WHORM Subject File Code: FG002-38
(Federal Government Organizations: Former Presidents: Carter, James Earl, Jr.)
Case file Number(s): 399939 (3 of 6)
Box Number: 5

nothingism? Hardly. The treaties were stuck in the Foreign Relations Committee under Senator Frank Church, a bastian of liberal internationalism. They were stuck because the problems with them are real and vexing.

Article VI of the United States Constitution declares that treaties as well as federal law and the Constitution, itself, constitute "the supreme Law of the Land." This seems to mean that the authority of a treaty is equal to that of an act of Congress, and so the courts have held. Indeed, in some ways the Supreme Court has placed treaties above legislation.[8] This means that by signing treaties the American government is making law binding on the United States.

Most of the time this fact is of no domestic consequence because most treaties concern only our relations with other states. But the human rights covenants and conventions are primarily concerned with the domestic actions of states. It would hardly be surprising if the Senate felt that matters of this kind are properly left to the normal legislative and judicial procedures of the United States rather than insinuated into our law through treaties.

At the very least ratification of these treaties would raise ticklish legal questions. Article 1[1] of both the economic and social and the civil and political covenants proclaims that "all peoples have the right of self-determination." Not long ago self-determination for American blacks was a demand raised by some militant groups. Would this demand now find legal footing? Perhaps more plausibly, what if groups of American Indians asserted their independence from the United States? And could U.S. affirmative action laws and rulings survive the dictate of Article 7[c] of that covenant guaranteeing "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence"? At worst, parts of these treaties directly conflict with the U.S. Constitution, such as Article 4[a] of the convention on racial discrimination which requires that all parties "shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred [or] incitement

to racial discrimination."

In order to cope with this problem, President Carter's message to the Senate submitting the treaties included the statement: "Wherever a provision is in conflict with United States law, a reservation, understanding or declaration has been recommended" by the State and Justice Departments in order to remove any "constitutional or other legal obstacles to United States ratification." Altogether the administration proposed seventeen "reservations," "understandings," "statements," and "declarations."[9]

These reservations pose problems of their own. Their status under international law is ambiguous, except if no other signatory raises any objection, an unlikely eventuality. At a minimum, no treaty to which the United States appended a reservation would be considered in effect between the United States and any country that objected to the reservation.[10] Friendly governments might be disposed to acquiesce in these reservations, but surely some others would find themselves unable to resist the temptation to embarrass the United States by objecting to them. And these are likely to be the very ones that we would most wish to bring under some sort of international regime of human rights. Nonetheless, the Carter administration's proposed reservations might solve the essential legal problems.

They would not, unfortunately, touch the larger, practical problem, namely that the treaties are not enforceable. The basic enforcement mechanism of the treaties are periodic reports submitted by each party concerning its own compliance. Is it any surprise that the variations in these self- evaluations provide an analogue to Senator Moynihan's aphorism that you can land in any country in the world and if the newspapers are filled with good news, you can assume that the jails are filled with good people? The governments that most abuse human rights tend to file the most glowing reports. Compounding this problem, these governments are also heavily represented on the UN committees that receive the reports. The net effect, as one UN official acknowledged, has been that "the respective Committees have tended to

accept at face value the anodyne self-congratulatory reports of states with notoriously poor human rights records, while examining in great detail and sometimes even with a certain hostility the honestly self-critical reports of manifestly democratic states."[11]

In addition to self-reporting, the Covenant on Civil and Political Rights has optional provisions that, although not constituting "enforcement," would at least allow for a freer airing of complaints. These are the Optional Protocol by which states authorize the Human Rights Committee to receive complaints about their alleged violations from aggrieved individuals, and the Optional Article by which states agree to submit to investigation of complaints brought against them by other states. As of December 1984, ninety-one states had ratified the covenant, forty-one of these had ratified the Optional Protocol and seventeen had accepted the Optional Article. Once again, those most willing to submit to outside complaints are those about whom there is least cause to complain.

In its eagerness to show that, as Derian's deputy Mark Schneider put it, "the rights we have promoted are not parochial American values,"[12] the administration professed to see in this UN record evidence of an "international consensus" on human rights. President Carter proclaimed that "the Universal Declaration of Human Rights is the cornerstone of a developing international consensus on human rights."[13] In the annual volume of country reports covering 1979 the State Department said:

> There now exists an international consensus that recognizes basic human rights and obligations owed by all governments to their citizens. This consensus is reflected in a growing body of international law: the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and other international and regional human rights agreements. There is no doubt that these rights are often violated; but virtually all governments acknowledge their validity.[14]

There is something a bit funny in the State Department's proclaiming that an international consensus is embodied in documents which the U.S. Senate refuses to accept, but the more serious point is that not nearly all governments "acknowledge the validity" of human rights. The UN documents are evidence less of consensus than of hypocrisy. The contrast between practice and preachment of human rights is not explained, as the State Department seemed to be suggesting, by the fact that governments violate their own beliefs (as if somehow the spirit was willing but the flesh was weak), but by the fact that many governments are quite willing to proclaim principles that they neither believe nor practice.

In truth, the United Nations exhibits growing discord on human rights, and that is the very nub of the problem of relating U.S. human rights policy to international law. The Universal Declaration was adopted by the General Assembly in 1948 by a vote of forty-eight in favor, none against, and eight abstentions. Of the forty-eight positive votes, the majority were democracies. They were voting for something in which they genuinely believed. Most of the rest of the forty-eight, though not democracies themselves, looked to democracies as their models. The eight abstentions were also sincere votes, cast by states that knew they did not believe in human rights: the Soviet bloc, South Africa, and Saudi Arabia.

Today the number of UN members has trebled, but the number of democracies has not grown appreciably. They now constitute not a hegemonic majority, but a clear minority. Which is not to say that the Universal Declaration, if introduced anew, would have tougher sailing through today's General Assembly. On the contrary, it would probably pass unanimously, this time without abstentions. Gorbachev's delegates would have a more clever strategy than Stalin's had, and so too would the Saudis and the South Africans. This points up two cardinal developments in the UN during these thirty-five years—on the one hand growing diversity, and with it discord; on the other growing hypocrisy. In regard to human rights questions the latter has

to some extent masked the former.

The twin problems of discord and hypocrisy do not necessarily render all international human rights instruments useless, but the ones that have proved most effective are the ones that somehow diminish the effects of one or the other of these factors. The most effective international human rights agreement is the European Convention on Human Rights, which has been in effect for thirty years. The convention sets a demanding standard for observance of human rights and it contains a full-blown enforcement mechanism designed not merely to air complaints but to adjudicate them. Moreover, the mechanism allows for complaints to be initiated by either states or individuals. Hundreds of complaints have been processed over the years, and the convention is widely held in high repute. The key to this success is that the parties are all Western European states. They are all democracies, and they share a great degree of cultural homogeneity.

Another regional treaty, the American Convention on Human Rights, has only been in force for a few years, but it al ready has shown utility as an instrument with which the hemisphere's democracies can bring constructive pressure to bear on its tyrannies. Although all of its adherents are not democracies, they share an even greater degree of cultural homogeneity than do the West Europeans.

The other most effective international human rights instrument has been the Helsinki "Final Act." It has not brought about any concrete improvement in respect for human rights other than perhaps some humanitarian gestures involving family reunifications, and it seems that the level of respect for human rights in the Soviet Union is lower today than at the time the Final Act was signed in 1975. But in addition to providing a point of reference and a source of encouragement for East European dissidents, it has created an effective framework for bringing attention to human rights abuses. This effectiveness has resulted from three factors that distinguish the Helsinki Accords from the UN-sponsored human rights treaties and that serve to mitigate the noxious impact of hypocrisy. First, the human rights provisions of

the Helsinki Final Act are more specific, more detailed, and less far-reaching than those of the UN treaties. Second, the Helsinki agreements include provisions that have allowed for regular, public review of their implementation. Third, and most important, the tyrannies constitute only a small minority of the Helsinki signatories, and the democracies constitute a clear majority, as they once did in the UN. The tyrannies lie and posture and prevaricate in the Helsinki review meetings just as they do at the UN, but because they are only a few against the many they do not succeed in creating the same miasma of lies and equivocations that so shrouds the human rights deliberations of the UN.

The European and American conventions and the Helsinki Final Act offer sorely needed evidence that international instruments can do some service for the cause of human rights, but their limitations and their special characteristics also reinforce the impression that international law is a disappointing instrument in the service of that cause. Law must rest either on consent or on some power of enforcement. International law has always rested, and in its very conception rests, on consent. But there is no likelihood at all that tyrannies will consent to respect human rights, which is equivalent to abolishing themselves, merely because they are told that international law requires it. The idea that abuses of human rights can in this manner be outlawed calls forth one historical analogy—in 1928 the nations of the world outlawed war.

If international human rights law cannot rely on consent, then is there some power that can enforce it? Patricia Derian once expressed the view that because "human rights is international law...there can be no other course for the U.S. Government but to apply and enforce that law."[15] But the United States has no authority, under the law, to act as the enforcer; indeed the effort to play enforcer might itself run afoul of other parts of international law, as witness the questions raised in connection with U.S. actions in Grenada. Nor has the United States, in an age when tyrants are armed with nuclear weapons, the power to enforce the law, except in iso-

lated instances. Those who seek in international law the enforcement of human rights may have in mind a transformation of international law into something more supranational. As a prominent exponent of that approach, John Humphrey, has put it: "what has traditionally been known as international law should now be called world law."[16] But the advent of some kind of new "world law" that will force governments to respect human rights not only seems exceeding remote, its desirability has been cogently challenged by J.S. Watson. Watson writes:

> Unless we are talking about a revolution of the human spirit, the proposed system of regulating conduct will have to be by external means. This would mean that the only substitute for the horizontal international order is a vertical order, a super state of some kind...Precisely why this super state, however administered, will be free from the ills of the present smaller states is nowhere clarified. This centralized world government would have to be achieved either by a great political force the like of which has been, thankfully, unknown up to now, or else by means of a spiritual awakening. Needless to say, a spiritual revolution of the degree necessary to overthrow the nation-state would make law largely redundant.[17]

In short, international law offers no short cut to making abusive governments mend their ways. Its usefulness lies in whatever moral weight it can add to a broader political or ideological struggle to make those governments change or give way to better ones. But the very terms in which the Carter administration invoked international law served to make that struggle more difficult.

