

What went wrong with human rights

The conflation of 'natural law' with 'positive law' handed communism

a philosophical victory after the end of the Cold War

Interview of Dr Aaron Rhodes (aaronarhodes@gmail.com) in Wall Street Journal

By James Taranto

Wall Street Journal (17.08.2018) – <https://on.wsj.com/2MC3oS3> – When the U.S. withdrew in June from the United Nations Human Rights Council, Ambassador Nikki Haley described the council as “a protector of human-rights abusers, and a cesspool of political bias.” Aaron Rhodes agrees but thinks Ms. Haley was too gentle.

“The Human Rights Council has become a cover for dictatorships,” he says. “They assume the high moral ground of standing for ‘dialogue’ and ‘cooperation,’ a tactic for smothering the truth about denying freedom. Raising human-rights concerns is dismissed as divisive and confrontational, and a threat to ‘stability.’ Most of the debate there is technocratic blah-blah about global social policy-not about human rights at all.”

To U.N. watchers it’s a familiar critique, but Mr. Rhodes, 69, applies it far more broadly. In his recent book, “The Debasement of Human Rights: How Politics Sabotage the Ideal of Freedom,” he argues that virtually the entire human-rights enterprise has been corrupted by a philosophical error enshrined in the U.N.’s 1948 Universal Declaration of Human Rights-and that this explains the travesty of the Human Rights Council.

That error is the conflation of “natural law” with “positive law.” Mr. Rhodes explains the difference: “Natural law is a kind of constraint on positive law.” Think of America’s Bill of Rights, whose opening clause is “Congress shall make no law.” The idea is “that laws have to answer to a higher law,” he says. “This is a vision of law that is very deeply embedded in Western civilization,” finding premodern expression in the ideas of the Greek Stoics and the Roman statesman Cicero, as well as in biblical canon law. Natural law is universal-or at least claims to be.

“Positive law,” Mr. Rhodes continues, “is the law of states and governments.” A statute like the Social Security Act of 1935 creates “positive rights”-government-conferred benefits to which citizens have a legal entitlement. Positive law is particular to a nation or other polity: “I live in Germany,” says Mr. Rhodes, a native of upstate New York whom I met during his U.S. book tour. “I enjoy a lot of economic and social rights there, but they reflect the political values of that community.” The Germans are “keen on being a moral society, where the state helps people. They’re statist. This is their mentality, but I don’t think it’s the same mentality here.”

Not everyone, however, accepts the idea of natural law. Adherents to the doctrine of legal positivism assert, in Mr. Rhodes’s words, “that all law is positive law, and the rest of it is just an illusion.” In this view, there is no difference in kind between, say, the right to free speech and the right to collect a Social Security check. Neither right is intrinsic to human nature, and both are bestowed by government.

Even in the U.S., the boundary between natural and positive law began to blur decades before the U.N.’s founding. Early-20th-century progressives, including Theodore Roosevelt and Woodrow Wilson, “were arguing vociferously against natural rights,” Mr. Rhodes says. “Their thing was that the constitutional rights were something archaic and an obstacle.”

Franklin D. Roosevelt enumerated his "Four Freedoms" in January 1941, including two natural rights (freedom of speech and of "worship") and one positive one ("freedom from want"). The fourth, "freedom from fear," Mr. Rhodes calls "meaningless," observing that fear is a "basic instinct."

In 1944 FDR exhorted Congress to enact a "Second Bill of Rights," all positive-including the rights to "a useful and remunerative job," "a decent home," "adequate medical care" and "a good education." Four years later his widow, Eleanor, chaired the committee that drafted the Universal Declaration of Human Rights, which reads like a mashup of America's real Bill of Rights and FDR's aspirational second one. "They tried to have it both ways," Mr. Rhodes says, by acknowledging that positive rights are "not the same as civil and political rights" while also insisting "they're human rights."

Mr. Rhodes is careful to add that he doesn't intend his argument "as an attack on welfare states, or even on socialism." Those arrangements are fine by him as long as they are chosen freely and democratically. What, then, is wrong with an expansive concept of human rights? For one thing, it leads to a kind of inflation that devalues natural rights. "The European Union, and its Charter of Fundamental Rights, says that the right to have free employment counseling is a human right," he notes. That "equates something as banal as employment counseling with something like the right to be free from torture, or the right to be free from slavery."

