Human Rights in Africa in the new Global Order: A Dilemma?

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Abstract

This paper tries to establish the basis for the assertion that human rights are universal, which is basically a demand for Western values to determine what is universally desirable in all parts of the world. This paper argues that historical and cultural linkages which were present in the evolution of the Western human rights model have themselves been a source of difficulty. They excluded Asian, Arab and African influences, for example. This paper therefore argues that, because these conceptions originated from the West and lacked inputs form other cultures, it is hard to justify their claim to universality. It is not surprising, therefore, that to some people, Western tenets of human rights are nothing but cultural imperialism, the paper suggests.

This paper points out that, while it is true that, in the post- independent period after the 1960s, the new nations were involved in formulation of the international conventions on civil and political rights and on economic, social and cultural rights, nevertheless, those convention remained largely the embodiment of Western values. Economic and social issues which did not fit into the Western viewpoint are still ignored.

This paper goes on to argue that, If human rights are to play an important part in the new world order, a global pattern must emerge which will be inclusive of the values of other cultures and not exclusion of them. Secondly, the various global conception must be sifted and synthesised and genuine concerns taken into account to promote global acceptance. Thirdly, this paper argues that the acceptance by all human rights observation is imperative in human governance all over the world. According to this paper, therefore, unless we can develop an acceptable balance in political and economic well-being for all within the context of a just world economic order, the internationalization of human rights may remain a perpetual enigma.

Introduction

This paper analyses, mainly from a conceptual viewpoint, the demand for human rights in Africa as part of the new global order since the fall of communism. Human rights issues are inextricably interwoven into the quest for good governance and constitute a condition for Western economic assistance to developing countries. But the question may be asked: whose perception of human rights? This is imperative because an underlying assumption of the globalisation process in this regard is that there is an approved standard version of human rights which can serve as a ready blueprint for all nations, all societies and all political systems in the contemporary world. The conceptual debate should revisit the economic, social, political and cultural underpinnings of divergent views on human rights and examine whether a synthesis can be forged that will serve as a centrifugal reference point for global application.

The world is bending towards obliging the demands of the West, spearheaded by the US, in a rather cloudy scenery filled with diverse interpretations and protestations, even if only Libya and Cuba appear to be charting a course of open defiance and deviation. Our dilemma is clear. Should human rights abusers be allowed to make their subjective determination of what human rights are, even if in the process they invoke cultural values? Should the contextualisation of

human rights be restricted to a superpower slant which denies the economic rights of poor citizens and nations? What will be left in the human rights dish after everyone has picked and chosen? These and allied issues are the subject of discussion in this paper.

Human rights principles are neither settled law nor incontrovertible principles. They are filled with social and cultural connotations, which give cause for concern. The normative prescriptions in this regard do not always stem from jurisprudential considerations but subjective factors such as socio-economic circumstances and religious convictions. The projectionist school of thought postulates, for example, that contemporary global human rights formulations do not bind them because they are Western-made, loaded with Western values and prejudices, and do not reflect non-Western aspirations and priorities, particularly economic equality. The argument continues that in view of innate differences in approaches, it is unjust to impose pro-tailored models upon other nations.

It may be rightly argued that certain inhuman practices, wherever they are found, should not be acceptable in contemporary times. Such conduct must be duly exposed for the maximisation of the quality of human life. These include human sacrifice, female circumcision, oppressive puberty rites, Widowhood rites, property rights of women, discriminating against women and children generally, etc. That same school of thought, if left alone, may be exploited as a rationalisation for depriving citizens of their fundamental human rights.

In any case, it becomes very difficult to judge violators if the principles governing human rights remain nebulous and subjective. These considerations mandate that a synthesis should be found between universalism and relativism to maximise the scope and effect of human rights in this era.

The Western Approach

It has to be recollected that the first attempt to place human rights on an international footing started in Europe in the nineteenth century and was related to the abolition of the slave trade. An aftermath was that the International Labour Organisation (ILO) which was established in 1919 to protect the rights of workers. At that stage, President Woodrow Wilson of the US proposed that the world should move one step further to provide that states would not make laws which interfered with freedom of religion. This proposition as supported by the UK and was poised for acceptance until Japan demanded that it should include equal treatment of all races and non-discrimination in the treatment of aliens. At this stage, rather than include the Japanese demand, which was inimical to their perception, the Western leaders abandoned the Wilsonian proposal altogether.

In the period following the Second World War, attempts were made to formulate a global human rights charter. At the San Francisco Conference where the UN Charter was drafted, the US expressed the view that President Roosevelt's "Four Freedoms" elucidated liberal rights and freedoms. The principles, crafted from a global perspective, were as follows:

> *In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression everywhere in the world. The second is freedom of every person to worship God in his own way everywhere in the world. The third is freedom from want, which translated into world terms, means economic understandings which will secure to every ration a healthy peacetime life for its inhabitants - everywhere in the World. The fourth is freedom from fear, which. translated into*

world terms, means a world wide reduction of armaments to such a point and in such thorough fashion that no nation will be in a position to commit an act of cat aggression against any anywhere in the world. (Roosevelt, 1941: 46-7)

The conference did not, however, draw up detailed human rights provisions, and it was not until 1948 that the General Assembly adopted the Universal Declaration of Human Rights. The voting revealed an underlying problem. Saudi Arabia, South Africa, the Soviet Union and its allies abstained. African countries were, of course, under colonialism and could not participate. The Soviet objections included the failure to mention Nazism and Fascism as violations of human rights and the failure to place socio-economic rights on the same footing as political rights. The Saudi objection was first against Article 16, which stated that "men and women are entitled to equal rights as to marriage, during marriage and on its dissolution". They also objected to the provision in Article 18 that everyone has the right to freedom of thought, conscience and religion, which included the "freedom to change his religion". In Islam, any change from Islam deserves death.

African nationalists in the UK, US and at home were disappointed that the right to self-determination, which would lead to political independence, was glossed over. The Declaration was also criticised for ignoring group and community rights and overemphasising individual rights. Western insistence on property rights, which was given a bourgeois interpretation by others, was manifest in Article 17 which provided that "everyone has the right to own property alone as well as with others. No one shall be arbitrarily deprived of his property".