The administration was right in sensing that any U.S. human rights policy needs to confront the accusation of ethnocentrism. It must try to show that its objectives are values of universal validity. Carter's approach to this task was to adduce international law as evidence of an "international consensus," in other words to argue that human rights principles have already been universally accepted. But this is manifestly false, and everyone knows it to be false. The sig-

natures of various states on UN human rights treaties are not proof of universal acceptance of those principles. Those treaties are not merely violated in practice, they are also explicitly contradicted in the pronouncements, the laws and even in the constitutions of signatory states. In this context, to speak of an "international consensus" is to gloss over both the profound hostility to human rights of many governments and their cynicism toward international treaties.

There is a firmer ground on which to answer the charge of ethnocentrism. It is to assert that human rights reside in the dignity of man. In the American tradition, this conception of the nature of man is consecrated in our most sacred documents, to wit, the declaration that "all men are created equal and are endowed by their creator with certain unalienable rights." We believe that these rights are each man's due by virtue of his membership in the species, whether he is an American or a Pole or a Tibetan or a Namibian. And we believe it irrespective of whether he believes it or whether it is acknowledged by his government or by the ancestral wisdom of his culture. Ultimately this is the only logically tenable foundation on which a U.S. human rights policy can be based.

If it is our purpose to impel or induce other governments to respect the human rights of their subjects, then we must face the fact that we are trying to get them to obey principles *in which most of them do not presently believe;* in short, that we are trying to impose, or at least to impart, "Western" ideas.

Such "cultural imperialism" alarms many, including many who are eager to spread to non-Western cultures such Western inventions as industrialization and other things that go under the name "modernization." It alarmed the Carter administration, whose deepest impulse in foreign policy was to lead the United States to a graceful acceptance of diminished influence in world affairs, or, as Carter put it, to "a more mature perspective....which recognizes the fact that we alone do not have all the answers." Perhaps it is wrong to seek to transplant Western ideas to cultures where they have not spontaneously taken root. But those who believe

it is wrong cannot also believe in pursuing a human rights policy. It was probably this quandary that led the Carter administration to invoke an imaginary "international consensus" on human rights.

Though human rights policy consists of promoting Western ideas, these are not "parochial American" ideas. The American founders were important contributors to the development of human rights thinking, and the American experiment has given the idea of human rights its most powerful vindication, but the idea is not an American one. It was born, in its modern form, before the American republic, in the thinking of French and English Enlightenment philosophers. The notion of human dignity that underlies this tradition also has important medieval, classical and biblical roots.

Moreover, the goal of U.S. human rights policy is surely not to have others copy American institutions. A written constitution, a written bill of rights, federalism, the separation of powers, bi-cameralism, the two party system, the separation of church and state, and many other hallmarks of the "American system," are strictly optional from the point of view of human rights policy. Other successful democracies flourish without these institutions. Things that are *not* optional, that human rights policy aims to see adopted universally, are such principles as rule of law, rule by the consent of the governed, due process of law, and freedom of conscience and of expression and of emigration.

Even if these are "Western" ideas, what is wrong with trying to foist them on others? It may be empirically true that democracy has had difficulty taking root in Third World countries. But that does not make it wrong to try to transplant democracy to them. Is it possible to "force" people to be free? Is it wrong to do so? Although it has often been said that freedom can be frightening, there is no concrete example in which a free people has voluntarily relinquished its freedom. Where people have lost their freedom it has always been because others—whether compatriots or foreigners—have taken it away.

Although the task of fostering observance of human rights in non-Western cultures may be difficult, the argument against "imposing" human rights on others is logically untenable. If people have rights "imposed" on them that they would rather not have, they need only abstain from exercising those rights. No force on Earth can stop a person from subordinating himself to another, if that is his wish. Therefore, it is meaningless to speak of imposing human rights on unwilling people. The only possible "victims" of the "imposition" of human rights are dictatorial rulers whose subjects will gain the chance to choose whether or not they wish to continue to be so ruled.

The conviction that all people are entitled to that choice is the bedrock on which U.S. human rights policy must rest, not on the appeal to hypocritical signatures on UN treaties.

ECONOMIC AND SOCIAL RIGHTS

In his memoirs, Jimmy Carter confesses that "at first we were inclined to define human rights too narrowly," but he came to realize, he says, that "the right of people to a job, food, shelter, medical care, and education could not be ignored."[18] It is true that in Carter's inaugural address, where the human rights program was launched, and in the administration's early pronouncements, the rights of which it spoke were limited to the traditional Anglo-American conception of "rights."[19] But within its first hundred days the administration had decided that it would depart from that tradition and include "economic and social rights" in its working definition of human rights.

This was announced in Secretary Vance's Law Day speech of April 30, 1977, which set the guidelines for the administration's policy. Vance began by stating that he wished to "define what we mean by 'human rights.'" He listed three categories of rights. First came "the right to be free from governmental violation of the integrity of the person." Last came "the right to enjoy civil and political liberties." In be-

tween was "the right to the fulfillment of such vital needs as food, shelter, health care, and education."[20] Thus, not only were economic and social rights on the list, but they were listed ahead of the category that embraced the traditional American conception of human rights. The administration was ambiguous about whether the order of listing was intended to suggest an order of priority, but from then on this order was kept intact in almost all administration pronouncements. Deputy Assistant Secretary Mark Schneider says that when in a speech he varied the order, listing civil and political rights ahead of economic and social rights, he was told by superiors that they would prefer him to retain the order used in Vance's speech.[21]

There was probably more than a single reason behind the administration's decision to give this emphasis to a concept of "rights" that stands somewhat outside the American tradition. For some in the administration this step was merely tactical, a way of accommodating to sentiment in the Third World. As Carter speechwriter, Hendrik Hertzberg, described it:

> ...I think the main motivation behind it was a desire to get the Third World to buy a package, [as if] this was the toy inside the Cracker Jack box. [It] was supposed to pull them into the idea of human rights...and then they would find that there was this package that involved freedom of speech and stuff like that.[22]

Others in the administration seemed sincerely to share the Third World view. Patricia Derian said that "the dichotomy...between civil and political rights on the one hand, and economic and social rights on the other, is much overrated."[23] UN Ambassador Andrew Young took the view that the two kinds of rights are "inseparable."[24] And Jessica Tuchman, the human rights specialist of the National Security Council, was quoted as saying: "In much of the world the chief human right that people recognize is 800 Calories a day. We're beginning to recognize that fact."[25]

Sandra Vogelgesang, who served at the time on the State Department's Policy Planning Staff, says that the

"emphasis on economic and social rights may have emerged more by accident than design. It was a belated addition to the draft text."[26] But whether it began by accident or design, the embrace of the category, "economic and social" rights, became a salient feature of the Carter human rights program. It came to serve both some of the administration's more "progressive" as well as some of its more conservative impulses. In the former category was the administration's craving to be more attuned to the Third World. In Andrew Young's approach to the UN, which administration spokesmen contrasted with the approach of Daniel Moynihan under the preceding administration, in its identification with the "frontline states" in southern Africa, and in other ways, the administration sought, by embracing at least in part the views of the Third World, to redeem Jimmy Carter's campaign pledge to improve America's standing in international forums. Embracing the concept, "economic and social rights," was an act of humility, a way of demonstrating America's willingness to defer to the ideas of others when they conflicted with our own. As one State Department publication explained: "First popularized by socialist thinkers, these [economic and social rights] eventually won universal acceptance."[27]

The same attitude was reflected in the way the administration chose to define economic and social rights. Warren Christopher explained to a congressional committee that the second category listed in Vance's Law Day speech "includes the various economic freedoms."[28] This perhaps infelicitous phrase served only to point up the irony that what was missing from the administration's formulation of economic rights was precisely those economic freedoms honored in the American human rights tradition: the right to own property, the right to engage in commerce, the right to bargain collectively, the right to shop wherever one can afford, all of which happen also to be rights to which the main proponents of "economic rights" on the international stage are indifferent or hostile.[29]

The term "social" in the phrase "economic and social

rights" seems never to have been defined or to have contained any precise meaning at all, but the American tradition also honors various rights that might well fit under that term: the right to choose a mate of one's choice at the time of one's choice and to determine the size of one's own family; the right not only to worship freely but also to build places of worship and other religious institutions and to educate one's children in one's chosen faith; the right to travel within and outside one's country and to choose one's place of residence. All of these rights are widely denied in the world, yet they were rarely, if ever, incorporated in the administration's discussions of economic and social rights.

National Security Adviser Brzezinski said that the human rights issue was a means of drawing the United States closer to the developing world, but given the records of most Third World governments on such central human rights matters as free expression, due process, or popular sovereignty, this issue should have been a source more of friction than of understanding with the U.S. By embracing the idea of "economic and social rights" and by acquiescing in the meanings attached to that term by spokesmen for the Third and Communist worlds, the Carter administration was able to some extent to elide the dismal record of the the Third World in terms of other rights and to find a common tongue in which to communicate.

