

**INTERNATIONAL
STATE CRIME
INITIATIVE**

**Working Paper Series
Editors: Penny Green & Tony Ward**

2/2010

**Comment on a paper by Joseph Raz,
'Human Rights in the New World Order'**

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Comment on a paper by Joseph Raz, 'Human Rights in the New World Order'¹

I am delighted to have the opportunity to discuss this rich paper with Joseph and others.

I will begin by making some comments about the premises from which Joseph proceeds, and will then say something about his argument.

1. The 'new world order'

As is signalled already in the title of his paper, Joseph thinks we live in a 'new world order', or at any rate in an emergent new world order, which he dates from the collapse of the Soviet bloc and finds reflected in developments that make the world seem smaller and also make it more interdependent.

The idea that, in the post-Cold War era, we were entering or had before us a 'new world order' was, of course, propounded in 1991 by George Bush Snr, but I think there was reason to be sceptical about that claim at the time, and I think there is even more reason to be sceptical about it in the light of events since.

To my mind, the most significant factor in world history in modern times is the consolidation of capitalism on a world scale. Of course, the end of state socialism, the advent of new information and communications technologies and all the other developments we subsume under the label 'globalisation' have brought changes to the context in which that unfolds.

But I don't think they have changed the basic structure, and nor do I think they have brought any general trend towards greater interdependence, as Joseph suggests. Rather, it seems to me that what we have seen are in many cases and on many levels deepening relations of dependence, inequality and exploitation. So while there are changes, to my mind the continuities are far more significant, and the new world order idea is problematic for the way it obscures and naturalises them.

I take issue with this first premise not just to be pedantic or to make a point for the sake of it, but because, as will become clear later in my remarks, I believe this has substantive significance for the subject of our discussion today.

2. Human rights

A second premise goes more directly to the subject of that discussion and takes up the other half of Joseph's title: human rights. Specifically, it has to do

¹ presented at King's College London on Tuesday, 11th May 2010

with the justification for human rights. For Joseph, the justification for human rights is a matter of working out whether we really 'have' human rights, to what extent it has been 'established' that a particular human right really 'exists', and how we are to analyse human rights with respect to the categories of moral rights, legal rights, legal rights with moral force, legal rights that recognise moral rights, and so on.

Joseph wants to determine whether people are using the term 'human rights' correctly or not, or at any rate whether their usage can be justified in formal terms. So the first half of his paper is an extended account of some distinctive characteristics of 'rights in general', presented analytically in terms of four 'truisms'. He then discusses whether claims about human rights are compelling insofar as they fit or do not fit those characteristics.

I approach the justification of human rights quite differently. I am not worried about people using the term human rights incorrectly, and nor am I concerned to determine whether we really have human rights, and to what extent particular human rights really exist. I see human rights as a body of practice, a form of discourse and a set of institutions that exist as historical phenomena, and people use them to advance claims. Of course, they may not be very helpful to those whom I and others care about. Indeed, as I will explain in a moment, I believe that they are in important respects unhelpful. But I don't think that has to do with formal or analytical weaknesses. I don't think it's a matter of failing to conform to some template or missing some truism. After all, if it's history you're interested in, there aren't too many truisms; self-evidence is usually more of a rhetorical strategy than a description of how things are.

3. 'Reckless activism'

These different premises lead me into a very different analysis of the significance and problems of human rights in the world today.

For Joseph, the value of human rights is that they 'set limits to national sovereignty'. States have to account to international tribunals and others for what they do. That means that: (a) they can't say 'mind your own business'; and (b) there is some recognition of the value of human life. As he writes, 'one crucial contribution of individual rights to the emerging world order is in underpinning its commitment to the value of human life' (p. 15).

But he thinks there is a problem with human rights in that people think you can simply read off human rights from social goods: 'many theoretical writers and political activists ignore the difficulty of the task their advocacy faces because they labour under the illusion that all they need to do is to point to the importance of the of the alleged right or its object to putative right-holders'. They 'neglect the need to establish correlative duties' (pp. 18-19). This leads, he writes, to a 'reckless activism' (p. 25).