Significantly, and to emphasise the variations in human rights perceptions, when several African countries gained independence in the 1960s, they joined the school of thought which de-emphasised private property rights. The result was that subsequent international covenants on human rights did not include property rights. Notably, despite the Western slant, the Declaration included economic and social rights — such as the right to work, rest, leisure, social security, education, adequate standard of living and to participate in cultural life, which were absent in Western documents on human rights. Article 28 (introduced by the Lebanese representative) provided that "everyone is entitled to a social and international order in which the rights and freedoms set out in this Declaration can be fully realised".

Asian countries were also disappointed when an article they proposed on minorities was defeated. It would have prohibited discrimination against minorities and allowed their cultural advancement rather the cultural assimilation. The US led the rejection. Notably, the US was supported by 'some nations of the New World who favoured the assimilation of minorities as against their separate development. The assimilation/separate development dichotomy continued to serve as an irritant as several African nations emerged. The francophone nations in particular preferred the process of assimilation, which was in consonance with French colonial policy. Kwame Nkrumah was strongly pitched in the opposite direction. For several years, the problem lingered on in international human rights laws. Convention 107 of the International Labour Organisation, for example, was revised to remove the emphasis on assimilation.

In the light of the above, the Convention was decried as a document of "moral chauvinism and ethnocentric bias ... based on the notion of atomised individuals ... and predicated on the assumption that Western values are paramount and ought to be extended to the non-Western world" [Alston 1983:65]. Nevertheless, the Declaration should be regarded as of great consequence and a worthy breakthrough. The African Charter on Human and People's Rights referred to it, for example. At least it is a useful point of reference, to my mind. Alston expressed similar view when he wrote that:

> *It is sometimes suggested that the doctrines of human rights as embodied in the Universal Declaration of Human Rights may not be relevant to societies with a non-Western cultural tradition or a socialist ideology. In its extreme form such an approach would thoroughly undermine the existing system for the international protection of human rights and create a 'free for all' situation in which each dictator and each military junta, as well as each democratically elected but embattled government, could design its own bill of rights suit not only local traditions but also its own self- interest (Alston, 1993: 65).*

The contemporary significance of the controversy between political and economic rights is, however, real. Cranston has insisted that the two sets of rights are fundamentally at variance (Cranston, 1989:17-25). Indeed, Western countries continued to advocate the separation of political and economic rights until this was achieved in 1968. It is important to note that an Optional Protocol was attached to the Covenant on Civil and Political Rights by which complaints can be lodged against a signatory state by individuals and organisations. This did not apply to the Covenant on Economic, Social and Cultural Rights. The global perception on enforcement of the two Covenants was shown in the fact that the political covenant provided for a committee of independent experts to monitor it while the economic covenant merely required that reports should be sent to the Economic and Social Council.

The US continues to be agitated over some of the covenants on economic rights. When, in 1984, the UN adopted the Covenant on the Right to Development, the US conspicuously cast the only negative vote, thus throwing open the search for global unanimity on the Issue. Article 2, for example, recognised the right of developing countries to determine the extent to which they would guarantee the economic rights of non-citizens, which had been provided for in the Covenant. This was very dear to the developing countries whose resources had been exploited by multinational corporations.

The US, however, felt that the exploitative strength of multinational corporations could be affected thereby and that this provision was therefore unacceptable to them. Article 25 also provided that nothing in the Covenant should be construed as to impair the inherent right of all peoples to enjoy and use fully and freely their own natural wealth and resources. This the US feared would guarantee self-determination for developing countries which was not in consonance with the capitalist interests of Western nations. A State Department letter discussing a Declaration which the US wanted to be attached to the Covenant, which would have neutralised its effect, speaks for itself: The United States declares that nothing in the Covenant derogates from the equal obligation of all states to fulfil their responsibilities under international law. The United States understands that under the Covenant everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property ... This declaration will make clear the United States position regarding property rights, and express the view of the United States that discrimination by developing countries against non-nationals or actions affecting their property or contractual rights may only be carried out in accordance with the governing rules of international law. Under international law, any taking of private property must be non-discriminatory and for a public purpose, and must be accompanied by prompt, adequate, and effective compensation (Department of State, 1978: ix).

The letter also amplified the US position that economic rights should remain goals and not concrete enforceable rights: -

> *"Articles 6 through 9 of the Covenant list certain economic rights, including the right to work (Article 6), to favourable conditions (Article 7), to organize unions*

> *(Article 8), and to social security (Article 9). Some of the standards established under these articles may not be readily translated into legally enforceable rights, while others are in accord with United States policy, but have not yet been fully achieved. It is accordingly important to make clear that these provisions are understood to be goals whose realization will be sought rather than obligations requiring immediate implementation (Department of State, 1978: ix).*

My basic argument is that when we come to consider universal principle no state should be allowed to speak of its "policy" as the US has repeatedly done. Because if every state should insist on the application and enforcement of its own "policy", no global understanding could ever be reached on human rights issues. When the UN General Assembly adopted the Declaration on the Right to Development in December 1986, only the US voted against it. The US also withdrew from the Working Group of Governmental Experts on the Right to Development. The US expressed the view that

> *the right to development is little more than a rhetorical exercise designed to enable the Eastern European countries to score points on disarmament and collective rights and to permit the Third World to "distort" the issue of human rights by affirming the equal importance of economic, social and cultural rights with civil aid political rights and by linking human rights in general to its "utopian" aspiration for a new international economic order (Alston, 1988: 22).*

With the collapse of communism, the fear that communist nations might score points should be allayed. The US should also note that other Western nations do not share its intransigence on the right to development. Internally, many Western nations have adopted social democracy and this should help the US revise its views. Lack of a Western consensus on the issue should serve as a ray of hope in the search for a new international order on the issue.

Philosophical and Religious Divergence

There have always been philosophical, mystical and religious dimensions in human rights issues. Thinkers have reflected on the ends of the state, the relationship and obligations between the state and man and also between man and man. Rights and obligations in society became the essence of political thought. In man's awe over the supernatural, from Judaism to Christianity, the golden rule has been love for God and love for man. Deity may be a rallying cry and source of compliance where there is unanimity and homogeneity in religious applications.

On a broader plane, however, it is a source of disagreement and conflict. To a nation which has as its motto, "In God we trust", it is in order to speak about human beings having been endowed with certain fundamental rights by their Creator. To atheistic people, however, there is no such Creator in the first place; rights must be fought for in a materialistic world where exploitation of the majority by a rich minority necessitates a Marxian class struggle.

