

The Carter Doctrine on Human Rights: A Normative Approach

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I

Nobody disagrees that human rights are universally desirable. As early as December 10, 1948, the UN General Assembly adopted without a dissenting vote the Universal Declaration of Human Rights. The Declaration proclaims the universal right of persons to life, liberty, and security of person; to freedom from arbitrary arrest; to freedom of movement and residence, of speech, press, assembly, and worship; and to the other legal rights commonly protected by democratic constitutions. These are what the United Nations considers "civil and political" rights, as distinguished from the "economic, social, and cultural" rights of the people to social security, education, and opportunities to earn a living.

The acceptance of human rights, therefore, is not new. In fact, the United Nations has defined, discussed, and adopted nine kinds of human rights as universal values than President Carter has enumerated in his pronouncements.

It is precisely because President Carter focused more on civil and political rights in the initial phase of his campaign, to the relative neglect of economic, cultural, and social rights, that the criticism of his campaign as biased and peculiarly American in orientation arises. Human rights, as accepted by the United Nations in 1948, represents the whole range of human rights guaranteeable to man as man by

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governments. As a package, it represents a compromise between contending priorities for and against civil and political rights on the one hand, and economic and social rights on the other.

But the bias for civil and political rights is not Carter's alone. It has been encouraged in the United Nations itself. It has been deemed easier to grant and guarantee than economic and social rights.:

In general, the civil and political rights, if they are stated in the constitution of a country, can be enforced by law. A man who is arbitrarily arrested and held without trial, for instance, can appeal to a court for a fair trial according to law. If the courts are so corrupt or so tainted with dictatorship that the citizen cannot get his constitutional rights, his nation is guilty not only of oppressing the people but also of violating its own laws.

With the economic, social and cultural rights, the situation is different. No country so far has discovered how to give its people full employment under good working conditions all the time. No country knows how to treat its people with moral justice beyond all criticism, nor how to give the people all the education and health that can be desired.¹

In official UN information materials, the same idea that political and civil rights are due and demandable anytime while economic, social rights may have to wait, is disseminated.

Many developing nations of the world, however, have realized that political and civil rights can be continuously guaranteed, or could have meaning only, if the more difficult economic and social rights are first dealt with and secured. This is recognition that political independence is meaningless without economic, social and cultural independence; that the maintenance of Western-style governmental institutions and processes could in fact be counterproductive and illusory. If some Third World nations adhered to Western notions of civil and political rights, and of their priority over the other rights, this may be a function of their colonial educational experience.

The argument that the notion of civil and political rights nurtured in Western tradition may be dysfunctional, undesirable, counterproductive, and therefore, should be consciously resisted and replaced by a more appropriate orientation, is presented by O.D.

¹David Cushman Coyle. *The United Nations and How It Works*, new ed., New York: The New American Library, 1969, p. 80.

Corpuz in his now popular essay on *Liberty and Government in the New Society*:

Operationally, a bill of rights is simply a list of two things. It is a list, first, of prohibitions on the government; second, it is a list of the rights of accused persons. Thus, it serves the interests of two classes of people in society. It protects the relatively few who are accused, and incidentally gives hope to those who intent to break the law. Secondly, it benefits these classes whose interests are threatened by positive governmental action, those classes whose status and comfort are maintained by governmental non-intervention in their lives. The overwhelming majority of citizens, who may safely be presumed to be law-abiding, do not in fact derive any benefits from the rights guaranteed to those who are charged and accused in the courts. Nor does the bill of rights offer solace and hope to those citizens whose only prospects for uplift and betterment depend upon positive action by the government, in terms not of positing civil and political rights on the one hand.

