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Introduction

The wisdom of a U.S. foreign policy that includes attention to “human rights” depends heavily upon which rights are in practice the focus of the attention. The major international documents on human rights include dozens of kinds of rights, often artificially divided into “civil and political” and “economic, social, and cultural” rights.¹ U.S. foreign policy probably could not, and almost certainly should not, concern itself with the performance of other governments in honoring every one of these internationally recognized human rights. The policy must in practice assign priority to some rights over others. It is not entirely clear so far either which rights are receiving priority or which rights ought to receive priority in U.S. foreign policy. The purpose of this book is to present the reasons why the most fundamental core of the so-called “economic rights,” which I shall call subsistence rights, ought to be among those that receive priority. As background, a brief look at some divergent indications of what the priorities actually are now, may be useful.

The official position that is closest on the issue of subsistence rights to the one for which this book will present the reasons was enunciated as policy in 1977 by the then Secretary of State in a major address, “Human Rights Policy”:

Let me define what we mean by “human rights.”

First, there is 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.

Second, there is the right to the fulfillment of such vital needs as food, shelter, health care, and education. We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation’s economic development. But we also know that this right can be violated by a Government’s action or inaction—for example, through corrupt official processes which divert resources to an elite at the expense of the needy, or through indifference to the plight of the poor.
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Third, there is the right to enjoy civil and political liberties. 

Our policy is to promote all these rights . . . I believe that, with work, all of these rights can become complementary and mutually reinforcing. 2

The Secretary’s list of “vital needs” that people have a right to have fulfilled extends even beyond what I shall include as subsistence rights. 3

Below the level of the Secretary, however, the Department of State in 1979 suffers sharp contradictions. In particular, positions emanating from the Bureau of Legal Advisers are in opposition to policy as articulated by the Secretary and in opposition to the evolving position of the Bureau of Human Rights. 4 The advice to the President emanating from the legal advisers at the State Department is to take the same position taken by U.S. diplomats at the United Nations when the single list of human rights in the Universal Declaration was, at U.S. urging, separated into two independently ratifiable treaties: sharply split the list of rights into civil and political rights, and economic, social, and cultural rights, and declare all the economic, social, and cultural rights, no matter how vital their fulfillment, as less genuine rights with less binding duties. 5 It is the intellectual bankruptcy of the presuppositions of this position that this book is intended to show.

In contrast, the Bureau of Human Rights, in its annual reports on the status of rights under governments to which the U.S. government is either providing financial support in the form of grants or selling U.S. weapons and other militarily useful supplies and technologies, is gradually taking the central group of rights in the Vance trichotomy more seriously and treating these most fundamental economic and social rights more nearly equally with the most fundamental rights of other kinds. For example, the Report on Human Rights Practices in Countries Receiving U.S. Aid for 1978, in the case of each country, comments upon “Governmental Policies Relating to the Fulfillment of Such Vital Needs as Food, Shelter, Health Care and Education,” and it gives in an appendix the positions of countries on the Physical Quality of Life Index (PQLI), which is one relatively straightforward way to quantify the extent to which a number of subsistence needs are being fulfilled. 6
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On the whole, the Department of State cannot be said to be taking rights to the fulfillment of basic economic needs very seriously. Issuing an official report that indicates, even if it does not stress, a particular government's failures to satisfy these rights is a very mild form of action, somewhat stronger than "quiet diplomacy" that criticizes violations. But "quiet diplomacy" can also be used to undercut the effects of public criticisms, and as long as major elements of the State Department deny that any economic rights are genuine, those who are criticized in public may be told in private not to worry about any serious actions being taken.

But should the Department of State, and U.S. foreign policy as finally shaped by State and others, take subsistence rights seriously and treat them as being as genuine as fundamental rights of other kinds are? This is the question I will try to answer. I will not be defending the thesis that all economic rights take priority over all other rights, a thesis as crude and implausible, I think, as its sometime rival, the thesis that all political rights take priority over all other rights. In fact, I am at least as interested in showing that although we face serious issues about priorities among rights, it is hopeless to construe the problem so broadly as a contest between the economic and the political, as I am to defend my own particular answer to the narrower problem that I think may be rationally resolvable. One of the strongest appeals I want to make is a general one in favor of slightly finer analyses that do not embrace, in one fell swoop, everything usually called economic rights and, in another, everything usually called political rights.