Be that as it may, the religious viewpoint has its own internal contradictions, as seen in Locke, for example. Since religion had a central place in Locke's liberal formulation (which became a foundation for Western human rights perceptions), his thoughts are useful in this regard. Locke wrote:

> *"There is indeed one science ... incomparably above all the rest ... I mean theology, which, containing the knowledge of God and his creatures, our duty to him and our fellow creatures and a view of our present and future state, is the*

> *comprehension of all other knowledge directed to its true end, i.e. the honour and veneration of the Creator and the happiness of mankind. This is that noble study which is every man's duty and everyone that can be called a rational creature is capable of (Locke, 1966: 77).*

The Law of Nature, from which natural rights emanate, springs from religion. It is, according to Locke, "the decree of the divine will" (Locke, 1954: 183).

The religious dimension in Locke leads him to move from individualism, where man is concerned only with the preservation of his right to life, liberty and property, to societal rights akin to the African conception of human rights. Locke recognised that, all men being equal and independent, no one should harm another in his life, health, liberty or possessions. He stated that all men alike are friends of one another and are bound together by common interests. This entails that each person has a right to protect himself from harm and also protect others and society generally. This is the way to preserve mankind in general in any situation where the individual's own preservation comes not in competition (Locke, 1967:6-8). There is the need for a judge in society because in the state of nature men are biased in their own interest. The judge must be known, unbiased and possessed with authority to determine all differences according to the established law.

In view of the fact that government is established solely for the protection of individual rights, if the ruler acts contrary to his trust, the people shall have the right to remove him. In exceptional circumstances, Locke allows the individual to rebel where the ruler acts against that person in a manner contrary to the trust and there is no other "Judge on Earth" to appeal to. In such circumstance, the individual may petition "heaven". According to him: "In that State the injured party may judge for himself, when he will think fit to make use of that Appeal" (Locke 1967: 242).

Even though Locke recommends an appeal to "heaven", he is clear about the difference between religious affairs and civil government. It is the duty of the magistrates, equipped with the authority of all the people to try wrongdoers and exact punishment. Whereas there can be compulsion in civil affairs, in the spiritual realm people are free to believe what they will. Individuals are accountable for murder, injury, false imprisonment, theft and violations against conscience irrespective of their religious beliefs.

The religious backdrop inevitably becomes problematic. Catholics, Muslims and atheists are not acceptable members of Locke's society. The problem with Catholics is that their religion is adverse to the pluralistic society that Locke envisages. Muslims cannot be trusted because of their allegiance to rulers of Constantinople and the Ottoman Empire. Atheists are excluded because promises, covenants and oaths, which are the bonds of human society, can have no hold upon them. In this Locke flouts his own warning about violating the civil rights of others on account of religion. Of course, if Locke had had the opportunity, he would have excluded Africans on grounds of their traditional religion with its polytheistic base which is at variance with Protestant monotheism.

The problem of property rights and economic exploitation, which face us in contemporary times, was also a problem for Locke. He believed that what a person had added his labour to was the person's property. In the process he seemed to have approved of social inequalities. Hence, an "over plus [of] gold and silver ... may be hoarded without injury to anyone". He was also of the view that it was useful to keep workers at subsistence level of wages as this would help ensure peace and stability necessary for increased productivity, a condition which would in turn, purportedly, maximise general benefit. In this he showed his ambivalence towards

economic life (Little, 1990: 73). Notably, Locke also addressed egoism and dismissed it. He asked: "Is every man's own interest the basis of the law of nature?" His answer was "No" (Locke, I 954 205-215).

Operating from a Christian backdrop, Locke would certainly not approve of the accumulationist standpoint of the US in contemporary times. He condemns economic exploitation of man by man and advocates a just economic order. All human beings have an inclusionary right to property, and the law and state of nature limit accumulation:

> *We know that God hath not left one Man so to the mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his children such a property, in his peculiar portion of the things of this world, but that He has given his needy brother a right to the surplusage of his goods; so that it cannot be justly denied him, when his pressing wants call for it ... it would be a sin in any man of estate to let his brother perish for want of affording him relief out of his plenty (Locke, 1967: 42).*

This "brother's keeper" principle — which goes to the root of Christianity — may be employed to correct the unjust world economic order which undermines the human rights of poor nations in favour of the rich. But is this possible under the existing global economic order?

Thomas Aquinas, who wrote from a full-fledged Christian perspective appreciated the inclusive approach to property which, to my mind, could help create a just world order in contemporary times. Tully (1990:132) captured the similarity between Locke and St Thomas Aquinas as follows:

> *Since a person has a property for the sake of preserving himself and others, once his preservation is secured, any further use for enjoyment is conditional on the preservation of others. Locke rather than undermining the traditional obligations associated with property gave them a particularly firm basis. Charity is a right on the part of the needy and a duty on the part of the wealthy.*

In Aquinas' own words:

> *whatever a man has in superabundance is owed, of natural right, to the poor for their sustenance ... If... there is such urgent and evident necessity [for] necessary sustenance [a person in need] may [in the last resort] take what is necessary from another person's goods, either openly or by stealth. Nor is this, strictly speaking, a fraud or robbery (Aquinas, 1959: 171).*

It will be interesting to apply this Christian conception, which is part of liberalism, to Africa. How can the plight of developing countries be removed? How do we deal with the debt-servicing problem which his become a vicious cycle? Should foreign assets be nationalised? The political economy of colonisation was a system whereby the underdeveloped nation produced raw materials, the prices of which were determined by the developed nations. Then the latter exported to the former, finished goods, the prices of which were also determined by the developed nations. This unjust global economic system does not only persist, but also no compensation or remedial action has been taken to correct the mischief done through colonisation and imperialism. The economic hardship means social deprivation. If the property rights of imperialism should not be touched how can the human rights of the African be realised?

There is a close nexus between poverty, misery, squalor and disease, on the one hand, and human rights neglect / abuses generally, on the other hand. In my view this is the essence of

Calvinism from which the Western establishments currently draw principles of the Christian faith, the tenets of which they selectively apply to their advantage and to the deprivation of Africans. Calvin wrote that inclusive property rights based on use existed in the state of nature. God had ordained that "none of the conveniences and necessaries of life might be wanting" to humankind. Therefore, property should be regarded as common to all in the sense that individuals are intended to enjoy it so long as the similar opportunity for enjoyment applies universally. In other words it is the right of the individual not to be excluded from fair access to property (Calvin, 1847: 156; 1999: 62).