In this manner, the category, "economic and social rights," also served one of the State Department's most conservative instincts, "clientitus." "Clientitus" refers to the inclination, attributed especially to professional foreign service officers, of treating the foreign nations with which they work as their "clients." As William Turpin put it, a foreign office "represents other nations inside and to our government; it is concerned less with the substance than the existence of foreign relations."[30] It is easy to see that a policy, such as the human rights policy, that focuses on the faults of other governments, would bring little joy to those afflicted with "clientitus." But their pain was eased by the inclusion of "economic and social rights," which provided a vast area for

finding things to approve in the "human rights" records of undemocratic governments.

Thus when Senator S.I. Hayakawa asked what justified the administration's request for aid to Mozambique "given previous Congressional prohibitions on aid to Mozambique" that were based largely on human rights grounds, Under Secretary of State Lucy Benson replied: "Mozambique's government has an excellent record in developing programs to meet the basic needs of the population for food, health care, and education."[31]

Mozambique has a left-wing government, but the same argument was applied to right-wing governments as well. Jessica Tuchman explained it this way:

> A lot of third world countries, particularly those with right-wing governments, insisted that "human rights begins at breakfast, and you cannot expect us to worry about frills like civil and political liberties until we can feed our people" and there was a lot of sensitivity to that in the State Department.[32]

A good example of what Tuchman is describing was provided by Fereydoun Hoveyda, the Shah of Iran's ambassador to the United Nations, who argued that economic and social rights are the "most urgent" ones "because without carrying out the basic needs of human beings, all other rights are mere illusions." Thus, wrote Hoveyda, Iran could be seen to have "a very good record" in the realm of human rights in view of the fact that its "rate of economic growth has been over 14 percent since the early 1960s."[33] The State Department's receptivity to this line of argument was reinforced by provisions within U.S. human rights legislation, notably, for example, Section 116 of the Foreign Assistance Act, that exempted from restrictions on foreign aid, based on human rights, all programs which "directly benefit the needy people."[34]

The way that the embrace of "economic and social rights" worked both to appease the Third World and to gratify the State Department's tendency toward "clientitus" was perhaps best captured in one volume of Country

Reports. Rather than say simply that the Third World was mostly run by tyrants, the department came up with this nonjudgmental formulation: "Economic rights continued to rank higher than political and civil liberties on the agenda of many countries, especially in the Third World."[35]

One argument advanced by some Carter administration officials, including Andrew Young and Mark Schneider, for embracing the concept of "economic and social rights" was that, as Young put it, "where there is poverty...there cannot be full political participation and freedom."[36] There is surely some truth in this, but it is a platitude. "Full" political participation and freedom, if one could define such a state, might well require the absence of poverty just as it would require that all citizens be well educated and fully informed. But this is a truly utopian notion whose only effect can be to cloud distinctions vital to this world and to generate excuses for the denial of freedom. Freedom and political participation were established as norms in the United States more than two centuries ago when all but a few of its citizens lived at an economic level that would today be called poverty even by international standards.

Even if these arguments in favor of recognizing the concept, "economic and social rights," are weak, is there any reason to resist adopting it? Does it do any harm? There are reasons to believe that it does. Of the many desirable things in the world, there are only a few that we call "rights." By calling something a right, rather than a goal or a desideratum, we mean that a person's entitlement to it cannot be abridged except for extraordinary reasons. We mean that government is under an obligation to respect and defend that entitlement. Economic and social rights, it can quickly be seen, do not just pertain to a different subject matter from that of civil and political rights, they are "rights" of a different character.

Louis Henkin, the noted international human rights lawyer, cites two differences. One is that economic and social rights, unlike civil and political rights, depend on available resources. The second is that the former category cannot

be enforced by the same means as the latter. But he adds that "I do not think any of these differences critical."[37] Patricia Derian said that she found only "one important" difference between the two kinds of rights. "A government can immediately stop torturing or censoring. It cannot immediately assure adequate nutrition, housing, or health facilities," she said.[38] Thus in the views of both Henkin and Derian the crucial issue is one of time or "resources." If a nation lacks the wealth to fulfill every citizen's economic and social rights today, it remains obliged to fulfill them as soon as it can.

Derian and Henkin assume that we know how to assure these rights and that all that is lacking is the political will or, in some short-run cases, the readily available resources. But even in so wealthy a country as the United States, not all people—indeed, not nearly all—enjoy the full range of "economic and social rights" as defined in the UN covenants. Some argue that this is because our political system has failed to enact those far-reaching measures of social welfare that would finally bring an end to poverty. But others believe that the vast additional taxes required for such programs would stultify economic growth and thus prove self-defeating.

The existence of such disagreement about how to achieve the "economic and social rights" compels us to choose one of two views. Either we take the view that we do not know which policies will lead to the realization of these rights; or we take the view that these rights require a particular set of policies. Either position has important and troubling implications.

To the extent that we take the view that we do not know which policies will serve to achieve these rights, they convey no correlative obligation. How can anyone or any government be obligated to achieve ends the means to which are unknown? In this sense social and economic rights can be viewed as desirable things, like, say, universal longevity, and as things to be pursued, as we pursue universal longevity through encouraging the medical sciences, but they do not convey the kind of instructions to governments that civil and political rights convey about what they may and may not

do. The problem with calling such goals "rights" has been pointed out by Maurice Cranston in discussing the Universal Declaration:

> To put secondary and hypothetical rights in such a list is not only illogical; it is also likely to bring the whole concept of human rights into disrepute. People may recognize—and it is not difficult to recognize—that the right to holidays with pay is neither paramount nor categorical, and then go on to suppose that none of the other rights named in the Universal Declaration is a categorical or paramount right either.[39]

The point is that calling more and more things "rights" may have the effect not of making more things obligatory, but of making nothing obligatory. In a world in which the struggle to make most governments respect any rights is still uphill, this seems an imprudent path to follow.

An argument that is often made in response to Cranston's denies that calling certain economic and social goals, "rights," will weaken the concept of rights. This argument, which usually arises, as did Cranston's, in respect to the UN treaties, holds that the two covenants express a clear and logical distinction between the two kinds of rights. Each signatory to the covenant on civil and political rights "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant."[40] In contrast, it is pointed out, each signatory to the economic and social covenant only "undertakes to take steps...to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant."[41] It can be seen that the two covenants convey different kinds of obligations. There is no reason, the argument goes, why one of these categories of rights should dilute the other, why people should have difficulty keeping in mind the distinction. But, ironically, the distinction was confused by Jimmy Carter himself. In signing the two covenants, President Carter declared that they "can play a similar role in the advancement and the ultimate

realization of human rights in the world at large" as that played by the "Declaration of Independence and Bill of Rights [which] expressed a lofty standard of liberty and equality."[42] If President Carter could not keep clear the difference in nature between the obligations conveyed by the International Covenant on Economic, Social and Cultural Rights, and those conveyed by the U.S. Bill of Rights, then the distinction, no matter how logically sound, is sure to be lost on many other people.

These problems may to a large extent be avoided if instead of taking the view that the "economic and social rights" are only general statements of desiderata which we are not sure how to achieve, we take instead the view that they compel a specific set of policies. For example, Henkin takes the view that these rights "imply a government that is activist, intervening, and committed to economic-social planning" and that they "advance a few small, important steps" away from capitalism "toward an equality of enjoyment."[43] But this view raises other problems.

At best we may infer, with Henkin, that "economic and social rights" compel some form of democratic welfare state. Such states have gone farther than any others toward realizing these rights. But many economists and citizens of these states believe that there are limits to the welfare state beyond which the burden of taxation and government intervention in the economy may begin to choke off the very prosperity that underwrites the welfare. These limits may be reached well before all of the "economic and social rights" have been realized. But even if no such limits exist, this view raises a more profound problem. Ernst Haas has put it this way:

> Those who exercise their political and civil rights may refuse, compromise, or delay the enactment of legislation protecting the right to social security, employment, decent housing, or full health. If, on the other hand, one wishes to give priority to economic and social rights that may themselves be controversial in any given country, the state must curtail the free exercise of political and civil rights. To do otherwise would leave the door open to democratically enacted legislation impairing economic

and social rights.[44]

This points up a basic tension in the idea of rights. All rights are limitations on the authority of governments or on the choices available to governments. Perhaps the most basic right is that of self-rule. Without it, other rights have never flourished. But if it is the people who rule, then all other rights constitute limitations on their rule.

To some extent these infringements are inescapable. If democracy is to survive, such basic rights as free speech and due process must be protected even against the will of the majority. But if too many rights, and rights that are too broad, are similarly insulated against popular will, then self-rule itself will be vitiated. Welfare programs of sufficient scope to guarantee to each citizen the "economic and social rights" defined in the covenant would reverberate into almost every area of domestic policy. If all of this were put beyond the bounds of majority will, then democracy will have been significantly truncated.

We have seen that if we take the view that "economic and social rights" compel no particular policies, their effect is to weaken respect for other rights. Now we see that if we take the view that they do compel certain policies, their effect is to narrow the scope of other rights. No matter which position we take, we find that the idea of economic and social rights is to some degree the enemy of civil and political rights.

