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## Introduction

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# INTRODUCTION

BY RICHARD FALK\*

The editors of this issue deserve praise for recognizing that human rights, even more than charity, begin at home. There is a tendency, however well-intentioned, for Americans to regard human rights as an incident of foreign policy. Even during the period of the Carter presidency, the emphasis on human rights was solely on pressuring other governments to institute minimal human rights requirements, while ignoring our own domestic agenda.

There is further cause for concern today. Somehow President Reagan, while managing to make racism respectable again, is giving human rights a rather bad name. His Administration would have us believe that all serious abuses of human rights are occurring in communist states. Berating these countries for their human rights record is little more than a species of hostile propaganda, an adjunct to the scary idea that the focus of evil in the world is found in the vicinity of Moscow. Such a fundamentalist campaign instills fear in the public and builds a war-fighting mentality among a portion of the citizenry. It converts the subject of human rights into a source of danger in our world, one more means to mobilize hostility, raise tensions, and divert attention from our failure to use more of our resources to help people. If we manage to survive the current nuclear and ecological crises, then subsequent generations will doubtless wonder why citizens allowed billions of dollars to be squandered on useless weaponry, while millions of their compatriots lacked adequate food, clothing, shelter and health care.

As several of the authors in this symposium make evident, there are a variety of more direct infringements on human rights than the misappropriation of resources to the detriment of the very poor. The instances of abuse of indigenous peoples is especially revealing. Leading liberal politicians who never protested the treatment of Native Americans in their home territories are suddenly publicly agitated by the fate of Misquito Indians at the hands of the Sandinista government in Nicaragua. The obvious point here is that embarrassing the Sandinista government is more politically expedient than is helping the Misquito. This is especially evident because the evidence suggests that both sides in Nicaragua are seeking to work things out in a positive spirit of negotiation, a process that Washington has not encouraged.

One topic not discussed here or generally in human rights literature

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is the political condition of the people of Puerto Rico. There seems to be every reason to regard the island as a colonial remnant, somehow entrapped within the greater orbit of a superpower. In one sense, the right of a people to self-determination underlies other more individual rights. I would not suggest that the people of Puerto Rico have yet spoken in one voice on these sensitive issues of statehood, any more than have Native Americans on reservations or black South Africans in townships. But there seems to be enough of a structure of domination and subordination between Washington and San Juan to make legitimate the issue of collective rights and self-determination. Annual appeals by Puerto Rican dissident groups at decolonization hearings in the United Nations lend additional credence to this concern.

The American approach to human rights is also influenced by the entrepreneurial ethos of capitalism. Our leaders may give lip service to those economic rights which relate to the satisfaction of basic human needs, but most are concerned with political rights and safeguarding individuals against abuses of state power. Such a priority is even more evident today when the welfare state is being dismantled before our eyes and the defense budget continues to escalate. So long as winners and losers are receiving their just rewards through the workings of the market, the resulting hardship creates, at best, a case for altruism, but not a category of legal rights and remedies for the poor and the politically powerless.

Surely, as Judge Ginsburg contends, the American achievement by way of judicially acknowledged and enforced human rights has benefitted many citizens of this country, although until recently it did very little to alleviate the plight of black Americans. Moreover, American courts are bending just a little in the direction of giving citizens a direct stake in upholding human rights, even if this acknowledgement causes some tension with respect to the conduct of foreign policy. The growing number of instances of civil disobedience by domestic, social and political leaders to protest South Africa's apartheid system is an encouraging sign. It reflects a growing understanding that upholding human rights is a serious concern, even if it means going to jail. Occasionally, a court has even upheld an individual's right to engage in "symbolic" violations of law, if his or her purpose was reasonably calculated to encourage compliance with applicable human rights standards.

One recent straw in the wind was a criminal trespass case in the state court in Burlington, Vermont. The 26 defendants were at Senator Stafford's Vermont office during the Winter of 1984 to induce him to vote against further aid for the Contras in Central America. In an historic jury charge, Judge Frank Mahady instructed the jurors that they

might acquit if they believed that the defendants were convinced their "illegal" actions were necessary to achieve a lawful foreign policy in Central America. An acquittal quickly followed, and subsequent discussions with jurors has revealed that they had become sympathetic with non-violent efforts to challenge an illegal foreign policy. Although such a trial proceeding in the United States does not directly relate to human rights, it does move the individual a step closer to possessing a *direct* stake in—and having some effect upon—the interpretation and implementation of international law. It is this kind of pressure from citizens today that is increasingly important to bolster human rights around the world.

The authors in this collection are attentive to a variety of dimensions of the human rights problem. They summarize ongoing work and open up new areas for research and writing. While the particular issues in this edition are necessarily rather specialized, they should all be viewed in a much broader context. For ultimately, the promotion of human rights is part of a plea for human solidarity. It draws upon an underlying human identity, foreshadowing an eventual movement in the direction of world citizenship.

In the meantime, there is much work for us all to do. There is an immediate need to press the Reagan Administration on its policy of "constructive engagement" with South Africa. At the same time, the protection of women, minorities, the handicapped and victims (e.g., gays and abused children) is part of the current human rights agenda. Ultimately, the future of human rights will depend on the strength of movements and public opinion, not on the benign disposition of leading governments, or the spontaneous initiatives of the main political parties.