The Lockean-Calvinist view noted above is in consonance with the Ghanaian concept of the usufructuary right to land and the African communalistic perception of human rights, to which we shall turn in due course. Notably, "liberation theology", which has root among both Catholics and Protestants, has demanded an alternative Christian stand on human rights in order to do justice to the Third World. These are known as "the fundamental rights to life and the means of life", which are considered prerequisites for the enjoyment of all other human rights.

In that connection, liberation theology is in agreement, with Marxist equalitarianism, African communalism and Christian humanitarianism. There is the need in the world today to place human rights discourses on "the transcendent framework of Christian theology". This will ensure that "rights are not spoken of primarily as individual claims against other individuals or society". This is because "they [rights] are woven into a concept of community which envisions the person as a part, a sacred part, of the whole. Rights exist within and are relative to a historical and social context and are intelligible only in terms of the obligations of individuals to other persons" (Cahill, 2000: 284-5).

From a Christian position, Father Hollenbach echoed the sentiment of the deprived world vividly:

> *All the doctrines and symbols of the Christian faith—creation of all persons by the one God, the universal graciousness of God toward all, the redemption of all by Christ, and the call for all persons to share in the mystery of Christ's death and resurrection — all these are the foundation of a conception of mutual love and human obligations of human beings towards each other whether liberal or Marxist. It is deeper precisely because it is based on a claim about the ultimate meaning of human community. This religious perspective is leading the Catholic rights theory to an intensified emphasis on human solidarity as the precondition for any adequate theory of human rights. Those rights which guarantee access of all to participation in the political, economic and cultural life of society have a priority in the most recent phase to the Catholic tradition (Hollenbach, 1999: 107-37).*

The Islamic Dimension

Islam has an influence in determining the global contours of human rights and with special reference to Africa. The reality of the Middle East and other nations under Muslim influence is that in the effort to have a world-wide human rights formula, the forces of fragmentation are gaining ascendancy over unification influences. Many states have been engaged in feverish efforts to return to pure Islam (Tibi, 1993:3-13). This has taken the form of a general rebellion against Western culture so as to prevent its globalisation. The view has been expressed that in such a context it is better to accept cultural pluralism, as opposed to cultural relativism which should not be allowed to sanction violations of human rights such as torture (Tibi,2000:130). This fear is well placed because the rejection of international standards of behaviour in the

name of Islam has fostered terrorism and human rights abuses. Extremists to justify their own power have also manipulated it.

Even though Muslims belong to different groups, they nevertheless face the option of adopting traditionalism or historicism [Laroul, 1976]. The refusal of Muslims to apply historicism to their faith leads to the literal interpretation of the revelations of Mohamed which teaches them that they are superior to all other human beings by virtue of their religion. This is an obstacle towards the realisation of any global understanding:

There are two schools of thought within Islam whose beliefs are on parallel lines. First is the group which sticks to ancient rules and regulations which were laid down at the inception of the faith. This group does not agree that Islamic rules can be affected in any way by social and economic circumstances, whether global or intra-state. Muslims who subscribe to this viewpoint do not recognise any international human rights conventions. Islamic law to them is the fundamental law — a higher: law to which all man-made laws must conform in order to derive validity.

On the other hand, the modernisation school of thought opines that the mutative forces of nature should hold supreme and that the practices laid down in Islam are the product of a certain time in history and were guided by the thoughts and applications of that era. This conflict is a source of tension between Islam and international law. Iran under Ayatollah Khomeini and others. Libya, Sudan, Pakistan under Zia. and Saudi Arabia. etc., have, refused to recognise several international human rights conventions, arguing that they were not in consonance with their religion laws which stand supreme.

Some interesting developments have, however, taken place. The Universal Islamic Declaration of Human Rights of 1981, for example, has become a subject of much controversy. From perspective, it indicates some progress, as it resembles the 1948 Declaration in several ways. It speaks of the right to live in dignity, the right to freedom, the right to equality, the right to justice, the right to protection from arbitrariness of political rule, the right to protection from torture, etc. On the other hand, it is feared that the Declaration is calculated to be manipulative and to frustrate the quest for a global solution to human rights problems. The Islamic Declaration claims priority in ancestry over the 1948 Declaration. For example, it says in its foreword that “Islam gave to mankind an ideal code of human rights fourteen centuries ago”, which, of course, is restated in the Declaration. This is not true and a mere attempting to score points. Secondly, there are serious discrepancies in the two documents. For example, the Islamic Declaration states clearly in the Arabic version that all rights are guaranteed only to the extent that they are protected by Islamic law (Mayer, 2000).

It is grave to have a universal law which is subject to state laws. The Constitution of Iran, for example, provides in Article 4 that: “All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all laws and regulations (Algar, 1990). Article 20 says that “All citizens of the nation, both men and women, equally enjoy the protection of the law and enjoy all human political, economic, social, and cultural rights, in conformity with Islamic criteria”. What are the standards of “Islamic criteria” vis-à-vis international criteria? Are they higher or lower? Can human rights abuses under Ayatollah Khomeini in the name of Islamic fundamentalism be acceptable in the light of Islamic criteria’’? If so, how do these criteria affect the universal order? This is very problematic for international law. At a conference on Human Rights held in Iran, Ayatollah Khomeini made it clear that from Islamic perspective human rights cannot be internationalised. His view is echoed in these words:

> *Be aware that all satanic powers and all allied agencies such as Amnesty International at and other organisations have all been united to stifle this Islamic public here and not to allow it to blossom ... These people are all commissioned to become united and to suppress this Islamic movement, that is to suppress Islam. They are afraid of Islam. They were also afraid of Islam from the very beginning, but now that they have been slapped in the face Islam, they fear it much more (Khomeini, 1988: 23-4).*

If President Zia of Pakistan had not died in an accident, he would have proceeded with the Islam Law Enforcement Ordinance, which made the Sharia the supreme of the land, as in Iran under the Ayatollah. Under the Ordinance, Pakistani men, for example, would have lost all the rights that reformist legislation and the courts had given them a few years earlier. Zia had planned to ban Benazir Bhutto from running against him for President on the ground that this was forbidden under Islam. This had been used in Pakistan before to cancel the candidacy of Fatima Jinnah.