This may not be as ironic as it first sounds. It is worth recalling that the idea of "social and economic rights" was embraced by the United Nations at the behest of those states which stood to be most embarrassed by international sanctification of human rights as they were traditionally defined. As Arthur Schlesinger put it: "the Universal Declaration....included both 'civil and political rights' and 'economic, social and cultural rights,' the second category designed to please states that denied their subjects the first."[45] And we have seen earlier that in the experience of the Carter administration, the recognition of "economic and

social rights" had the effect of diluting or diverting criticisms of violations of other human rights. Taken together these facts lend strength to Walter Laqueur's argument that "giving priority to economic and social rights does not reflect a different political outlook, but is usually merely an alibi for states that practice oppression at home, and whose record even in the economic and social field is any thing but brilliant."[46]

CATEGORIES AND PRIORITIES

Inclusion of the category, "economic and social rights," was not the only noteworthy feature of the definition of human rights presented in Secretary Vance's Law Day speech. The other was his decision to divide human rights into three categories. The UN covenants divided human rights into two categories, social and economic, on one side, and civil and political on the other. Vance took what in UN terms would be the single category, civil and political rights, and divided it into two.

In one category he put:

> the right to be free from governmental violation of the integrity of the person. Such violations include torture; cruel, inhuman, or degrading treatment or punishment; and arbitrary arrest or imprisonment. And they include denial of fair public trial and invasion of the home.[47]

In the other category he put:

> the right to enjoy civil and political liberties—freedom of thought, of religion, of assembly; freedom of speech; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government.[48]

There were several related reasons for this division. One was pessimism about the prospects for advancing civil and political rights. As Samuel P. Huntington, who served on

Carter's National Security Council Staff, later described it:

> In the early 1960's in Latin America...the goal of the United States was democratic competition and free elections. By the mid-1970's, that goal had been lowered from the fostering of democratic government to attempting to induce authoritarian governments not to infringe too blatantly the rights of their citizens.[49]

This revolution of declining expectations may have been best represented by the father of the congressional human rights movement, Donald Fraser, who, after having left the Congress, appeared as a witness before the subcommittee that he had once chaired to share the accumulated wisdom of his years as a pioneer in the human rights field. Fraser said: "it becomes quite clear that most governments are incapable of fulfilling the expectations that [the UN] covenants generate....Where I am most militant is in the core rights or basic rights....even an authoritarian regime can introduce due process, and it doesn't have to torture people."[50]

A second reason for the division was the desire to identify an area of human rights that would be insusceptible, not only in legal but also in cultural terms, to the accusation that it reflected only "parochial American values." As Jessica Tuchman put it: "I think that the attempt was to draw a rather small category that we felt transcended political systems and were of universal human concern."[51]

The most compelling reason, however, for separating violations of the integrity of the person from other denials of civil and political rights was rarely articulated, perhaps because it is so obvious. Murder, torture, kidnapping, and other acts of physical brutality are more horrifying than other human rights violations.

There is no evidence that Vance's decision to divide human rights into three categories was controversial within the administration, but apparently a controversy did develop about how much emphasis to give each category. Jessica Tuchman, the senior official within the National Security Council staff with responsibility for human rights issues,

reports that this question of emphasis became one of the most controverted issues in the formulation of "PD-30," the administration's internal guidelines for its human rights policy.[52] In his Law Day speech, Vance elided this issue. "Our policy is to promote all these rights," he said. "There may be disagreement on the priorities these rights deserve, but I believe that, with work, all of these rights can become complementary and mutually reinforcing."[53]

The order in which Vance listed the rights seemed to suggest an order of priority, but some argued that the sentence about promoting "all these rights" meant that they were of equal importance. The National Security Council staff, as well as those at the State Department of a traditionalist bent, wanted to give a strong emphasis to issues concerning the "integrity of the person." On the other side, those in the State Department's Bureau of Human Rights wanted to treat all three categories more equally. Their view, as it was described by the Congressional Research Service, was "that amelioration of the conditions of individuals is only a form of firefighting in a much broader battle for the fostering of more open and competitive political systems with judicial institutions that routinely protect the rights of individuals."[54] In her first days in office, before Vance's speech, Patricia Derian told a congressional committee: "We can't pick and choose among human rights. There is no 'top ten' of those which we must emphasize and bear down upon."[55] But a year later, after the bureaucratic dust had settled, the administration decided in favor of placing emphasis on Vance's first category.[56]

While it was those identified as belonging to the more "liberal" camp within the Carter administration who wanted more emphasis to be placed upon civil and political rights, the same position became a major theme of the Reagan administration's human rights policy and of its critique of Carter's policy. As Reagan's Assistant Secretary of State Elliott Abrams put it, "Other human rights goals such as an end to physical brutality by the police, or an end to torture, or the right to form free trade unions, can sometimes be gained

for a moment without a system of free elections. But without free elections these gains are ephemeral: They can disappear as quickly as they appeared, for they come only as the gift of the rulers to the ruled."[57]

Though hanging someone by his thumbs is surely a worse offense than denying him the chance to run for office, the most reliable way to assure that people are not hung by the thumbs is to assure that they do have the chance to run for office. It might be added that our ability to know about and prevent people from being hung by the thumbs depends on the ability to discover and publicize and protest against abuses. Violations of free expression or of political rights do not chill us to the bone the way torture does, but that does not make these rights less important.

The Carter administration's emphasis on violations of the "integrity of the person" helped to create the impression that, as Jeane Kirkpatrick charged, it favored America's totalitarian enemies over our authoritarian friends.[58] The citizens of the Soviet Union and of most other Communist countries enjoy far fewer rights than do those of any of the rightist dictatorships of Latin America which bore the brunt of Carter's human rights sanctions. In all of the latter, some independent institutions—opposition parties, labor unions newspapers, magazines, universities, churches, human rights organizations—survive, albeit often under pressure and harassment. The survival of these institutions is abetted by the fact that the economy is for the most part not owned by the government, a fact which also makes it easier for individuals who are out of favor with the authorities to survive.[59]

In Communist countries, such independent institutions, except in some cases for churches, have been able to exist at best for brief moments with little more than symbolic effect. Moreover, the "space" in which the average individual can live his life free from government interference is appreciably greater under rightist dictatorships than under Communism. In Communist states, individuals' decisions about religion, place of residence, child-rearing, educa-

tion, and employment are affected by or subject to political considerations to a degree that is unknown under rightist regimes since Hitler. And while other dictatorships are content if the citizen remains apolitical, Communist states use a combination of coercion and incentives to elicit affirmative assertions of loyalty and to enlist each citizen to play his role in the repression of his fellows.

Nonetheless, because they have been in power so long, because they are so thorough in their repression, because they have so many levers of repression available, and perhaps for other reasons, the Soviet government and other European Communist governments have had less resort, in the years since Stalin, to the use of widespread, naked violence than have several rightist regimes. The latter, notably several in Latin America, clinging to power with an uncertain grip, lacking well-developed institutions of control like the Communist party or the KGB, and faced with violent revolutionary opposition, have made more wanton use of murder and torture than is the current practice among ruling European Communists.[60]

At first, "left-liberals" in the activist "human rights movement" complained little about the administration's emphasis on "integrity of the person," perhaps because this led to a focus on rightist authoritarian regimes which corresponded with the movement's own priorities.[61] This changed in 1979 when, due at least in part to the pressures brought by the Carter administration, there began to be a dramatic decrease in "disappearances" in Argentina.[62] Soon American human rights activists began warning that mere decreases of this kind were of little fundamental importance. A spokesman for the Lawyers Committee for International Human Rights said that "until the Argentine Government provides information on past cases and develops effective procedures to prevent new abductions from taking place, the diminished rate of new disappearances should not be interpreted as a significant improvement."[63] A spokesman for Amnesty International stressed that despite "a lessening of the number of disappearances," there had been "no sub-

stantial change in the institutional structures that permitted the disappearances to continue."[64] And a spokesman for the Washington Office on Latin America declared that "even a drastic reduction of integrity of the person violations is fundamentally meaningless without the simultaneous introduction of some procedural guarantees for the protection of those rights."[65]

The administration's best response to these criticisms aimed at its chosen emphasis on "integrity of the person" was expressed by Mark Schneider, who, ironically, is one of those reported to have opposed this emphasis when the issue was debated within the administration. Schneider argued that:

> it is easier to move repressive regimes on violations of the integrity of the person first. Once you begin to remove that sense of fear of the use of torture, or immediately being thrown in jail without any possibility of due process, at that point it becomes more difficult, hopefully, for them to maintain the denial of [other] freedoms.[66]

Schneider's argument is a good one, and it has been strengthened since by developments in Argentina. It is plausible that the administration's successful efforts to bring about a reduction in violations of the integrity of the person was one stepping stone on the path to the restoration of Argentine democracy. But it does not answer the question of whether violations of the integrity of the person ought to be regarded as violations of a special category of rights.

Treating this as a category of rights reflects a deep pessimism about the prospects for democracy in the Third World, a pessimism born of watching one after another of the states newly emancipated from colonialism after World War II degenerate into dictatorships after having begun life as democracies. But even if democracy must be written off in the Third World for the foreseeable future, how many other rights must be written off with it? Freedom House, for example, distinguishes between "political rights" and "civil liberties." Political rights include voting and other means by

which people may participate in or have control over government. Civil liberties designate the freedom of the individual to think and say and do what he wants. Political rights presuppose civil liberties—the right to vote has little meaning in the absence of free debate—but the inverse is not true. It is possible to have a significant degree of liberty short of the right to change the government. Democracy requires that those in government acquire habits of mind that induce them to relinquish power at the end of their term of office. If this is too much to expect in the non-Western world, even a dictatorship can allow some freedom of expression.

And if even this is too much to expect, it is possible to think of some other rights that deserve to be considered "core rights," because they are so manifestly just, because they affect the happiness of so many people, and because a country need not be a democracy to allow them to be exercised. Such a list might include freedom of worship, freedom to emigrate, freedom of residence within one's country, freedom to make personal decisions about marriage and family. What excuse can there be for denying these? By formulating categories and drawing distinctions the way it did, the Carter administration made it seem that these very elemental rights belonged together with free elections off at the far end of some utopian horizon.