O.D. Corpuz suggests that there is a need to reconsider liberty defined as limitations of government to one that is more relevant today:

It takes courage to challenge the threat to one's liberty that comes from the awesome powers of government. Anybody can see that. We extol as heroes those who defend the dignity of the human persons against authoritarianism. But the redeeming virtue of courage in this sense is denied to persons who endure despite a continuous assault upon their human dignity by socio-economic deprivation, and who retain the human spirit in their humble shelters despite the dehumanizing influence of uncontrolled technology. Conscience moves some of us to alleviate the lot of our unfortunate fellow human beings through individual and private acts of charity. But it is a higher morality to agree that the collective conscience of the community shall impose upon the government that we maintain, the legal and moral obligation to use the community's substance and intelligence to defend the dignity of every citizen against whatever threat from whatever source. This involves a commitment from all of us to help restore to our fellow citizens the human capability to develop to the fulness of their potential.

The point is that in evaluating the record ANY GOVERNMENT IN THE GUARANTEE OF CIVIL AND POLITICAL LIBERTIES TO ITS CITIZENS; THERE MUST NECESSARILY BE A SIMILAR EXAMINATION OF THE ECONOMIC AND SOCIAL PORTION OF THE BALANCE SHEET: This is because human rights and their violations are rarely a black and white matter.

A nation may make an evaluation on the basis of an unbalanced appreciation of the importance of both civil and political rights, and economic and social rights, and for it to express dissent to the policies of any nation on the basis of UN declaration that "no nation of the United Nations can claim that maltreatment of its citizens is solely its own business." But, "equally, no member can avoid its responsibilities to renew and to speak when torture or unwarranted deprivation of freedom occurs in any part of the world." If the evaluation remains in the plane of expression and, therefore, constitutes the *promotion* rather than the unilateral *enforcement* of particular interpretation of the human rights, then such would be, perhaps, within the course of action contemplated by the United Nations.

However, for a nation, especially of a power stature as that of the United States, to unilaterally act on its evaluation through the granting, continuation, or withdrawal of foreign aid is a violation of the right of self-determination of nations. This is on the assumption that the rich countries of the world are obliged to aid the underdeveloped countries *qua* underdeveloped countries, and that what is presently forthcoming to the underdeveloped nations as foreign aid are not "grants" in the strict sense of the term.

Thus, there is a serious question as to whether the human rights being campaigned for by President Carter are not being interprestred too much from an American viewpoint and as such constitutes an imposition on most of the other nations of the world. Only about a dozen of the 147-nation members of the United Nations seem to guarantee "individual freedom" to their respective peoples to American satisfaction.²

II

The second aspect we would like to consider with respect to the Carter Doctrine is whether the strategy of implementation accords

²*Newsweek*, May 9, 1977, p. 7.

with that agreed upon by the nations of the world. The importance of this question lies in the fact that the success or failure of every internationalist policy in the international consensus not only as to what is desired, but also how it ought to be pursued.

With respect to the implementation of human rights, S.P. Lopez says that

The duty of the United Nations . . . is limited to the "promotion" as distinguished from the "protection" or "enforcement" of human rights. The powers and functions of the United Nations in regard to the pursuit of higher standards of human rights are educational and pervasive rather than compulsory or directive in character.³

Admittedly, this limitation has far prevented the United Nations from coping effectively with violations of elementary rights in various parts of the world. But, as Lopez says, "we must resist the temptation to go too fast, unless we do this, we may learn too late that haste indeed makes waste." Unilateral action in support of a particular interpretation of human rights may constitute "moving too fast." If anything, vigorous promotion in terms of exhorting other nations should, perhaps, be confined to the halls of the United Nations, in terms of practice, to one's territorial jurisdiction.

The worldwide agreement to the Universal Declaration of Human Rights as far back as 1948 maybe considered an agreement in principle, and even as such may have been a freak event. S.P. Lopez tells us that

if the work on the Universal Declaration of Human Rights had been delayed by even as little as one year, that historic document might never have seen the light of day. For by 1948-1949, the honeymoon season in the United Nations was coming to an end, and the freezing winds of the cold war had begun to blow. Thus, while the Universal Declaration of Human Rights was able to escape the blight of the cold war, the draft Covenants on Human Rights and the three draft Conventions concerning freedom of Information what not so fortunate. Together, with the proposals for implementation machinery, these draft legal instruments were caught by the wintry blasts of the cold war and kept in prolonged cold storage.⁴

³S.P. Lopez. "The 20-Year Struggle for Human Rights in the United Nations," *Fookien Times Yearbook*, 1968, p. 34.