African Interpretation

The trajectories of human rights in Africa may be perceived on three broad premises. First, they are spoken of as being group rights, and in support of this argument, it is said that Africa did not know individual human rights as such. African societies existed satisfactorily without individual human rights until colonisation undermined these societies. As a result, African traditional cultural values are enough to govern our societies. Secondly, there is the argument that, because of the pressures of nation building, Africa cannot afford observance of individual human rights which impede its economic development and nation building. Thirdly, it is argued that the unjust world economic order must be changed first before Western countries talk to Africa about human rights. This is because economic rights are at the base of all human rights. These different perceptions are based on our understanding of the role of culture in African societies, the role of the post-colonial state as well as the operations of the unjust world capitalist system.

Culture

The argument is that specific rights were not recognised and protected in traditional African society. Those who argue that human rights are alien to Africa are, however, quick to point out certain shortcomings in the traditional system. These shortcomings include human sacrifice, trial by ordeal, and infanticide, which permitted twins, for example, being sacrificed in many parts of Africa. The importance of the group as against the individual was approved which recognised strong extended family ties, as well as cultural attachment to one religious practice that gave traditional religion a legitimacy since it was predetermined by the larger society which the individual was seen as being part of. On the other hand, it is asserted that in this form of society. African women were regarded as the property of their husbands, while widows underwent a number of humiliating rites which are now judged to be against their dignity. Young females were sold into slavery to atone for the sins of some members of their family.

On the public domain, it is also asserted today that people did not elect their rulers into office and that political parties were not known. It is also asserted that there was nothing like private property rights, but, rather, property was held in common. Land, in particular, was used under communalism, which suggested that individual human rights were not tenable. We may

therefore ask the following question: is there something inherent in the traditional system or culture that can serve as a foundation for the enrolment of Western human rights concept? In short are human rights culturally specific?

We will see in due course that the above-painted picture is a gross oversimplification. The negative aspects tend to be exaggerated and several positive aspects are ignored. Furthermore, the law of mutation in the development of the human being should be regarded in universal terms. Individual human rights have not always been part of British culture, for example. When Julius Caesar invaded Britain, he had the occasion to report concerning his Gallic exploits that the British were barbarians — *barbari* — and that they wore no clothes and had their wives in common. Definitely the British had not come to develop individual ownership of anything.

This means that, assuming that human rights were not known to the traditional African society in its crudest form, this does not preclude Africans from adopting other conceptions of human rights within an international framework. The real viewpoint of this presentation, however, is that there were positive strands in the traditional system that can be successfully woven into a modern and global human rights fabric.

Our discussion here is viewed largely in terms of cultural relativism also from the perspective of the customs of the dominant Ibibio tribe of Nigeria. From the Nigerian (Ibibio) perspective, which applies generally in some parts of Africa south of the Sahara, we realise that there was a basic recognition of the human being as *ipa*, meaning a "person". Qualitatively, this individual possesses life in the form of this individual's "spirit" called *kra*. The spirit of every individual is unique and the source of his destiny. It determines a whole range of good or ill fate which befalls him/her.

The uniqueness of every human being is shown in this maxim which is often invoked when collective pressure is being placed on an individual to act against his/her conscience: "nobody was present when I was taking my destiny from God".

The next valuable traditional possession is *gya*— blood. This is the essence of life and depicts the right to life by virtue of a person being a human being. A person who is being pinched or maltreated in any manner quickly reminds the malefactor that *gya nau me ma,* meaning that "blood flows through my veins".

The third attribute of the human being is *nsum* which means "spirit" or "personality" — a psychological attribute unique to the individual which gives him a peculiar presence among others. It is the source of respectability, dignity, self-confidence and happiness. If a person is humiliated in any manner, his/her *nsum* suffers. In this connection, we say: *so aku me nsum* meaning "you have killed my spirit". The human rights principle thus emerge that a human being should not be subjected to inhuman treatment. When Babangida chained people in detention cells he offended this principle.

Abachas security men have in recent times, tortured prisoners, used cigarette ends to burn their genitals and plucked out people's finger nails in efforts to squeeze out confessions (Oquaye, 1995: 564). All such practices, it is submitted, were un-Nigerians and human rights abuses within a Nigerian perspective. Indeed, when known, such conduct was condemned in the remotest villages without resort to Western tenets.

The attributes of respect for the human being enumerated above had societal implications and were deeply rooted in rights and obligations. The new-born baby was treated as a special visitation and nurtured not only by the parents but the entire extended family. The Ga tribe of Abuja (Nigeria's capital) places the responsibility of society over children thus: *kome foo yi gye*

kome kweo meaning that even though one person delivers a child into this world it is not one person who looks after the child. From the responsibility to the child by the parents a reciprocal obligation arose when the child grew up.

This was the right of parent to be looked after with dignity in his/her old age. This parental right, which extended to all persons who stood in the position of a parent in relation to the individual was found in an old Akan adage which said: "if your parent looks you to grow your teeth, you must look after him/her also to lose his teeth (i.e. in his/her old age)". We have taken the trouble to observe and enquire about the treatment of the aged in the UK and US. It is appalling. They have no right to be looked after by their children in their old age. Most of them die in old peoples homes which they perceive as pre-death funeral homes ad worse than prisons.

The traditional Africa Stem recognises that the individual needs the help of society. Nevertheless, it is also perceived that society is necessary because of the individual. *Ipa ki boa*. means a human being is entitled to help. There is also the saying that a human being is not an island so as to be sufficient unto himself (Wiredu, 1990:247) Individualism is woven into the larger social order and the political system to which the individual belongs. Every individual belongs to a family, which has a head. The family is part of a lineage —one of the branches or larger families which make the village. The village, which comprises all the families has a chief. Everyone has the right of political participation. No one is ignored in the process and a well-linked chain of rights and obligations exist.

By a system of check and balances, the chief is prevented from becoming an autocrat. His advisers, who are themselves sub-chiefs and heads of the various lineages, belong to the council as of right and can protect the individual rights of members of their lineages (Busia 1951:14). The individual was part of a larger whole and he was obliged to light in battle. But his individuality and singular importance - Wiredu put it thus:

> *If every Ibibio was thus obligated by birth to contribute to defence in one way or another also the complementary fact that he had a right to the protection of is person, property, and dignity, not only in his own state but also outside it. And states were known to go to war to secure the freedom of their citizen abroad or avenge their mistreatment" (Wiredu, 1990: 249).*

The chief was forbidden to insult a subject, refuse to hear his complain or seduce his wife. A chief who broke any of these rules lost his throne.

