

## CHAPTER 2

### NOTIONS ABOUT "HUMAN RIGHTS"

Human rights have been described as the legal, political, and moral claims to conditions necessary for the well being of individuals. Although it goes without saying that there is no unified understanding of the concept of "human rights" even in the West, philosophically, they are said to be based on concepts of human dignity and non-discrimination among people. Legally, they are based on national constitutions, laws and international treaties that oblige governments to behave in certain ways toward persons under their authority.

The concepts of human rights emerged within the Western traditions of natural law, natural rights, and liberal individualism. Major parts of these traditions have become internationalized, particularly after the end of World War II, before which only a limited number of rights had been defined under international law. More detailed definitions and enumeration of human rights have dramatically developed in the latter half of this century.

Opposition to slavery, humanitarian intervention, humanitarian law, and the rights of minorities were areas in which scattered progress was made from the early 1800's through until 1945. The Slavery Convention of 1926, negotiated by the League of Nations, required all signatory states to prevent

and suppress the slave trade and to abolish all forms of slavery as soon as possible (Alston, 1992: paraphrase).

During the 19th century, some Western European states intervened to protect Christian minorities in the Middle East and Eastern Europe. They justified their actions by drawing on a doctrine of humanitarian intervention. The Ottoman Empire was presumed to recognize freedom of religion and to open administrative positions to non-Muslims and non-Ottomans. However, since humanitarian intervention was invoked later as a justification for imposing imperial control in Asia and Africa, the concept has been widely criticized in the 20th century (Alston, 1992).

The Versailles treaty ending World War I established both the League of Nations mandate system and the International Labor Organization (ILO) whose mandates were to promote moral and material well-being, not to mention social progress, as a sacred trust of civilization. The ILO started to draft various agreements on working conditions including freedom of association, freedom from forced labor and freedom from discrimination in employment (Alston, 1992).

International humanitarian law applicable in times of war started to take shape with the 1864 Geneva convention. But this and later treaties did little to slow the descent into World War II as the League of Nations was ineffectual in countering aggression in the 1930's. It was also during this time that there was increasing discussion of how to enforce international arrangements and how to guarantee human rights and fundamental freedoms. In the Atlantic Charter of 1941, US President Franklin D. Roosevelt and

British Prime Minister Winston Churchill pledged to respect the right of all peoples to choose the form of government under which they live...to see sovereign rights and self-government restored to those who have been forcibly deprived of them. (Although he later added that he meant only those countries occupied by fascist powers, not the rights of indigenous peoples in Western imperial possessions) (Alston, 1992). Some of Roosevelt's statements on "freedoms" in the early 1940's are also said to have foreshadowed the post-war Universal Declaration of Human Rights, and the decision to try German and Japanese leaders for war crimes and "crimes against humanity" are said to represent the first effort to determine responsibility for violating human rights.

A proliferation of human rights concerns, including standards of accountability, and further protections, emerged when controversy erupted over the universality of human rights provisions at the 1993 United Nations World Conference on Human Rights held in Vienna. It has become apparent that governments have become responsible to at least some degree to the international community for the treatment of their inhabitants and as human rights enter into the practice of interstate relations, nations have increasingly incorporated standards of accountability and protection of civil and political rights into their foreign aid and diplomatic recognition policies.

Although human rights have been debated for centuries, in recent years these standards of accountability and protections have been mostly developed by the United Nations and through regional treaties, including the UN Charter. Despite diverse philosophic roots and cultural traditions, efforts have been made to secure some degree of consensus through the

increasingly extensive network of international treaties. In recent decades, greater emphasis has been placed on the collective rights of groups (including the right to self-determination), the rights to development, and on duties as correlatives to rights.

But the centuries-old debate over the origins and definitions of human rights continues. Natural law theorists, among others, regard these rights as moral rights or ethical rights, while legal positivists emphasize fundamental personal rights found in the law. Utilitarian and analytical theorists criticize the idealistic nature of aspirations claimed as rights. For example, 19th century British philosopher, Jeremy Bentham deemed natural rights "rhetorical nonsense, nonsense upon stilts". He claimed "right" is the "child of law" and that from "real law comes real rights", but from "natural laws" or "imaginary laws" come merely "imaginary rights" (Blaustein, 1987: paraphrase).

Can a "right" exist if it is not regularly enforced? Legal positivists have argued that no right exists unless there is a correlative duty - an obligation to rectify a given situation. In this way, legal positivism rejects the idea that human rights can exist without specific legislation (domestically, through constitutional processes, and, internationally, through voluntary inter-governmental agreements leading to treaties and conventions) that provide for enforcement and remedies. Governments concerned with protecting their sovereign powers tend toward such a legal positivist perspective.

Human rights are also viewed as rooted in natural law and natural rights. An example of this latter approach is Thomas Jefferson's assertion in the Declaration of Independence "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the Governed" (Blaustein, 1987). This natural law approach asserts that human rights result from the fact of being human and are therefore inherent in individuals. Furthermore, several human rights, such as freedom from slavery or from torture, whether grounded in natural law or in legal positivism, have become recognized as part of customary international law.

Several scholars have developed alternative definitions of human rights including political theorist, Henry Shue, who defines three basic rights in his Basic Rights: Subsistence, Affluence and U.S. Foreign Policy. These basic rights include physical security, economic security (or subsistence) and political participation. From these basic rights, Shue derived three duties: to avoid deprivation, to protect from deprivation, and to aid the deprived.