This problem was aggravated by the administration's very mistaken decision to place rights of "integrity of the person" at the top of its tri partite list, and "civil and political rights" at the bottom, with "economic and social rights" coming in between. This peculiar ordering seemed intended to signal that civil and political rights warranted very low concern.

It is hard to see what is gained by creating a special category of "rights" called "integrity of the person." Once it had determined to recognize the category, "economic and social rights," the administration might have defined human rights in terms of the two categories of the UN covenants, civil and political on the one hand and economic and social on the other, and have added the caveat that obvious

humanitarian considerations compelled special concern for such egregious abuses as murder and torture.

"Integrity of the person" is really not a category of rights at all, but a category of violations. There is a clear logical distinction between the degree of latitude a government allows its subjects in exercising their rights, and the degree of viciousness with which it molests those who it feels have exceeded the bounds. The idea of human rights draws vibrance from certain philosophical premises about the nature of man. The idea that viciousness is wrong entails a much narrower philosophical premise; it is easy to believe, for example, that it is wrong to be cruel to animals without believing that animals have "rights." By creating the category, "integrity of the person," and emphasizing it above all others, the Carter administration helped to weaken or obscure the very ideas that it should have endeavored to strengthen and clarify—those of the Western human rights tradition.

NOTES TO CHAPTER 4

1. U.S., Congress, House, Committee on International Relations, *Arms Trade in the Western Hemisphere, Hearings before the Subcommittee on Inter-American Affairs*, 95th Cong., 2nd sess., 1978, p. 170.
2. "United Nations," *Weekly Compilation of Presidential Documents*, March 21, 1977, p. 401.
3. "The State of the Union," ibid., Jan. 20, 1981, p. 2995.
4. These mechanisms pertain only to the Covenant on Civil and Political Rights. The Covenant on Economic, Social, and Cultural Rights contains, for all practical purposes, no complaint procedure at all.
5. See, for example, Louis Henkin, "Human Rights as 'Rights'," in *Human Rights*, eds., J.R. Pennock and J.W. Chapman, Nomos XXIII, Yearbook of the American Society for Political and Legal Philosophy (New York, N.Y.U. Press, 1981), p. 272f.
6. U.S. Mission to the United Nations, Press Release, Dec. 9, 1948, reprinted in *The Dynamics of World Power: A Documentary History of United States Foreign Policy 1945-1973*, gen'l ed., Arthur M. Schlesinger, Jr., Vol. 5 (New York: Chelsea House Publishers,

1973), p. 463.

7. "The State of the Union," *Weekly Compilation of Presidential Documents*, Jan. 28, 1980 pp. 177-178.
8. In the Case of Missouri v. Holland (252 U.S. 416 (1920)), the Supreme Court ruled that the authority of treaties could extend even into areas beyond the ordinary authority of Congress. Justice Holmes stated for the court: "Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States." Holmes granted that he was not prepared to spell out all of the implications of this nuance of difference, but argued that the essential point was that there were some things that the federal government could do by virtue of a treaty which otherwise the Constitution would forbid it to do. In Cook v. United States (The Mazel Tov) (288 U.S. 102 (1933)) the Supreme Court ruled that even where legislation is more recent than a conflicting treaty, the legislation shall not prevail unless it is shown that that was the explicit will of Congress. Justice Brandeis ruled: "A treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed."
9. U.S., Congress, Senate, *Four Treaties Partaining to Human Rights*, Message from the President of the United States, 95th Cong., 2nd sess., Feb. 23, 1978, pp. iii-xv.
10. See Advisory Opinion: Reservations to the Convention on Genocide (1951) I.C.J. Rep. 15, and the Vienna Convention on the Law of Treaties, May 23, 1969, Article 20.
11. Paul C. Szasz, "The International Legal Aspects of the Human Rights Program of the United States," *Cornell International-Law Journal*, Vol. 12, No. 2 (Summer 1979), p. 173. Szasz holds the title of Principal Officer, U.N. Office of Legal Affairs.
12. Mark Schneider, "Tenets of Official Policy on Human Rights," *Rights and Responsibilities: International, Social, and Individual Dimensions*, Proceedings of a Conference Sponsored by the Center for the Study of the American Experience, Annenberg School of Communications, Univ. of Southern California, November 1978 (New Brunswick: Transaction Books, 1980), p. 195.
13. Jimmy Carter, "Bill of Rights Day, Human Rights Day and Week, 1980," *Department of State Bulletin*, Vol. 81, No. 2047 (February 1981), p. 54.

14. U.S., Congress, House Committee on Foreign Affairs and Senate Committee on Foreign Relations, *Country Reports on Human Rights Practices for 1979*, Report submitted by the Department of State, 96th Cong. 2nd sess., Feb. 4, 1980, p. 1.
15. "Human Rights and International Law," *Department of State Bulletin*, January 1981, p. 23.
16. John P. Humphrey, "The Implementation of International Human Rights Law," *New York Law School Review*, Vol. 24, No. 1 (1978), p. 33.
17. J.S. Watson, "Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law," *University of Illinois Law Forum*, Vol. 1979, No. 3 (1979), pp. 539-540.
18. Jimmy Carter, *Keeping Faith* (New York: Bantam Books, 1982), p. 144.
19. See, for example, the testimony of Deputy Secretary of State Warren Christopher in U.S., Congress, Senate, Committee on Foreign Relations, *Human Rights, Hearings before the Subcommittee on Foreign Assistance*, 95th Cong., 1st sess., 1977, pp. 63-64.
20. U.S., Department of State, *American Foreign Policy Basic Documents 1977-1980*, Department of State Pub. 9330, 1983, Document 160, p. 409.
21. Interview with Mark Schneider, held in Washington, D.C., Nov. 3, 1983.
22. Interview with Hendrik Hertzberg, held in Washington D.C., Nov. 2, 1983.
23. Patricia M. Derian, "Human Rights in American Foreign Policy," *The Notre Dame Lawyer*, Vol. 55 (December 1979) p. 270.
24. Andrew Young, "The Challenge of the Economic and Social Council: Advancing the Quality of Life in All Its Aspects, *Department of State Bulletin*, May 16, 1977, p. 496.
25. "The Push for Human Rights," *Newsweek*, June 20, 1977, p. 53.
26. Sandra Vogelgesang, *American Dream; Global Nightmare* (New York: W.W. Norton, 1980), p. 184.
27. U.S., Department of State, *Human Rights and U.S. Foreign Policy*, Pub. 8959, December 1978, p. 5.
28. U.S., Congress, House, Committee on Foreign Affairs, *Foreign Assistance Legislation for FY1980-81, Part 4, Hearings before the Subcommittee on Asian and Pacific Affairs*, 96th Cong., 1st sess., 1979, p. 183.
29. Amusingly, the Reagan administration, which has dropped "economic and social rights" from its definition of human

rights, and which is more execrated by organized labor than any administration at least since Hoover's, has made a point in compiling its Country Reports of placing "greater emphasis....on the right of labor unions to organize." (*Country Reports on Human Rights Practices*, February 1983, ibid., p. 3.)

30. William Turpin, "Foreign Relations, Yes; Foreign Policy, No," *Foreign Policy* No. 8 (Fall 1972), p. 33. Also on this subject, see John Krizay, "Clientitus, Corpulence, and Cloning at State—The Symptomatology of a Sick Department," *Policy Review*, No. 4 (Spring 1978).
31. U.S., Congress, Senate, Committee on Foreign Relations, Hearings on *FY1980 International Security Assistance Authorization*, 96th Cong., 1st sess., 1979, p. 79. Mrs. Benson offered no source for this evaluation, but it is likely that she drew it from the State Department's annual "Country Reports," the 1979 edition of which declared that: "The Mozambican government has dedicated itself to meeting the basic needs of its citizens for housing, health care, food and education." (U.S., Congress, Senate Committee on Foreign Relations and House Committee on Foreign Affairs, *Report on Human Rights Practices in Countries Receiving U.S. Aid*, Report by the Department of State, 96th Cong., 1st sess., Feb. 8, 1979, p. 128.) All Marxist governments claim such dedication. Whether the Department had any empirical basis for its endorsement of Mozambique's claims is unclear, but the endorsement grew fainter in each subsequent edition of the Country Reports, with the most recent stating merely that: "Because reliable statistics are unavailable, it is difficult to gauge how successful the country has been in its efforts to promote social welfare." (U.S., Congress, Senate Committee on Foreign Relations and House Committee on Foreign Affairs, *Country Reports on Human Rights Practices*, Report Submitted by the Department of State, 98th Cong., 1st sess., February 1983, p. 221.)
32. Interview with Jessica Tuchman, held in Washington, D.C., December 29, 1983.
33. Fereydoun Hoveyda, "Not All Clocks for Human Rights Are the Same," *New York Times*, May 18, 1977, p. A25.
34. 22 USC 2151n.
35. *Country Reports on Human Rights Practices*, Feb. 2, 1981, p. 3.
36. "A New Unity and a New Hope in the Western Hemisphere: Economic Growth With Social Justice," *Department of State Bulletin*, May 30, 1977, p. 571.