Even though the youth were not part of the ruling council, in due course their political right were recognised and their leader known as *akwaahene* gave the views of the youth at council meetings. However, as a free operator, he was not bound by the council's decisions. With time this became an institutionalised means of expressing divergent views and the *akwaahene* in effect became the leader of the chief's opposition.

The traditional system took a serious view of the right to land. Land is understood to belong to the dead, the living and those yet to be born. Every person has a usufructuary right to land. In other words, a person could reduce as much of the common ancestral land to is use as he could utilise in terms of subsistence farming. That became his property because he had mixed his own labour therewith. The right to use meant that the bulk of land was still held in trust by the chief for everyone. Colonisation brought other forms of long-term individual ownership which became a source of conflict. Land was exploited through minerals and timber concession for example. The need to redress such exploitation remains part of the controversy regarding economic rights and property rights in the quest for a global order.

An important aspect of the African system, which is at variance with Muslim extremism, is religious freedom. Belief in God was taken for granted. Hence the saying, "no one shows God to a child". In the same way, people were free to worship God the way they felt best and sceptics, *yefo* were never persecuted. What is more, the beliefs of individuals did not affect social and political obligations. From this developed freedom of conscience. The Ibibio were only concerned with the civil conduct of individuals who were entitled to harbour their own beliefs generally. Any attempt to control freedom of thought was considered futile as shown in the statement, *me se se wo me rim*, meaning "my real thoughts are in my own head". Because everybody was free to express his view on any matter and because society considered it desirable, the saying emerged, *tri ako enk agy*, meaning one head cannot hold counsel or that two heads are better than the one, therefore every one should have his say (Wiredu. 1990: 255).

Nation-Building

The next principal issue is that the trajectories of nation-building explain Africa's poor human rights record. The argument that development takes precedence over human rights considerations is one of the tenets of post-colonial African leaders of whatever persuasion. This accounts for the pervasiveness until recently of the one-party state system on the continent. M'Baye observed that even though African states adopted the Universal Declaration of Human Rights, they did not in fact observe them:

> Looking beyond the phrases set down in these Constitutions and laws, one discovers an Africa more concerned with achieving economic and social development and maintaining the stability of its government than with—recognising and promoting rights and freedoms ... Hence the pursuit of developement for the sake of which all sacrifices are permissible (M'Baye, 1992:587).

In Ghana, Kwame Nkrumah claimed that emergency measures of a totalitarian kind were necessary in building the emerging African nation (Nkrumah, 1957). To support his argument he referred to:

a) the emergence of factional, ethnic and religious political parties which could lead to the fragmentation of the state;

b) attempts to forcibly overthrow his government; and

c) incidents of violence in the name of freedom of association and movement.

He therefore imposed the Preventive Detention Act (PDA) 'which permitted the state to detain his opponents virtually indefinitely. At one stage Dr Danquah, an eminent jurist, tested the constitutionality of the PDA in the courts. He referred to Article 13(1) of the 1960 Constitution and argued that, the President having sworn upon taking office that "no person shall be deprived of freedom of religion or speech, the right to move and assemble without hindrance or the right of access to Courts of law", the detentions were illegal and the law authorising it was also illegal in the light of the Constitution. But the Supreme Court ruled that the oath could only evoke political not legal sanction. It held that those rights were not justifiable and were akin to the coronation oath of the British monarch (Re Akoto, 1961: 523). If the Court had perceived that oath in terms of traditional society — which it should have done — it would

have ruled that the chief who broke his oath to his people lost his throne. Therefore, the oath to protect human rights could not be flouted and the President remain in office.

Asante explained the problem of nation-building and upholding human rights thus:

> *Upon attaining independence, African governments are confronted with a situation in which the very existence of their respective nations has yet to be established as a meaningful concept. Development is further bedevilled by poverty, disease and illiteracy and a serious dearth of human and material resources. On this fragile foundation, the leaders of an emergent African nation are charged ... first, to forge the bonds of unity and nationhood, and to foster loyalty beyond the parochial, tribal or regional confines. Second, to convert a subsistence economy into a modern cash economy without unleashing social turbulence and economic chaos. Third, to industrialise the country and to introduce a sophisticated system of agriculture. Fourth, to erase poverty, disease and illiteracy ... A bill of rights ... might well impede not only social and economic progress but also national unity" [Asante 1969: 83-5].*

He admits, however, that this can foster despotism and corruption.

In our view, there is nothing empirical to establish that social and economic advancements were made as a result of despotism and human rights abuses in Ghana. This was evident under Nkrumah. The worst period in human rights violations under Rawlings's revolution also saw the biggest economic and social decline. The nation had to resort to aid from the international community and, incidentally, the period of improvement in human rights abuses coincided with some improvement in the economy. In fact, it is our submission that the human rights abuses of earlier times, the seizure of property and currency and the wanton incarceration of businessmen by the revolutionaries have rather hindered quick recovery in that many investors are distrustful of the regime. Wai [1999:115] observes that the argument that nation-building could excuse the absence of human rights is untenable. This is because it "stems from the belief that in the pursuit of political strength and economic development, criticism of policy makers is harmful, that there should be no dissent, and that the Presidents are immune from doing wrong". He added that it is not so much a concern for protection of society and the fundamental human rights of its members that motivates the banning of opposition parties and the perfection of colonial opposition laws. Rather, he notes, "it is a desire for authoritarian power and personal protection of the leaders". Considerations of stability require a high respect and regard for rights and not their suppression.

Unjust Economic Order

The next point, which may be linked with the above positions of the post- colonial order, is that Western human rights are not capable of universal application in that they constitute an offshoot of capitalism, a system which exploits African nations. The unjust economic order not only enables Western nations to enjoy bourgeois rights but also prevents the developing nations through exploitation from developing their economies so as to enjoy those rights. The developed nations, therefore, if they are serious about human rights in Africa, must first correct the unjust global economic order. Until this is done, Western human rights cannot be of universal application.