Ronald Dworkin, a Professor of Jurisprudence, argues in Taking Rights Seriously that the rights of individuals are "political trumps". He writes that they can be held against decisions made by a society as a whole and against decisions made by a specific institution.

Distinctions are also frequently drawn between what are referred to as "generations" of human rights. The first generation, corresponding to civil

and political rights, involves restrictions of government powers. In general, they read, "No one shall be subjected to.....". They are also called "negative" or "liberty" rights. By contrast, the second generation of rights corresponds to economic, social and cultural rights, and involves the expansion of government resources and responsibilities. Such "positive" rights are deemed necessary to ensure equality in the face of discrimination. Finally, the third generation, including self-determination, peace, development, and a healthful environment, are asserted to be collective in nature as they involve an entire people or humanity as a whole. These are occasionally termed "fraternity" or "solidarity" rights from French Revolution terminology.

It can also be asserted, however, that human rights are interdependent and that the distinctions between so-called "generations" of human rights are very weak. It is said that Cold War tensions accounted for a large portion of the separation among different types of rights.

Western countries, particularly the United States, have tended to stress civil and political rights, while the former Communist bloc tended to focus on economic and social rights, and developing nations tended to stress self-determination and other collective rights. Questions of cultural relativism have long been raised by social scientists stating that standards and values are relative to the culture from which they derive, so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any declaration of human rights to mankind as a whole (American Anthropological Association, 1947).

The delicate nature of these cultural differences showed once again when there was controversy over the presumed universality of the UN Declaration of Human Rights and other "universal" documents at the UN World Conference in 1993. Several Asian governments argued that such "universal" documents merely reflect historical evolution, economic conditions, and basic values of Western democratic, industrialized states and that they are not truly "universal" or applicable on a global scale. Their argument is that any rights that are asserted and/or protected should be determined in part by the unique circumstances of each state or society. Thus, rather than being universal, human rights should be relative to the cultural and religious background from which they arise.

"Rights", as discussed by Donnelly, have moral and political senses: *rectitude and entitlement* (Donnelly, 1991: 9). This distinguishes them from the notion of dependency on another force through some kind of reciprocal relationship. It is therefore argued that "human rights" are universal in the sense that they are a kind of innate entitlement, a universal class of moral entitlements afforded any human being, *the rights one has simply because one is a human being* (Donnelly, 1991: 49) to realize human dignity.

Donnelly argues, however, that the definitions of that "dignity" are subject to historical contexts. In this respect, human rights are "universal" as a universal class of moral entitlements at any one time, but these historical contexts, or particularities, are not universal across time. Such historical particularity can be seen *not only in conceptions of human dignity, but also*

*in social systems and political regimes based on such conceptions* (Donnelly, 1991: 67).

Because *human rights are a particular social practice that aims to realize a substantive conception of human dignity* (Donnelly, 1991: 68), and because human dignity differs from the *equal and inalienable rights each person has simply as a human being* (Donnelly, 1991: 67-68), despite the variance in conceptions of human dignity in various socio-economic contexts and cultural situations across time, it is argued that human rights, by definition as the inalienable rights of every human being, *potentially open to all human beings* (Donnelly, 1991: 32), are universal.

Although the concept of human rights is universal, various definitions of human dignity evolve in various historical and socio-economic contexts. However, the main proposition put forward to justify the "universality" of human rights often pertains to the consensus among nations which have signed the International Human Rights Covenant, which they claim proves consensus among nations regarding the universality of human rights arising from *the inherent dignity of the human person* (Donnelly, 1991: 17).

Donnelly also writes that *internationally recognized human rights require a liberal regime* (Donnelly, 1991: 69) and he does not think that other regimes' concepts of human dignity *stand up to scrutiny under the standard of human rights* (Donnelly, 1991: 67) in the face of the shared challenges of the current modern age.



Most of the concepts of human rights discussed by Donnelly also focus on the realization of human dignity in a socio-economic sense, *the vision of a life in which each person is an equal and autonomous member of society enjoying a full range of human rights* (Donnelly, 1991: 69), while he points out that *questions of genesis must be kept separate from theoretical justification* (Donnelly, 1991: 31).

However, if the metaphysical nature of "why" people should be treated in a certain way is a problem for some cultures,

*..various declarations and conventions relating to Human Rights state not only how people should be treated but also why they should be treated that way. The metaphysical nature of the "why" part is one of the causes of the sense of strangeness with which various cultures view these documents* (Tamthai, 1998: 3) then perhaps one needs to consider that, the idea of "human rights" in its entirety is far greater than any specific understanding we may have at any certain time and/or at any particular place. (Tamthai, 1998: paraphrase).

Such considerations may be relevant considerations for those who insist that any discussion of "human rights" is totally inappropriate with regard to Thailand. As a matter of course, by the same token, as is clear from the previous historical background, there is no unified understanding or consensus on the issue of human rights, or their definitions for that matter. However, the author would argue that *...the idea of human rights is about a yearning which all humanity has had throughout time about being able to live together in peace in a just society...the universality of human*

*rights is the universality of this yearning rather than the universality of its expression at any particular time* (Tamthai, 1998: 3).

Next, it may be significant to make a few brief observations about the apparent direction of Thai development in order to consider the consequences for human rights concerns in Thailand in the post-1992 years.