Joseph finds this reckless activism reflected at two levels. One concerns process. Not enough attention is paid, he believes, to the need for impartial,

efficient and reliable institutions to administer and enforce human rights. The other level concerns content. Also lacking, in his assessment, is an appropriate degree of sensitivity to cultural diversity. This has again a double aspect.

On the one hand, and taking the example of the right to the highest attainable standard of health, there is the point that what constitutes the highest attainable standard of health is different in Burundi from what it is in Britain; indeed 'the very idea of health is culturally relative', he contends (p. 22). On the other hand, it is also the case that the right to highest attainable standard of health needs to be, and routinely is, balanced against all sorts of other rights and other considerations: 'different cultures have different, conflicting and yet reasonable attitudes to such conflicts' (pp. 23-24); 'many different individual attitudes and public policies, though inconsistent with one another, are sensible or at least acceptable' (p. 24).

It follows for Joseph that, 'contrary to much current rhetoric', human rights are not absolute; their just interpretation and implementation requires sensitivity to cultural diversity and to the validity of other ends (p. 26). The 'current practice of international human rights is deficient [inasmuch as it] is more likely to invoke cultural differences to condemn them than to acknowledge their validity' (p. 24). At the same time, since 'human rights are there to be enforced', greater consideration needs to be given than at present to the implications of international institutions' assuming 'jurisdiction over the way [for example] different countries compromise between concern for health and the pursuit of other values' (p. 25).

4. Current practice

I completely agree that there are profound problems and limitations associated with human rights, but I don't share Joseph's vision of what they are.

To begin with, and this is the least important point I will make about his argument, I am not at all sure about the accuracy of his account of current practice in the sphere of international human rights law.

Firstly, do international human rights activists, officials and scholars labour under the illusion that all they need to do is to point to a need and a right will follow? This seems an odd claim, given that the entire thrust of human rights work is to specify the duties incumbent on states and others, and that applies, if anything, more to social and economic rights (Joseph's examples) than to civil and political rights.

Secondly, do such people think human rights are absolute? That too seems a surprising claim. Plainly, the structure of international human rights law is that, with very few exceptions, absolute status is denied human rights. For the most part, they are guaranteed in qualified terms; they are subject to the possibility of derogation in times of national emergency; they can be modified

or excluded by reservations. Even in the case of those few rights, such as the right not to be subjected to torture or to inhuman and degrading treatment or punishment, which are guaranteed in absolute, non-derogable terms, it is clear that the scope of the right is subject to interpretation.

Thirdly, is the implementation of human rights inattentive to cultural diversity? Before coming to that, I think we need to remind ourselves that what we are talking about here are not discrete wholes. The entire thrust of anthropological thought over the last thirty years has, after all, been to emphasise that so-called 'cultures' are structures of power. We need always to ask who speaks for culture. We need always to think about how cultural contexts are contested and dynamic. There is a 'billiard ball' model predicated in the vision of cultural relativism to which Joseph alludes, which is surely not one we can accept.

Finally, what, then, of the fact that international human rights institutions are assuming jurisdiction over the way different countries compromise between competing values? I could not agree more that the issue of who decides, and how much legitimacy human rights institutions have for working out how (for instance) access to health care should be balanced against other social goods, is a crucial question. In fact, I would go further than Joseph, and when he says that 'different individual attitudes and public policies, though inconsistent with one another, are sensible or at least acceptable', I would want to ask: 'sensible and acceptable' to whom?

So, yes, there is an important issue here of legitimacy, and ultimately of democracy – the possibility for exercising control over decision-making that affects you. But I think we need to remember that the WTO, the World Bank and IMF, the International Court of Justice, and every other international institution and indeed every national and private aid agency, make those kinds of interventions, those kinds of decisions about how to balance competing social goods, all the time.

That does not make the democratic questions any the less pressing, of course. But Joseph's analysis does prompt reflection on whether international human rights institutions are exceptionally poor in this respect; it does prompt reflection on whether they stand out for their insensitivity to the diversity of global circumstances. I think people in the human rights world would argue, with some justification, that quite the reverse is the case.