A political system cannot be approached in isolation and must be viewed in a socio-economic milieu. Indeed, liberal democracy and attendant human rights doctrines may be described as the brainchild of Western capitalism, having been conditioned by economic circumstances. Macpherson (1975) noted that "a fact which some people find admirable and some people would prefer not to have mentioned, is that liberal democracy and capitalism go together. Liberal democracy is found only in centres whose economic system is wholly or predominantly that of capitalist enterprises ... It would be surprising if this close correspondence were merely coincidental". It might therefore appear that the liberal version of human rights is not capable of universal application. Lipset (1960) saw liberal democracy as the political system of a developed capitalist economy and perceived capitalist development as the *sine qua non* and a necessary condition for, the development of Liberal democracy. In short, the richer a nation is, the greater are the chances that it will sustain democracy.

In terms of the social system, it is established that wide social inequalities and cleavages in social distinction do not sanction freedom. Alexi de Tocqueville (1956) observed that social equality helped to preserve liberal democracy in America. He observed that God Himself has given Americans "the means of remaining equal and free by placing them upon a boundless continent. General equality is favourable to the stability of all Governments but more particularly of a democratic one" In his study, Dahl (1958) confirmed the observations of de Tocqueville thus: "the world had never before witnessed so much equality of conditions as existed in America".

The opposite of wealth is poverty and just as it has been observed that advanced social prosperity promotes democracy and human rights so has the warning been sounded that social stagnation militates against it. The Bi-Partisan Commission on Central America appointed by President Ronald Reagan in 1984 to study the Political process and particularly political instability in the area, observed that "hunger and malnutrition, illiteracy, poor educational and training opportunities, poor health conditions and inadequate housing are unstable conditions on which to encourage the growth of viable democratic institutions". In 1983, the Brandt Commission report nailed the issue on the head when it said widely shared development is a condition for national and international stability". Though it appreciated that man causes underlie the rise in the pendulum of conflict and political instability, the Commission observed that "failure of development often provides the conditions on which they (i.e destabilising forces] can originate and flourish".

It will appear that the African experience lends weight to this school of thought and partly explains our failure to develop democracy and observe human rights. It is obvious that 'imperialism has kept us down economically. As part of the strategy of keeping Africans perpetually underdeveloped the colonial imperialists monopolised economic activities, thus preventing the rise of an indigenous entrepreneurial class. Owing to dependent development after independence, indigenous capitalism had been stagnated from developing to viable level leading to persistent economic decline with adverse consequences for the development of democracy and human rights.

The Berg Report written for the World Bank on the economic conditions of Africa, noted that most African countries and for the majority of the African population the report is grim and it is no exaggeration to talk of crisis. The crisis reveals itself in slow overall economic growth, sluggish agricultural performance coupled with rapid rates of population increases and balance of payments and fiscal crisis — these are dramatic indicators of economic trouble. Between 1960 and 1979 per capita income in 19 countries grew by less than one percent per year while

during the last decade 15 countries recorded a negative growth rate in income per capita (Jonah, 1987: 105].

Jonah observed that income distribution in Nigeria is highly unequal: 12.9 per cent of the total incomes went to 6 per cent of wage and salary earners by 1957. In 1962, 5.1 per cent of wages and salary earners received 20.3 percent of all income. By 1968, 4 percent received 24.7 per cent. As shown by the UN Statistical Yearbook 1981, the per capita income comparison between Nigeria and a few liberal democratic countries revealed the following:

Nigeria	—	US$	438
USA	—	US$	9,407
Canada	—	US$	9,147
Switzerland	—	US$	14,893
West Germany	—	US$	11,759.
UK	—	US$	8,222

Nigeria had a high birth rate of 48.4 per cent per 1000 during the period and an infant mortality rate of 156 per 1 000. The life expectancy was 46.7 years for male and 50.00 years for female. There were 2.7 doctors to every 10 000 Nigerians and 0.2 pharmacists, 6.9 midwives and 18.6 nurses, compared with the USA during the same period where they had a birth rate of 26.5 per 1000. Infant mortality was 31.5 per 1 000 and the average life expectancy of 69.5 for males and 77.2 for females (Jonah, 1987).

It is against this background that it may be argued that a certain level of socio-economic advancement is necessary as a basis for liberal democracy. Yet, this assertion has set serious implications. Can it be said, for instance, that the hungry man has no regard for free speech and constitutional limitation of power, freedom from detention and allied rights. The view that material prosperity must precede democracy and freedom is therefore erroneous. A man once told a judge in Lagos to quicken his trial arid send him to jail because he was better off in prison where he had food to eat and a place to sleep. This was an expression of free will in those circumstances!

Several academics, including Drah, have expressed views on the issue. Drah (1987: 51) made the point that material prosperity as a precondition for democracy “is a dangerous half-truth”. Material well-being may be a necessary condition of liberal democracy, but it does increase the opportunity for dictators to control people’s minds through mass communication, and people’s bodies through highly organised police and military services, which all show that material prosperity can result in despotism. Drah concluded therefore that

> *a free or constitutional democracy is possible only if and when at least a certain number of social forces want it and value it. Therefore, it follows logically that it is not possible if and when a substantial portion of the population does not want and value it. We are here then talking of the element of political awareness and human will. True this element of political consciousness and political will is itself conditioned by, is not independent of, circumstances; but it may often turn, and it has often turned, the scale either way. What the histories of those countries where liberal democracy eventually triumphed clearly show is this: material advancement and the will to create a free democratic system — rather than live with a despotic rule — emerged together and reinforced each other. So that, it is, after all, possible for a hungry man to claim his freedom to say that he*

is hungry — if he so wills. He will not leave it to someone else to tell him when he is, or should be, hungry.

Some may argue that such view is more idealistic than realistic.

Conclusion

In this paper we tried to establish the basis for the assertion that human rights are universal, which basically is a demand for Western values to determine what is universally desirable. The historical and cultural linkages which were absent in the evolution of the Western human rights model have themselves been a source of difficulty. They excluded Asian, Arab and African influences, for example. Because these conceptions originated from the West and lacked inputs from other cultures it is hard to justify their claim of universality. It is not surprising, therefore, that to some people. Western tenets of human rights are nothing but cultural imperialism.

