fruits of the failed revisionist agenda were transmuting into the only marginally more successful Right to Development, his account would have charted a trajectory on the incremental dissolution and dismemberment of the organic philosophy proclaimed in 1948. Yet in its concluding chapters, the story of division turns again toward unity, as post-colonial revisionism was replaced with post-Cold War restoration. In the 1993 Vienna Conference, and the decade that followed, Whelan finds nascent trends toward a real indivisibility, and mechanisms by which the interdependence of civil and political and the economic and social rights are deepened. The term he employs is "restoration" but, in some ways, it seems more than that. Human rights might be returning to the apparent unity of 1948, but that brittle unity was predicated on the soft obligations of the Declaration. A modern indivisibility would be one that existed in a world of covenants, special rapporteurs, individual complaint procedures, and an ever-expanding transnational network of human rights NGOs. Unlike the model of 1948, it would be an indivisibility where the hard questions were actually being answered, rather than postponed.

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