37. Henkin, "International Human Rights as 'Rights'," p. 266.
38. Derian, "Human Rights in American Foreign Policy," p. 269.
39. Maurice Cranston, *What Are Human Rights* (New York: Basic Books, 1962), p. 40.
40. Part II, Article 2[1].
41. Part II, Article 2[1]. Emphasis added.
42. "United Nations," *Weekly Compilation of Presidential Documents*, Oct. 10, 1977, p. 1489.
43. Louis Henkin, "Rights: American and Human," *Columbia Law Review*, Vol. 79, No. 3 (April 1979), pp. 410, 418.
44. Ernst B. Haas, "Human Rights," in Kenneth A. Oye, Donald Rothchild and Robert J. Lieber, eds., *Eagle Entangled* (New York: Longman, 1979), p. 175.
45. Arthur Schlesinger, Jr., "Human Rights and the American Tradition," *Foreign Affairs*, Vol. 57, No. 3, p. 511.
46. Walter Laqueur, "The Issue of Human Rights," Commentary, Vol. 63, No. 5 (May 1977), p. 30.
47. U.S. Department of State, *American Foreign Policy Basic Documents 1977-1980*, p. 409.
48. Ibid.
49. Samuel P. Huntington, "Human Rights and American Power," Commentary, Vol. 72, No. 3 (September 1981), p. 40.
50. U.S., Congress, House, Committee on Foreign Affairs, *Human Rights and U.S. Foreign Policy, Hearings before the Subcommittee on International Organizations*, 96th Cong., 1st sess., 1979, p. 303.
51. Tuchman interview, ibid.
52. Ibid.
53. U.S. Department of State, *American Foreign Policy Basic Documents*, p. 409.
54. U.S., Congress, Senate, Committee on Foreign Relations, *Human Rights and U.S. Foreign Assistance*, Report prepared by the Foreign Affairs and National Defense Division, Congressional Research Service, Library of Congress, 96th Cong., 1st sess., November 1979, p. 59.
55. Senate Committee on Foreign Relations, *Human Rights*, p. 71.
56. Tuchman interview, ibid.
57. U.S., Department of State, "Promoting Free Elections," Current Policy # 433, Bureau of Public Affairs, November 1982, p. 4.
58. Jeane Kirkpatrick, "Dictatorships and Double Standards," Commentary, Vol. 68, No. 5 (November 1979), pp. 34-45.
59. There is an argument within the liberal tradition, between socialists and those who believe in free enterprise, over whether

a private economy is essential to freedom. This argument is usually framed in terms of the question of whether a free society can remain free if the economy is brought under government control. Respectable arguments can be brought on both sides of this question, but there is another aspect to the relationship between freedom and free enterprise, about which there is much less room for thoughtful disagreement. In societies which are not free but dictatorial to begin with, there is no doubt that the existence of a private economy tends to serve the interests of freedom or liberalization by acting as a counterpoise to the concentrated authority of government.

60. There are, however, some Communist regimes, notably all of those in Asia, which were engaged throughout the Carter years in widespread use of naked violence. Kirkpatrick's accusation gains force from the fact that the administration responded to these violations with little alacrity, if at all. There were various other reasons that contributed to this inaction (see Chap. 5), none of which imply a sympathy for Communism. The administration appeared no more indifferent to reports of widespread violations of the integrity of the person in China than it did to the Saudi practice of severing hands, a most literal violation of "the integrity of the person." But even if it is true that one reasonable criterion led it to deemphasize human rights in Eastern Europe, a second reasonable criterion led it to deemphasize them in Indochina, and a third led it to ignore them in the PRC, it is also true that the Carter administration had no ideological compass that would make it feel that it was straying off course when it found itself pursuing a human rights policy that downplayed the Communist world.
61. One exception was Bruce Cameron, the foreign affairs lobbyist for Americans for Democratic Action and a Co-Chairman of the Human Rights Working Group, who testified in 1977 that securing the release of political prisoners might have a "token effect," but would not change "the system of repression." (U.S., Congress, House, Committee on Appropriations, *Foreign Assistance and Related Agencies Appropriations for FY1978*, Pt. 3, 95th Cong., 1st sess., 1977, p. 335.)
62. U.S., Congress, House, Committee on Banking, Finance and Urban Affairs, *Human Rights and U.S. Policy in the Multilateral Development Banks, Hearings before the Subcommittee on International Development and Finance*, 97th Cong., 1st sess., 1981, pp 47, 75-78, 96-98 passim.

63. Ibid., p. 374.
64. Ibid., p. 338.
65. House Committee on Foreign Affairs, *Human Rights and U.S. Foreign Policy*, p. 138.
66. U.S., Congress, House, Committee on Foreign Affairs, *Foreign Assistance Legislation for FY1980-1981*, Pt. 7, 96th Cong., 1st sess., 1979, p. 19.

FIVE

The Problem of Consistency

Much of the controversy aroused by the Carter administration's human rights activities centered on the accusation that the administration responded more sharply to violations in some countries than to violations of equal or greater severity in others. These discrepancies, observed Stanley Hoffmann, "are particularly unbearable in a domain which seems to call for consistency, since moral principles are at stake."[1]

Different observers, however, complained of different inconsistencies. Some found the administration to be too soft on rightist governments. Jonathan Dimbleby of the British Broadcasting Corporation, for example, pressed the president on why he "concentrated so very much on Russia and human rights there, where you are not actually able to do very much, and haven't apparently done anything, for instance, in Iran, a country which you have very close links with and where you could presumably very much influence what in fact went on."[2] Congressman Don Fraser complained about the omission of South Korea and the Philippines from

the initial list of countries for which the administration announced reductions, for human rights reasons, in military aid. "Our track record on consistency or even-handedness is off to a dubious start," said Fraser.[3]

More often, the administration was criticized for being harder on rightist governments than on leftist governments. Congressman Henry Hyde (R.-Ill.), for example, complained of a bias in the way that the administration directed U.S. representatives to cast their votes in the international financial institutions. Said Hyde:

> if we continue to direct our representatives on these multilateral governing boards to vote "no" or to abstain from supporting development loans to such countries as the Philippines, Argentina, Chile, and Korea and to vote "yes" on similar loans to Romania, Madagascar, and Yugoslavia, then whatever support these financial institutions have had—support such as my own—will vanish.
>
> We have been more than merely eccentric in our application of human rights standards in the IFIs; we have been hypocritical.[4]

Making the same point in a more sweeping way, Jeane Kirkpatrick wrote that "while the Carter administration was reluctant to criticize Communist states for their human-rights violations..., no similar reticence was displayed in criticizing authoritarian recipients of U.S. aid....The Carter administration made an operational (if inarticulate) distinction between authoritarianism and totalitarianism and preferred the latter."[5]

This line of criticism has been echoed, albeit less pointedly, by former officials of the Carter administration itself. In his memoirs, Zbigniew Brzezinski reveals that in mid-1978 he brought to the president his concern that "our human-rights policy was in danger of becoming one-sidedly anti-rightist," a problem Brzezinski attributed to "the way State was implementing" the policy.[6] Richard Holbrooke, who was Carter's assistant secretary of state for East Asian and Pacific Affairs, testified after leaving office that "in the

name of human rights, a small but vocal group of people [within the administration] sought to carry out far-reaching changes in the world structure....their targets were almost without exception regimes of the right which happened to be anti-Soviet."[7]

Still a third group of critics complained of a bias whose vector was neither leftward nor rightward, but rather away from criticizing governments of strong or important countries and toward criticizing the weak or geopolitically unimportant. Stanley Hoffmann wrote: "The danger is not, as some have charged, that we shall hit only our 'friends,' but rather that we shall predominantly hit those expendable offenders who play no important role in the power contests."[8] Arthur Schlesinger made a similar analysis:

> Washington was fearless in denouncing human rights abuses in countries like Cambodia, Paraguay and Uganda, where the United States had negligible strategic and economic interests; a good deal less fearless toward South Korea, Saudi Arabia, Yugoslavia and most of black Africa; increasingly circumspect about the Soviet Union; totally silent about China.[9]

Jessica Tuchman, the National Security Council staff member in charge of human rights issues, agreed that the policy was plagued by inconsistency, but she saw the cause as based on bureaucratic politics rather than on bias toward one kind of country or another. She said:

> The Asian bureaus, both at State and the NSC, were skeptical, if not opposed, to the whole policy. Whereas the Latin American officers, both at State and the NSC, were very much in favor of it. That accounted for one of the policy's chief weaknesses: it was so unevenly applied. We applied it heavily in the Soviet Union, not at all in China, forcefully in Latin America, weakly in East Asia. That was its great Achilles heel, in my view.[10]

The administration's responses to these criticisms varied. When Bernard Kalb asked Patricia Derian on "Face the Nation," "Where is the consistency on human rights?", she replied:

> There's a consistency in the mechanisms that are set up for decision-making and for full inquiry...think of it a little bit like the structure of the system of justice...Real human beings come in with real problems and discrete events have taken place. It's the same way in reaching decisions about steps that you will take in the countries....and we decide on a case-by-case basis.[11]

The problem with the analogy is that in the criminal justice system, the main issue is whether or not the accused is guilty, whereas in the Carter administration's human rights deliberations the accused government was already known to be "guilty" and the main issue was whether or not the United States could afford to antagonize it.

As the administration's own classified policy statement on human rights, PD-30, which was leaked to *Time*, put it: "The policy shall be applied globally, but with due consideration to the cultural, political and historical characteristics of each nation and to other fundamental U.S. interests with respect to the nation in question." This, said *Time*, with perhaps unintended humor, "displays Carter's determination to continue using U.S. economic aid, military assistance and diplomatic pressure to promote human rights in foreign countries, wherever and whenever other U.S. interests permit."[12]

National Security Advisor Brzezinski offered a more straightfoward defense than Derian's:

> I'm sure you must have confronted this same issue in other walks of life...If you cannot punish all the criminals, is it fair to punish the one that you can punish? The same thing applies to the international community. If, in fact, you are in a position, without damaging your other relationships, to make progress in the case of country A but not make progress in the case of country B, should you therefore abstain from making progress in country A? I would say no.[13]

But the reason that not all criminals can be punished is that they cannot all be detected, apprehended and convicted. The main reason that not all human rights violators could be punished by the Carter administration was that it did

not dare offend some governments. Pursuing Brzezinski's metaphor, it was as if known criminals repeatedly went unpunished because the judge and prosecutor refused to act against any defendant with whom they had personal business dealings. Such a situation would pose the question whether the benefit that the community would derive from the punishment of some criminals would be worth the price of accepting the rule of arbitrary and capricious authority.