The common simple dichotomy between economic rights and political rights is misleading in several respects. Some rights seem to be neither economic nor political in any very strict sense. This includes not only the cultural and social rights that the partisans of political rights are inclined, in any case, to assign to the same limbo as economic rights, but also firmly entrenched rights like the right not to be tortured. Since it often needs to be asserted against governments, the right not to be tortured is frequently counted among the political rights. But most rights need to be asserted against governments, and this right can also be asserted against private individuals. Secretary Vance has enunciated official U.S. policy by means of the trichotomy quoted above. One
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section deals with what he (and former Congressman Donald Fraser before him) called the integrity of the person. This section includes the right not to be tortured and is quite properly distinguished from both vital (economic) needs and civil and political liberties.

Other frequently asserted rights, such as the right to form labor unions or the right to own private property, are both economic and political. Each can plausibly be taken to be a liberty, and each concerns the basic structure of the economic system.

But the main reason for advocating a modestly greater degree of analysis than either the usual dichotomy, which unfortunately is enshrined in the two separate International Covenants that inadvertently, I believe, try to split the subject-matter of the Universal Declaration, or the State Department’s trichotomy is simply that even after “the integrity of the person” is separated out, the two lists remaining include items that range from the absolutely vital to the highly desirable but, if necessary, deferrable.

What I will try to show, then, is that at least one small set of what are normally counted as economic rights belongs among the rights with the highest priority. There are, if this is correct, some economic rights over which no other rights have priority, although some other rights, including some that are normally counted as political and that the Vance trichotomy treats as concerned with the integrity of the person, have equally high priority. If not all political rights are of this highest priority, some economic rights have priority over some political rights. This, I take it, is controversial enough, at least within the wealthy nations of the North Atlantic, to be worth discussing.

This book may seem to have a certain imbalance in its relative emphasis, respectively, on positive argument for the thesis that certain economic rights—namely, subsistence rights—have the highest priority and on responses to objections to the thesis. Only one of several possible lines of positive argument is given, and much attention is devoted to answering critics. This is for the following reason, which is partly strategic and partly philosophical. Virtually any argument in favor of a right will depend at bottom on emphasizing that the interest to which the right is asserted is genuinely important, fundamental, vital, indispensable, etc. But no matter how high the positive arguments are piled, the critic

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can always respond by conceding it all but simply adding the objection, in effect, that recognizing the right in question would place too great a burden on all the other people with the duties to honor the right. Thus, disputes are avoided by conceding the right in theory, and costs are avoided by denying the right in practice. The statement by Secretary Vance has laid the ground for such a move by following the acknowledgment of rights to the fulfillment of some vital needs with the proviso: “We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation’s economic development.” Consequently, once some presumption has been established in favor of a right, the main task is to answer the objection that the duties involved would ask too much of others. So, I have concentrated here upon the task of responding to major variants of this potentially crippling objection.

Part I attempts to show that rights to three particular substances—subsistence, security, and liberty—are basic rights. The main conclusion is that subsistence rights are basic, but a valuable part of the case for taking subsistence to be the substance of a basic right is the demonstration that the same reasoning that justifies treating security and liberty as the substances of basic rights also supports treating subsistence as a basic right. The parallel with liberty is especially important, because the defenders of liberty usually neglect subsistence and the defenders of subsistence often neglect liberty, and each one-sided view provides its own special sustenance to the U.S. policies that support exploitative dictators who deny their subjects both liberty and subsistence. Part II then considers three of the difficulties that are most often urged against all assertions of economic rights, including—without sharply distinguishing—subsistence rights. These difficulties may be roughly summarized by the questions, what about the future poor? (chapter 4), what about me? (chapter 5), and what about the local poor? (chapter 6). Part III briefly illustrates a few of the simplest kinds of policy changes required by the recognition of subsistence rights.
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