In his discussion of universality, Joseph seems to assume that universality, unless qualified as 'synchronic', would necessarily imply some kind of transhistorical uniformity (see p. 13 *et seq.*). But people working on human rights know that universality can mean many different things; it has no unitary or self-evident meaning. And for most of them, it refers in this context not to uniformity (whether transhistorical or 'synchronic'), but rather to the global reach of particular procedures and institutions and the global circulation of particular practices and ideas. As they circulate, those practices and ideas, of course, get reappropriated in specific contexts.

Certainly, if you look at any report of the Committee on Economic, Social and Cultural Rights, it is very clear that no-one makes the mistake of thinking that the right to the highest attainable standard of health has the same implications in policy terms in Burundi as it does in Britain. It is not, and never has been, doubted that the profound differences between countries in terms of histories, traditions, and locations within the global economy, to mention just a few relevant axes of diversity, mean that the significance of human rights and of the obligations correlative to them varies. The primary issue, for the Committee and other such institutions, is always to ensure a non-discriminatory approach to the allocation of whatever resources are available.

5. Two worries

If for Joseph the problem of human rights is at one level too much enforcement (i.e. insufficient attentiveness to diversity), the drift of his analysis seems to be that, at another level, the problem is too little enforcement (i.e. insufficient attentiveness to the need for institutional oversight). On that latter aspect, most international human rights activists, officials and scholars would certainly agree. For them, the problems of human rights are, above all, weak enforcement and lack of accountability.

To my mind, the most pressing problems and limitations of human rights are captured neither in that claim, nor in Joseph's argument that the fact that something is of value to someone doesn't of itself mean they have a right to it.

To explain how my analysis differs from both these accounts, let me return to what Joseph says about the value of human rights. On the one hand, they 'set limits to national sovereignty', and on the other hand, they make a 'crucial contribution to the emerging world order in underpinning its commitment to the value of human life'. These are familiar claims, but to my mind they need qualifying, and the qualifications give a clue to what I think is wrong with the whole analysis.

Let's start with the idea that human rights set limits to national sovereignty. At first sight, it seems hard to dispute that, but then on closer inspection it is not at all obvious that we are faced here with a zero-sum game in which more human rights mean less state sovereignty. Things are surely a lot more complicated than that. And while they are more complicated in a variety of ways, one is that, if human rights constrain governments, they also enable them. To prohibit torture is to permit whatever does not constitute torture. We were, of course, forcefully reminded of that by the Bush Administration's infamous torture memos. Likewise, to invoke rules about arbitrary detention is to invite the invocation of exceptions. Again, we have had many occasions to reflect on that since 9/11.

So here is the first thing about human rights that worries me -- not that people are using them incorrectly or without justification, but rather that they can be used correctly in ways that seem to me objectionable. In other words, I am

worried about what arguments human rights support, what arguments they make available.

This perspective is different from Joseph's because it invites us to think critically about human rights. It invites us to see human rights as potentially part of the problem, and not just because they can be abused or used recklessly in the ways Joseph describes, but rather because they can be used entirely properly but for repressive rather than emancipatory ends. It invites us to think about the contributions and limits of human rights in their normal, proper functioning, and not simply to assume that their normal, proper, responsible and non-reckless functioning is beneficent.

Let me turn now to the other thing Joseph regards as valuable about human rights – they make a 'crucial contribution to the emerging world order in underpinning its commitment to the value of human life'. It will be apparent from what I said at the beginning of these remarks that I wonder about the commitment of the emerging world order to the value of human life.

In January this year an earthquake struck Haiti and between 200,000 and 300,000 people were killed. That appalling death toll was not because of the severity of the earthquake or because it struck near urban centres – a much more severe earthquake hit Chile, also near urban centres, about a month later and between 500 and 800 people were killed. No, this catastrophe in Haiti was man-made. It had to do with policies of 'economic modernisation' that were from the beginning determined by mixture of domestic and foreign forces but that in recent years got stepped up under the impact of structural adjustment and related phenomena to the point where, when the earthquake hit, hundreds of thousands of Haitians were living in flimsy slum dwellings on the edge of deforested and eroding ravines.