⁴S.P. Lopez, p. 187.

Generally, the agreed manner of approach to implementation was the adoption, ratification, and enforcement of treaties and conventions on human rights. Unilateral action has never been given serious thought. But it is interesting to note that the unconventional approach of Carter to the implementation of human rights follows in the wake of previous U.S. non-support of treaties and conventions on human rights.

In 1953, Secretary of State John Foster Dulles declared that the United States was opposed to interventional efforts to promote human rights and fundamental freedoms by compulsion, including treaties or covenants on human rights. One reason for this attitude was the difficulty faced by a federal government in accepting legal obligations on matters considered to lie within the prerogatives of state governments. Another was the fear that the high standards of human rights and freedoms existing in the United States would tend to be diluted by the lower standards obtaining in other States parties to the treaties or conventions, following Gresham's law that bad money drives out the good.⁵

The point to be made here is that President Carter seems to continue with among history of American unilateral effort to unduly determine the course of the world human rights movement, at one time attempting to slow it down in the name of respect for domestic jurisdiction, and at this time hastening it, especially with respect to civil and political rights.

Considering the relative instability of the host of problems of the other states of the world, they may be unable, assuming they are convinced, to keep in step with the American tune.

III

A third general criticism of the Carter Doctrine is that, despite its laudable intentions, it may trigger off serious adverse consequences for many nations if not the whole world. There have been numerous suggestions that Carter's pronouncements on human rights might not have been based on a careful study of the possible consequences. This feeling is summed up in the description of the Carter Doctrine as "speak now, think later" policy.

But there are real problems involved: Carter faces an . . . acute dilemma in pursuing his crusade for individual

⁵Lopez, p. 35.

freedoms in Eastern Europe. Specialists draw a cautionary parallel with the disastrous events of 1956, when Hungarian "Freedom Fighters" revolted partly in the belief that they could count on U.S. help. That belief was encouraged by the Eisenhower Administration's so-called liberation policy.⁶

Carter's campaign might encourage false expectations among "freedom fighters", subversives, dissidents, etc., and aside from making the concerned governments miserable, it might itself be confronted with stark choices with respect to the restive situation in Eastern Europe. The U.S. may have to "intervene to help the freedom fighters at the risk of triggering World War III, or stand on the sideline while Russian tanks crushed the human rights movement by force."⁷

Short of this gloomy scenario, Carter, through his pronouncements, might have made life harder for political prisoners and dissidents worldwide. Through his "openmouth" diplomacy, he might have launched an open and direct attack against the pride of many governments, eager to demonstrate now that they are not succumbing to the pressure by cracking down more viciously on these dissidents. There are reports that this is presently the case with respect to Soviet Russia. A telling criticism of the Carter Doctrine in this respect is provided unwittingly by Kissinger when in October 1976 he described his own approach:

This Administration has believed that we must bend every effort to enhance respect for human rights but that a public crusade is frequently not the most effective method. Our objective has been results, not publicity.⁸

In addition to the probable ill-effects of the Carter human rights "spectacular", the dovetailing of foreign aid to the policy may also have adverse effects. Certain quarters feel that it is the people, not just governments, who are hurt by the selective embargo on aid.⁹ Cutting down on the aid may be cutting down not violations of civil and political rights, but on-going programmes to secure economic and social rights of the people. It can be argued that the repressive machinery of any state is the last area to suffer any budgetary cutbacks as a result of reduction in aid.

To what extent then is the Carter Administration, and for that matter the United States, answerable in the event these probable

⁶*US News and World Report*, March 14, 1977, p. 21.

⁷*Ibid.*

⁸*Ibid.*

⁹*Ibid.*, p. 19.

adverse circumstances take place? If President Carter does not have reasonable control over the adverse effects of his campaign, it would clearly be an irresponsible policy, no matter how good the intention.