It is true that in the post-independence period after the 1960s, the new nations had become involved in the formulation of international conventions on civil and political rights and on economic, social and cultural rights. Nevertheless, those conventions remained largely the embodiment of Western values. Economic and social issues, which did not fit into the Western viewpoint are still ignored. African critics have not stopped punching some serious holes into the Western conception of human rights, which, for example, did not stop Hitler and the German state from unleashing a holocaust against Jews. Incidentally, this was linked with the Hitlerite ideology of the superiority of the Germanic race. The “rights” of the German were, of course, different from and superior to, those of the Jew.

If human right should play an important part in the new world order, a global pattern must emerge which will be inclusive of the values of other cultures and not exclusive of them. Secondly, the various global conceptions must be sifted and synthesised and genuine concerns taken account of to promote global acceptance. Thirdly, it should be accepted that human rights observation is imperative in human governance all over the world Fourthly, the socio economic inequalities should be removed. Unless we can develop an acceptable balance in political and economic well-being for all within the context of a just world economic order, the internationalisation of human rights may remain a perpetual enigma.

References

Algar, Harnid (trans.) 1990. *Constitution of the Islamic Republic of Iran* Mizan Press, Berkeley, CA.

Alston, P. 1993. "The Universal Declaration a 35: Western and Passé or Alive and Universal?" *Review of the International Commission of Jurists,* 41.

Alston, P. 1988. "Making Space for New Human Rights: The Case of the Right to Development", *Harvard Human Rights Yearbook.* 1: Spring.

Aquinas T. 1959. *Summa Theological*, in A. P. d'Entrèves (ed.), Aquinas: Selected Political Writings Basil Blackwell, Oxford.

Asante, S. K. B. 1969. "Nation Building and Human Rights in Emerging African Nations", *Cornell International Law Journal*, 2: Spring.

Busia, K. A. 1951. *The Position of the Chief in the Modern Political System of Ashanti* Frank Cass, London.

Cahill, L. S. 2000 "Towards a Christian Theory of Human Rights", *Journal of Religious Ethics*, 28.

Calvin, J. 1847. *Commentary on the Book of Psalms,* trans. Revd. J. Anderson, Vol. 4, Calvin Translation Society, Edinburgh.

Calvin, J. cited in D. Little. 1989. "Economic Justice and the Grounds for a Theory of Progressive Taxation in Calvin's Thought", in R. L. Stivers (ed.), *Reformed Faith and Economics* University Press of America, New York.

Cranston, M. 1939. "What are Human Rights?", in W. L.aqueur and B. Rubin (eds.), *The Human Rights Reader* Temple University Press, Philadelphia.

Dahl, R. 1958. *Pluralist Democracy in the United States of America* Rand McNally, Chicago.

Department of State. 1978. "Letter of Submittal", in *Four Treaties Pertaining to Human Rights: Message from the President of the United States Transmitting ... the International Covenant on Economic, Social and Cultural Rights...*,US Senate, 95 Congress, 2nd Session GPO, Washington, DC.

De Tocqueville, A. 1956. *Democracy in America* New America Library, New York.

Drah, F..K. 1987. "Aspects of the Higgi. State System: Pre-Colonial and Colonial", in K. A. Ninsin and F. K. Drab (eds.), *The Search for Democracy In Nigeria*, Asempa Publishers, Accra.

Hollenbach, D. 1999. *Claims in Conflict: Retrieving and Renewing The Catholic Human Rights Tradition* Paulist Press, New York.

Jonah, K. 1987. "Social and Economic Conditions for a Stable Democracy", in K. A. Ninsin and F. K. Drah (eds.), *The Search for Democracy in Nigeria* Asempa Publishers, Accra.

Khomeini, A. 1988. The City of Justice: *A Collection of the Statements of Imam Khumayni on Human Rights in Islam Held in Iran in 1988*. Islamic Propagation Organisation, Teheran.

Laroul, A. 1996. *The Crisis of the Arab Intellectual: Traditionalism or Historicism?* University of California Press, Berkeley, CA.

Little, D. 1990. "A Christian Perspective on Human Rights", in A. Ahmed An-Na'im and F. M. Deng (eds.), *Human Rights in Africa* The Brookings Institution Washington, DC.

Lipset, S. M. 1960. Political Man, VSF, Bombay.

Locke, J. 1954. *Essays on the Law of Nature,* (ed.) W. von Leyden, Clarendon Press, Oxford.

Locke, J. 1966. *Of the Conduct of the Understanding*. (ed.) F. W. Garforth, Teachers College Press. Columbia University.

Locke, J. 1967. "The Second Treatise of Government", in P. Lasslet (ed), *Two Treatises of Government* Cambridge University Press.

Macpherson, C. B. 1975. *The Real World of Democracy* Oxford University Press, New York.

Mayer, A. E 2000 "Current Muslim Thinking on Human Rights", in A. Ahmed An-Na'im and F. M. Deng (eds.), *Human Rights in Africa* The Brookings Institution Washington, DC.

M'Baye, K. 1992 "Human Rights in Africa", in K. Vasak and P. Alston (eds.), *The International Dimensions of Human Rights,* Vol. 2, Greenwood Press, Westport, CT.

Nkrumah, K. 1957. *The Autobiography of Kwame Nkrumah* Thomas Nelson, Edinburgh.

Oquaye, M. 1999 "Human Rights and the Transition to Democracy in Nigeria", *Human Rights Quarterly*, 19:3.

Re Akoto. 1961. "The Supreme Court of Ghana", 2 *Ghana Law Reports*, 523.

Roosevelt, F. D. 1941. *Address of the President of the United States*, 6 January 1941, Washington, DC.

Tibi, B. 1993. "The Renewed Role of Islam in the Political and Social Development of the Middle East", *Middle East Journal*, Vol. 47, No. 1, 1983.

Tibi, B.2000 "European Tradition and Islam", in A. Ahmed An-Na'im and F. M. Deng (eds.), *Human Rights in Africa* The Brookings Institution, Washington, DC.

Tully, J. A. 1990 *Discourse on Property: John Lake and His Adversaries*, Cambridge University Press.

Universal Islamic Declaration of Human Rights (1981) Islamic Council, London.

Wai, D. 1999 "Human Rights in Sub-Saharan Africa in Adamantia *et al. (eds.), iland Ideological Perspectives* Praeger, New York.

Wiredu, K. 1990, An Ibibio Perspective on Human Right Brookings Institution,

Washington, DC.