POPULATION AND HUMAN RIGHTS

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Summary

In the field of population, concern for human rights has become more prominent during recent years. Most governments have adopted policies and programs intended to influence demographic trends. At the same time, governments have used the United Nations as a forum where their representatives can discuss and ultimately reach consensus on their citizens' rights in the field of population. Among the specific demographic issues dealt with are: fertility and access to family planning, the family, mortality, abortion, internal migration, international migration including refugees and undocumented migrants. The development of these rights over the last half-century is reviewed and some leading issues for the future are identified.

1. Introduction

Population and human rights were two of the prominent issues on the world's agenda during the years following the conclusion of World War II. Scholars can trace historic roots for each of them back through the millennia, but they were really only fully articulated after the mid-1940s. During the last half-century, they have each established their own programs and establishments at the international, national and local levels. Each has experienced considerable growth in the institutions that are active in its respective area.

Population and human rights are separate issues, but they are not independent of one another. Human rights concerns have come to play an increasing role in population

policies and programs over the last fifty years. In turn, demographic trends and population policies continue to present evolving and, at times, new challenges to human rights. The changing relationship between population and human rights will be explored here. As a first step, it will be useful to review some of the basic characteristics of human rights as they exist in the modern world: what they consist of, how they are enacted and how they are enforced. Following that, it will be possible to consider what they have to say about population.

2. Human Rights

The establishment of the European nation-state system is commonly identified with the Peace of Westphalia, in 1648. That system largely prevailed in Europe for the following three-and-a-half centuries and by now in the rest of the world, as well. It holds that every state is sovereign and has complete control over its internal affairs. No state has the right to intervene in the domestic affairs of any other state.

Of course, even within Europe itself, the nation-state system did not always function uniformly or consistently. No political system ever does. Nevertheless, it was a crucial component of the way statesmen thought about the organization of political affairs.

National sovereignty was made a basic component of the Charter of the United Nations, adopted in 1945. During the decades of political decolonization that followed, the sovereign nation-state system was extended to cover virtually the whole of our planet. With the cold war, both sides violated the system at one time or another, but it remains one of the most pervasive elements of all political life at the end of the millenium. It faces some new challenges with the emergence of the global economy, but it is very far from outmoded or superseded.

Ironically, it was at the same time that the system of national sovereignty was firmly established at the global level in the Charter of the United Nations, that the nations of the world also began to take significant steps to limit their own sovereignty. They began the process of systematically formulating and adopting a set of universal human rights. The horrors of World War II demonstrated that the Westphalian system had failed in some fundamental ways. Although the representatives of the various nations were not prepared to abandon the system, they reached a consensus that absolute sovereignty had to be constrained if human beings everywhere were to be protected from recurrence of the horrors and if the nation-state system itself were to continue. In effect, the secular political system made a pragmatic attempt to learn from its own experience of failure, to change itself in a way that would be in the best interest of all. On the whole, the attempt was successful.

Throughout the last half-century, the process of formulating and adopting human rights has been carried out mostly within the institutional framework of the United Nations. It is in that setting that it will be discussed here.

The foundation stone upon which the post-World War II human rights establishment was built was the Universal Declaration of Human Rights. It was formally adopted and proclaimed by the United Nations General Assembly on December 10, 1948. The

Universal Declaration, along with its two accompanying Covenants, make up the International Bill of Human Rights.

The Universal Declaration (hereinafter: UDHR) is a comparatively brief document; it consists of thirty articles set forth in just a few pages of text. It provides the essential framework of civic and of social and economic rights that every human being must be able to enjoy simply because he or she is a human being.

The topics covered include the fundamental equality of all humans, their rights to life, liberty, security, due process and equality before the law, and privacy. Slavery, torture, and arbitrary arrest are prohibited. The right to freedom of movement, asylum, and to a nationality is specified. All persons are granted the right to form a family, own property, enjoy freedom of thought, religion, expression, peaceful assembly, and participation in the government of their country. In addition, all have rights to development, employment, leisure, education, social security, and the enjoyment of one's culture.