Moreover, the problem in the international human rights arena was that the United States, unlike a criminal court, was acting in a strictly self-appointed capacity. By what authority, it was often asked, does the United States judge the behavior of other sovereign states? There is only one compelling answer to this question—by the authority of justice, or, if you prefer, of natural law. But the United States cannot claim to act by this authority and at the same time insist upon obeying the dictates of expediency and self-interest. Patricia Derian seemed to understand this when she told Congress that "the thing that would probably subvert our human rights initiatives more than anything is a grossly inconsistent pattern of application."[14]

Despite Derian's qualms, the administration received considerable outside support for its attitude on this issue. Jerome Shestack, president of the International League for Human Rights, argued that "we have got to recognize that in the application of foreign policy, there cannot be an entirely single standard, except perhaps in the utopian sense, and you sometimes have to act despite a double standard."[15] Abraham M. Sirkin, a former diplomat who has written a thoughtful essay on this subject, concluded: "Since each case differs, in some respects at least, from every other, an intelligent human rights policy, sensitive to the different combination of factors in each situation, requires a deliberate 'inconsistency' in its application."[16] And even Arthur Schlesinger in effect gave back with one hand what he had taken away with the other: following his trenchant description of the administration's inconsistencies he added this observation:

> Of course the double standard was inherent in the situation. Not only were other nations in varying stages of maturity, but the promotion of human rights could not in any case be the supreme goal of foreign policy...A nation's fundamental interest must be self-preservation; and, when national security and the promotion of human rights came into genuine conflict, national security had to prevail.[17]

If Shestack and Sirkin and Schlesinger are right that there are sound reasons why a human rights policy must be inconsistent, it still may be asked whether these reasons account for the inconsistencies in the Carter policy.

In the discussions of the problem of consistency by those both within and without the Carter administration who have argued that inconsistency must be accepted in a human rights policy, five major reasons are mentioned most often as the ones that make inconsistency unavoidable. These five are: 1) we should have different *expectations* of different countries which take into account the unique history of each; 2) the United States has different amounts of *leverage* with different countries; 3) evaluations of the human rights performance of various governments will differ in accordance with different opinions about which kinds of human rights deserve *priority*; 4) various external and internal *conditions*, notably war or insurrection, may affect what it is reasonable to expect from a government in the realm of human rights; and 5) *other interests* of the United States may impede its ability to act on its principles with regard to specific countries. How did these five reasons affect the Carter policy?

Expectations. Abraham Sirkin points out that "one might reasonably look for free elections in Uruguay, Chile, and the Philippines, whose people have had the voting habit, before expecting them in Saudi Arabia, where the ballot box is virtually unknown."[18] The point pertains to more than just elections. Among the nations whose governments today engage in significant human rights violations there are wide variations in political histories and in other cultural traditions that have bearing on the likelihood of the emergence of democratic forms, or on the degree of tolerance of the expres-

sion of dissenting opinions, or on the readiness with which their governments or other groups will resort to the use of violence. This may affect, said Mark Schneider, Carter's deputy assistant secretary of state for Human Rights, not only what it is reasonable for the United States to expect in other countries, but what people in those countries themselves expect. "If you look at some countries that have had democratic institutions and democratic experience," he said, "within their own context they accept that as being legitimate standards that you can hold them to and press for."[19]

The idea that human rights policy should acknowledge different expectations for different countries has found echoes in the Reagan administration. In discussing Carter's human rights policy toward Iran, Reagan's assistant secretary of state for Human Rights, Elliott Abrams, said:

> There are countries which have a much stronger democratic tradition than Iran, which has essentially none. There are a number of countries, unlike Iran, which have long experience with democracy, Chile, for example. It is not sensible to believe that the only alternative to Pinochet is chaos. It may be true, but one should entertain the theory that a stable democracy is possible. It's a hard theory to believe in Iran.[20]

But easy as it is to see the logic of holding different expectations for different countries, it is not so easy to see the logic of being harsher on one country than another merely because we expect more of the first. Perhaps Saudi history and culture make it unreasonable to expect its sudden transformation into a democracy. Should we say too that the strength of Islamic custom makes it unreasonable to expect that the Saudis abandon the practice of severing the hands of thieves and of stoning fornicators? If so, can we not at least expect that they cease maintaining their country *Judenrein*? Nothing in the Islamic tradition prevents Jews from living among Moslems or at least traveling among them, as they have done since the birth of Islam. The point is that although we may expect less from some countries than from others, we can, and if we are committed to advancing the cause of

human rights we will, expect *something* from each one.

It is also far from clear that differential expectations were a genuine cause of the inconsistencies in Carter's policy. If it was Chile's democratic history that motivated the administration to place the emphasis it did on Chilean human rights violations, then what would one expect about its approach to, say, the German Democratic Republic, a country whose human rights violations are considerably more severe than Chile's? Germany, after all, had known democracy from 1918 to 1933, and for decades before that it had enjoyed a degree of pluralism including multiple flourishing political parties, powerful trade unions, a free press, and a functioning, albeit not very powerful, parliament. That German culture is capable of sustaining a democratic polity has been demonstrated beyond a reasonable doubt by the Federal Republic of Germany. Yet the GDR was almost never a focus of the administration's human rights attentions.

The Library of Congress looked at the Carter policy and issued a report implying that differences among countries may have been more an excuse than a cause for inconsistency. The study's author testified that:

> To the best of my knowledge, the Department of State has acknowledged the relevance of cultural and historical factors in determining the level of human rights protections one should expect from individual countries, but has not developed any more specific bases for establishing levels of expectation. Thus, the extent to which, and the ways in which, such factors shape human rights policy emphases is impossible for an outsider to determine. Our interviews suggest, however, that there is no systematic effort to use those factors in shaping levels of expectation of human rights performance.[21]

Leverage. The Congressional Research Service also concluded from its study that Carter administration human rights officials believed that "the leverage available to the United States with respect to specific countries should be a significant factor in determining the amount of human rights attention they receive."[22] Such an approach would flow from

the dictum articulated by Deputy Assistant Secretary of State Mark Schneider that the goal of the human rights policy was to "do as much as we can wherever we can."[23] The concern for leverage could explain why the human rights mechanisms developed by the Carter administration were so heavily geared to the manipulation of foreign aid. Aid, it was believed, gave the United States its best leverage for the difficult task of influencing the domestic behavior of other governments.

This focus on the manipulation of aid had much to do with giving the Carter policy what the Congressional Research Service called its "pronounced focus on governments with which the United States has friendlier relations."[24] As Carter's Deputy Assistant Secretary of State for Human Rights Stephen Cohen put it: "The primary source of the 'double standard' charge had to do with cutting off security assistance and not providing security assistance to non-Communist right-wing governments." But, says Cohen, "I am absolutely convinced that the charge of inconsistency is wrong."[25] The explanation for the error, he says, "is that only non-communist countries are eligible for military aid...the one exception being Yugoslavia..." and therefore those were the only ones that got cut off.[26]

However, several Communist countries, and others with governments hostile to the United States, receive economic aid from the United States. The pattern of the Carter administration in using this kind of aid to apply human rights sanctions casts doubt on Cohen's explanation. Most of the unfriendly governments that receive bilateral aid from the United States do so under Public Law 480, the "Food for Peace" program. The law says that this aid may not be given to countries whose governments engage in a "consistent pattern of gross violations of internationally recognized human rights" unless the aid "will directly benefit the needy people in such country," and in such cases the aid agreement between the United States and the recipient country must "specify how the projects and programs will be used to benefit the needy people."[27] In FY1980, the last full year

under the Carter administration, eighty countries received aid under PL480. Of these the Department of State decided that six qualified under the law as human rights violators requiring the special language about needy people in their aid agreements. The six were Guinea, Haiti, Indonesia, Liberia, Somalia, and Zaire. Among the seventy-four for whom the Department imposed no such requirement were Syria, Nicaragua, Panama, the People's Republic of China, Kampuchea, Angola, Benin, the People's Republic of the Congo, Ethiopia, Guinea-Bissau, Mali, Mozambique, and Tanzania—all of which had Communist or leftist governments. The record was quite similar in each of the previous Carter years.

And there is additional evidence that the charges of inconsistency cannot be laid to rest as easily as Cohen wishes. He and his colleagues recognized that the perception of inconsistency was damaging to the Carter policy. The notions that "we applied a double standard" and that "we were tough only on our non-Communist friends" are two premises "that have gained wide acceptance," wrote Cohen just after the Carter administration left office.[28] If the appearance that the Carter administration picked on friendly governments was merely an unintended consequence of the fact that these governments receive most U.S. aid, then it would seem natural that the administration would have sought, wherever the aid situation allowed, to find steps that it could take to counter the perception. Instead, it often took steps that reinforced it.