IV

A fourth general evaluation of the Carter Doctrine is with respect to its internal and external consistency. By internal consistency, we refer to the extent to which the policy is coherent and uniform in its application. By external consistency, we refer to the extent to which the policy is consistent with the broader scope of American foreign and domestic policy.

A major criticism of the Carter Doctrine is that it espouses a "selective morality" through a "case by case" approach. Seemingly, President Carter's pronouncements in his inaugural address and in subsequent occasions have brought home the point that human rights were to be a guidepost of American foreign policy as they have been in the past. In his inaugural address, he spoke of his "absolute commitment" to human rights and promised that under his administration, "U.S. foreign policy would be guided by a sense of moral values."¹⁰ In a later statement issued by US Secretary of State Cyrus Vance, however, it was suggested that the human rights drive will be undertaken along a "practical, case-to-case approach consonant with over-all US foreign policy priorities."

This strategy, when applied, would therefore constitute a non-uniform and a partial application of a policy claimed to be rooted in every man's being regardless of race, sex, language.

In addition to "selective morality", another point to be made is the linkage approach, that is, Carter's statement that he should be able to criticize and extol on human rights without affecting the state of negotiations, let us say, on SALT II with the Russians. This view is inconsistent with the tying-up of foreign aid to the human rights movement.

V

To venture into a legal critique of the Carter human rights campaign in foreign policy necessitates an examination of whether or not such is legitimate or, more explicitly, if it is authorized by law.

¹⁰*Newsweek*, March 14, 1977, p. 6.

While the United States Congress has adopted guidelines, including the observance of human rights, in the conduct of US relations, these same are inadequate as a legal basis for her actions in the international scene. No state can impose its legal system to others; it runs counter to the idea of sovereignty. The real foundation, therefore, of the American human rights campaign should be the Universal Declaration of Human Rights which internationalized "human rights" when 48 out of 56 member-states approved the declaration on December 10, 1948, thereby making it part of International Law.

Against this historic document, the Carter Doctrine on human rights can be evaluated. Some basic questions which could be asked are: (1) Is the scope of Carter's human rights campaign consistent with the UN Declaration of Human Rights? and (2) Does the UN Declaration authorize any one state or group of states to enforce its provisions?

It appears that the Carter Doctrine on human rights emphasizes the Anglo-Saxon interpretation which pertains to the political and civil rights of men. The right to life, liberty and pursuit of happiness are viewed as inherent attributes of man's being. As such, they are inalienable and, therefore, imperative to the dignity of man. Thus, it is not surprising to note that the attempt to enforce the Carter policy focused on the violation of these civil and political rights.

Cases of tortures, denials of due process both on the substantive and procedural aspects were looked into to determine the so-called "human rights performance" of states. On December 29, 1976, the State Department sent to the US Congress a report on alleged violations of human rights in six countries including the Philippines. And then, again, sometime in March 1977, the State Department submitted an expanded report on 82 countries.

As earlier intimated, our questions is to find out whether or not this Anglo-Saxon definition of human rights jibes with the UN Declaration of Human Rights. We submit that the Carter human rights doctrine is limited in scope if put against the UN Declaration. Essentially, the UN Declaration provides three dimensions, namely: civil and political rights, social and economic rights, and the rights of states. While the Carter administration claims that the scope of its human rights campaign will be expanded, the fact remains that its initial implementation covered only the civil and political rights component of the UN Declaration. Evidently, the social and economic rights together with the rights of states were not included.

The least that we can infer from this limited scope fo Carter's human rights is that it can generate only limited support. The whole of the Socialist bloc will not extend its support because of the priority it gives to social and economic rights. The newly-independent states of Asia and Latin America will be cold on the policy because of the importance they attach to the principle of self-determination, the right of all people to independence, the illegality of the subjection of peoples to alien subjugation, domination and exploitation and, finally, the right to territorial integrity. These are, of course, the "human rights of states."