The corollary is that abolishing torture and slavery-or protecting the freedoms enumerated in America's Bill of Rights-is no more important than employment counseling. Which brings us back to the U.N. Human Rights Council. Mr. Rhodes describes it as "controlled" by "Islamic theocracies" and "heavily under the influence of China." Those unfree countries "are forming a human-rights vision of their own," he says. "It's human rights without freedom. It's human rights based on economic and social rights, where freedoms are restricted in

the interest of 'peace' and 'stability' and power-their power."

That in turn has "instilled a kind of passivity among people" living in unfree countries, Mr. Rhodes says: "They expect that they can fix their society through human rights. But the human-rights system is impotent; it doesn't have any teeth. There's an illusion of 'the U.N. is going to force my government to protect me.' No, it doesn't do this. So civil society puts all of its energies into this structure, which can't do anything."

The problem has worsened since the end of the Cold War, which provided the clarity of "an ideological battle about human rights," as Mr. Rhodes puts it. The communists, like today's repressive regimes, embraced "this fraud of economic and social rights, which provided this derisory standard of living" but was actually "a cover for their power." Some Western diplomats argued in favor of natural law. And the Soviet Union and its satellites abstained from the U.N. General Assembly's vote on the 1948 Universal Declaration because, Mrs. Roosevelt believed, they couldn't abide Article 13's provision that "everyone has the right to leave any country, including his own."

Natural rights enjoyed something of a renaissance beginning with the 1975 Helsinki Accords, in which the Soviet bloc joined the West in pledging to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief." Helsinki included positive rights too, "but nobody paid attention to them especially," Mr. Rhodes says.

"The importance of the Helsinki Accords was to stimulate civil society behind the Iron Curtain," he says. That took the form of national "Helsinki committees," whose members would go to international conferences for the purpose of "talking about human rights and embarrassing these dictatorial states." In

1982, at the suggestion of Soviet dissident Andrei Sakharov, the committees formed an umbrella nongovernmental organization, the Vienna-based International Helsinki Federation. The Berlin Wall fell in 1989, the Soviet Union collapsed in 1991, and Mr. Rhodes became the IHF's executive director in 1993. He held that position until 2007, when the federation dissolved.

His work in post-communist states could be dispiriting. "Some of the new governments-they didn't want NGOs around. They'd say, we are human rights; we don't need civil society to tell us what to do," Mr. Rhodes recalls. "But of course they needed criticism, especially with regard to minorities, and civil liberties as well. They needed to be observed and constrained in their policies." Among citizens of the newly liberated lands, Mr. Rhodes observed what he calls "the notorious mentality problems": "As a result of living under these communist systems, people are very subdued. There's a lack of their panache has been removed from them."

The end of the Cold War felt like a victory for the free world, but in Mr. Rhodes's view it proved a "disaster" for the concept of human rights. The U.N. held its World Conference on Human Rights in Vienna in 1993, the same year he began his work at the Helsinki Federation. It was "a period of chaos," he says: "You have all of these ridiculous theories, like the 'end of history' and 'new world order'-and meanwhile, wars in Tajikistan and Yugoslavia and Georgia."

To which the U.N. answered, in Mr. Rhodes's paraphrase: "Let's call everything a human-rights problem." The Vienna Declaration concerned itself not only with natural rights and the familiar positive ones, but also with policing private conduct and attitudes, including crimes like domestic assault, civil offenses like sexual harassment, and "socially determined barriers," even "psychological" ones, that exclude the disabled from "full participation in society."

“The irony of it is, with the end of these communist regimes, their theory of human rights was victorious,” Mr. Rhodes says. “The Soviet idea of human rights found legitimacy in the international system.”

Can anything be done? “I wish that the Trump administration would talk about human rights once in a while,” Mr. Rhodes says. “They should talk about freedom.” He adds: “I think the only administration that really promoted natural rights was Reagan.”

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