I don't think the world order we have has much of a commitment to the value of human life in general; it values some people's lives very much more than other people's. Have human rights made a crucial contribution to changing that situation? Could they make such a contribution? I am not at all sure.

The reason I am not at all sure is partly what I have just said about the ambiguous significance of human rights: their dual potential to serve as constraints, on the one hand, and facilitators and legitimisers, on the other. But that, of course, is something they have in common with all the products of modernity. So let me mention one further and perhaps more distinctive reason for being doubtful about the extent to which human rights have made or could make a crucial contribution of the kind Joseph has in mind.

Here I need to touch very briefly on another respect in which he and I part company. Joseph thinks that 'there cannot be human rights which cannot be enforced by law' (p. 21), that 'human rights are there to be enforced' (p. 24). Again that seems at first sight hard to dispute, but for own part I am not convinced that that is the only, or even the ultimate, function of human rights. It seems to presuppose that people are out there waiting for courts or some other legal experts to tell them that that have suffered injustice. It seems to

presuppose not just a beneficent role for human rights, but a vindicationist one.

Well, I think we need to contemplate the possibility that people already know when they have suffered injustice; that they already know when their governments have failed them, and when the international system works against them, and that their real or, at any rate, most pressing need is not for someone authoritatively to state that, but instead for help in channelling their already acute sense of injustice into effective political action. Human rights have played a role of that sort, and they have the potential to do more. But the commitment of the human rights movement to neutrality, impartiality and 'non-political' intervention – its 'anti-political' style of politics – means that that kind of help is the thing which human rights institutions and organisations tend to be least comfortable with providing.

The counterpart of that reticence is the assumption I referred to earlier that the problem of human rights is weak enforcement and lack of accountability, the assumption that all you need to do is give clearer signals to governments on what they should be doing and attach some consequences so as to follow up on those signals, and everything will be okay. But *why* are they not doing what they should be doing?

This, then, is the second thing that worries me about human rights. To my mind, there is too much focus on technical-legal solutions, and not enough focus on working out why violations are occurring and hence what it will take to bring about change. To be sure, there is a lot of talk today about the 'root causes' of human rights abuse. But there is actually very little effort to bring into the focus the systemic constraints and pressures (and, of course, those are constraints and pressures not just by and on governments, but also by and on businesses) that form the context in which the violation of human rights becomes not just possible, but even rational. And if we don't understand the context in which the violation of human rights becomes possible and even rational, then, of course, we also don't understand what it will take to put the violation of human rights to an end.

Conclusion

One way of summarising this point, and indeed everything I have said, is to observe that Joseph considers human rights from perspective of formal logic, while I think they need to be considered from the perspective of historical logics, that is to say, from the perspective material reality and the possibilities it throws up for transformative change.

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P.S. Comment on Q&A

The seminar on Joseph's paper included a lively and enjoyable Q&A which sparked many thoughts, but let me just record here one. As already noted, Joseph's account centres on a series of 'truisms' regarding 'rights in general'. In discussion too, his emphasis was on points about which he expressed the hope that he was not saying anything 'controversial'. In a similar vein, I was asked to provide an 'uncontroversial' example of how human rights are not just part of the solution, but also part of the problem (to use a formulation borrowed from David Kennedy – see *The Dark Sides of Virtue* (2005)).

So it is perhaps worth spelling out that my orientation is rather different from this one that presupposes, or aims at, consensus. I do not start from the idea that we – or all reasonable people – agree on certain fundamental matters (or would agree if we adverted to them), and nor do I strive to say things that are uncontroversial. Rather, I start from the reality of social conflict, social antagonism. There is, and can be, no uncontroversial example of how human rights are not just part of the solution, but also part of the problem, because what is the solution to one group in society is the problem to another.

That is not just because of different 'preferences' or 'values', as liberals might say. It is not just a function of dissensus over policies and goals. It is because, both within countries and across the world, some people's privilege depends on others' deprivation. In human rights terms, it is because some people benefit from, and indeed live off, the violation of other people's rights. It follows from this that the protection of human rights, or, more pertinently, the goal of 'truly human emancipation', is not a matter of academic enlightenment, but of struggle against often extremely determined resistance.