When the first set of annual "Country Reports" on human rights practices was published, early in the Carter years, it evoked a variety of criticism.[29] One of the criticisms was that the reports served to focus attention, inequitably, on governments friendly to the United States. Unfriendly governments, whose ranks comprised the world's worst human rights violators, received no aid from the United States, hence were ignored by the reports. To correct this anomaly the Congress eventually amended the law to require that the reports cover all countries belonging to the United

Nations. The rationale for making membership in the UN the basis for inclusion in the reports was the Carter administration's repeated assertions that U.S. human rights policy was based on international law, primarily the UN Charter. Yet, surprisingly, the State Department opposed, in congressional testimony, amending the law to increase the number of countries covered by the reports. The Department's reason was that "extending the report to all nations with whom the United States has some form of diplomatic relations....would add to the fairly heavy time and resource burden now involved in the preparation of the current list of countries."[30]

Perhaps an even more important area in which the administration missed the opportunity to compensate for the inconsistencies toward which it was impelled by its quest for "leverage" was in casting its votes within the multilateral development banks (also often referred to as the international financial institutions). A growing share of American foreign economic aid has come to be channeled through these banks out of the high-minded goal of not using our aid as an instrument of political pressure. Every loan or grant disbursed by these banks is voted on by the respective governing board, and U.S. representatives, who receive directions from the U.S. government, sit on all of these. Both the International Financial Institutions Act of 1977 and the Foreign Assistance and Related Programs Act of 1978 contain provisions directing U.S. representatives to oppose disbursements to governments engaged in a systematic "pattern of gross violations" of human rights, and the Carter administration did so on 116 separate votes. A broader range of countries receives aid from these institutions than receives direct bilateral aid from the United States, including countries with which the United States is on bad terms or has no diplomatic relations. Thus, in this setting, the United States did have leverage against some of the abusive governments who do not receive bilateral aid. The record in these institutions, say former Carter human rights officials, provides a unique opportunity to disprove the theory that the Carter administration was tougher on friendly or rightist governments than on hostile

or leftist ones. Deputy Secretary Stephen Cohen said: "If you look at the votes in the IFIs, you will find no record of [the Carter administration] going easier on Communist countries than non-Communist ones."[31] In fact, said Cohen, "to the extent you don't find consistency between our actions, in the IFIs, on Communist and non-Communist countries, you'll find we were tougher on the Communists."[32]

The record does not sustain Cohen's assertion. The country that was the most frequent target of negative votes by the United States in these banks was Argentina. Twenty-eight times during the Carter years the U.S. voted "no" or abstained on projects for Argentina. (Abstentions, like "no" votes, are otherwise quite uncommon on these boards, and there was no practical difference in the degree of censure implied by one vote as opposed to the other. In the numerous reports to Congress, for example, "no" votes and abstentions were listed together as meaning in effect the same thing.) The second most frequent targets were Uruguay and the Philippines, each of which suffered thirteen negative votes. Then came the Communist government of Laos which received nine negatives, followed by South Korea, Chile, and Paraguay, with eight each. Several other leftist governments also were on this list. The People's Democratic Republic of Yemen received seven negatives; Vietnam, six; Afghanistan, four; Ethiopia, three; the "socialist" government of Benin, two; and the "socialist" government of Guinea, one. El Salvador, Guatemala, and the Central African Empire, each of which suffered two negatives during the Carter years, round out the list.

The votes against Vietnam and Laos were cast under especially intense congressional pressure. According to the Congressional Research Service:

> The House voted to prohibit international financial institutions (IFI's) from using U.S. funds to assist these countries [Cuba, Uganda, Vietnam, Cambodia, Laos, Angola, and Mozambique] because of their poor human rights records, among other considerations. After World Bank President McNamara stated that the institution would not accept U.S. funds under the restric-

> tions specified in the House-passed measure, the Senate deleted such provisions from the bill. When a House-Senate conference was unable to resolve the issue, President Carter promised to instruct U.S. representatives to the IFI's to oppose and vote against any loans to the seven named countries during fiscal year 1978.[33]

The president's pledge did not extend to the subsequent fiscal years, but the implicit congressional threat to renew the dispute did, and this no doubt had much to do with the administration's continuing toughness on Vietnam and Laos in the IFIs. So, too, did Vietnam's continuing imperial activities in Indochina and the fact that the government of Laos was regarded as little more than a puppet of Vietnam.

The two other established Communist governments that receive support from the multilateral banks, those of Romania and Yugoslavia, experienced very different treatment from the Carter administration. In eighteen votes on aid to Romania and twenty-one to Yugoslavia, the U.S. voted "yes" every time. There may be sound geopolitical logic to this, in terms of the West's interest in encouraging polycentrism in the Communist world, but there is little human rights logic to it. The governments of Yugoslavia and especially Romania are at least as repressive as those of Argentina, South Korea, Chile and the Philippines. And the laws under which the administration was working make no provision for geopolitical considerations. The law that applies human rights criteria to America's bilateral military aid programs does provide that certain national security considerations may override human rights matters, but there is no such "loophole" in the laws about the IFIs.

The only loophole in those laws provides that the U.S. may support IFI aid to governments that violate human rights if the aid goes directly to meet "basic human needs." This criterion proved insusceptible to precise definition, but the essential idea was that the aid should be aimed at directly alleviating poverty rather than for more general development goals. Deputy Secretary Stephen Cohen argues that when the U.S. voted in the IFIs for aid to Communist countries,

it was for programs falling under this "basic human needs" rubric.[34] But neither Romania nor Yugoslavia is an especially poor country, the former having as of 1980 a GNP per capita of $1,900 and the latter, $2,620.[35] And the loans and grants voted to these countries by the IFIs were often for projects labeled "industry" or "transportation" or "power."[36] It is hard to imagine that all of these could have met the criterion of serving "basic human needs" except by a definition broad enough to have encompassed many of the projects in Argentina, Chile, Korea and the Philippines on which the United States voted negatively. These countries all have lower per capita GNP than Yugoslavia, and that of the Philippines, $ 720, is not much more than one-third of Romania's.[37]

Numerous other non-Communist but leftist dictatorships, with human rights records at least as bad as that of any of the rightist governments against whom the Carter administration voted in the IFIs, received support from the banks, with the United States voting "yes" every time. These included Syria, Togo, Tanzania, Somalia, Rwanda, Mali, Panama, Madagascar, Guinea-Bissau, Burma, and Algeria. No doubt some of these outlays went for programs that addressed "basic human needs," but to the extent that items such as a $ 14 million credit to Tanzania for the development of "tourism" did so, the "needs" may not have belonged to Tanzanians.[38]

To further complicate this picture, the administration announced that, on occasion, it had voted against loans for projects that in its judgment did indeed meet the "basic human needs" criterion. Arnold Nachmanoff, deputy assistant secretary of the Treasury for Developing Nations, testified in 1978: "The United States voted 'no' on 3 loans of the international development banks for human rights reasons even though the projects would directly meet basic human needs. In each instance, the Administration's objective was to indicate to the government the seriousness with which the United States viewed continuing violations of the human rights of the citizens of that country." [39] The three

countries in question were the Central African Empire, the People's Democratic Republic of Yemen (South Yemen), and Chile.

This raises many questions. The People's Democratic Republic of Yemen was (and still is) surely one of the world's most repressive governments. In search for a comparison, Freedom House noted that year that it was "as free as Kampuchea."[40] South Yemen received no bilateral aid at all from the United States, so it is possible to imagine why U.S. officials searching for some kind of leverage might have felt impelled to take the exceptional step of opposing even a "basic human needs" project. All the more so because U.S. officials may have reasoned that the loan in question, intended for an irrigation project, might only free additional resources that the government of South Yemen could put to use in its campaigns of military support for guerrilla fighters seeking to conquer neighboring North Yemen and Oman. In light of the South Yemeni government's coercive efforts at settling the Bedouins and collectivizing agriculture, it may also have been wondered whether irrigation projects would ultimately serve the basic needs of the people or of their rulers.

The Central African Empire also rated as one of the world's most repressive governments. The United States did give some bilateral aid to the empire, but the amounts were so small—less than a million dollars during the year in question, excluding the Peace Corps—as to afford very little leverage. Perhaps the absence of any other leverage impelled a vote against even a "basic human needs" project in the Central African Empire. But what about Chile? The United States possessed and had used other leverage with Chile in the form of bilateral military and economic assistance. It also had the opportunity in the banks to oppose numerous loans for projects that did not qualify as directly aimed at basic human needs. The loan in question, for a rural health project, was hardly one whose purposes lent themselves to abuse. And the human rights record of the Chilean government, while bad, was not as bad as numerous other govern-

ments for which the United States never opposed a "basic human needs" project: Guinea, Somalia, or Mozambique, for example.

If "basic human needs" projects were not sacrosanct in a case such as Chile's then the explanation that it was differential leverage that led to inconsistencies in U.S. policy loses much of its persuasiveness. The list of countries that receive some form of *bilateral* assistance from the United States includes, as has already been noted, many unfriendly, repressive governments. The reason the United States lacks leverage with these governments, so it is argued, is that the only assistance that it gives them is for programs meeting "basic human needs" and such programs are not cut for human rights purposes. But, if they are cut in some cases, why not in others?

Finally, one other question arises about the issue of exempting programs falling in the "basic human needs" category. Of the more than 120 loans on which the United States has cast negative votes in the multilateral banks, not a single one has ever been voted down! Ours has usually been a lone dissent; we have always been in the minority. Thus it has been recognized that the only purpose of the negative U.S. votes is symbolic. It is a way of making a statement of American disapproval of human rights violations in the country in question. The only direct concrete effect has been in some instances in which countries have withdrawn or postponed loan applications to avoid the embarrassment of a negative vote from the United States.

Since the negative vote of the United States almost never has the effect of actually blocking a project, what difference does it make if the project serves human needs? The law does not require the United States to vote in favor of all "basic human needs" loans, it merely *allows* favorable votes for such loans to governments with bad records. If U.S. human rights policy was suffering, as it was, from the appearance of inconsistency caused in part by variations in available "leverage," why shouldn't the United States have voted against a batch of "basic human needs" loans to governments over which it