Population issues as such are not extensively dealt with in the UDHR. No reference is made to population size or to rate of growth, nor for that matter in any other human rights instrument adopted since. However, in one way or another each of the various factors that affect the size and growth of population—fertility, mortality, internal and external migration—are taken up.

Mortality is implicitly dealt with in Article 3, which states that "Everyone has the right to life" and in Article 25, which specifies the right to "a standard of living adequate for the health and well-being". The International Covenant on Economic, Social and Cultural Rights, one of the two covenants that along with the UDHR comprise the International Bill of Human Rights, adds that States Parties should take steps to reduce still-birth rates and infant mortality. The fundamental human rights issue of genocide was not taken up by the UDHR, but it was the subject of a separate instrument, the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly in 1948, just one year after the UDHR.

Fertility is dealt with in an implicit and qualified manner in Article 16. It is useful to consider this Article in full. It reads:

- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at it dissolution.
- Marriage shall be entered into only with the free and full consent of the intending spouses.
- The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

There are two particularly relevant points in the Article. First, any right to control one's fertility is imbedded in the reference to the right to found a family. At the time that the UDHR was drafted, it was only a few demographers that were coming to view levels of fertility as in any way problematic. Second, while the UDHR vests most civic and social-economic rights in the individual, Article 16 ascribes a privileged status to

communal unit, the family. At the same time, it calls for full equality between the marriage partners. It notably does not offer guidance for dealing with conflict that might arise between the interests of the family as a "communal unit" and its individual members. However, in almost all societies near the end of the first half of the 20th century, the rights of women were to a greater or lesser extent subordinate to the interests of the family in which they lived. Tension between the interests of the family and its individual members has continued, in societies and in human rights and other legal forums, and is far from being resolved at the end of the century.

Citizenship and the movement of individuals between countries is a matter of great concern under the Westphalian system of sovereign nations. The UDHR ascribes two rights in this area to every person. Article 13, Section 2 stipulates that: "Everyone has the right to leave any country, including his own, and to return to his country." At the same time, no right is indicated for anyone to enter any country other than his or her own. The right to decide whether any non-national shall be permitted to enter a country thus remains implicitly but quite clearly within the sovereign authority of that country. The second right related to movement between countries that is given to all persons is "…to seek and enjoy in other countries asylum from persecution". The very difficult question of how to deal with any potential conflict of interest between a country's right to limit entry of non-citizens and an individual's right to seek asylum from persecution is not dealt with by the UDHR.

For migration within a country, the UDHR quite simply and unequivocally states that "Everyone has the right to freedom of movement and residence within the borders of each State" (Article 13, 1).

Finally, it should be noted that the UDHR refers in only a very passing and limited manner to the age distribution, a characteristic of populations that can have great importance for the quality of people's lives. Old age is mentioned, along with unemployment, sickness, disability and widowhood, as a condition beyond the control of the individual in which his or her right to security must be assured.

As can be seen, the UDHR treats population, in a rather concise fashion. Over the succeeding decades, as concern for population growth became more urgent, treatment of the issue in the human rights context was greatly extended. A similar kind of amplification can be seen in many other substantive areas. During recent years, there has been a marked upsurge in attention to the implementation of civic rights and to the particular human rights concerns of as women, children, minorities and indigenous people.

Although the establishment of human rights is viewed by its proponents as a most urgently needed human enterprise, it also has its critics. It may indeed be that as concern for human rights has become more firmly established and more fully articulated, the criticism has also grown. In order to assess the impact on population that human rights concerns are likely to have in the future, it is essential to review these criticisms. The critics have made three main points: first, all to often human rights are rights without remedies, mere rhetoric that may only mislead; second, there is an unresolved tension

between civic and social/economic rights; third, the universality claimed for human rights is unattainable, and at worst a kind of thinly veiled imperialism.

The first criticism, that violations of human rights are without remedies, is a partial truth. In the first place, many of the key human rights have been formulated in resolutions of the United Nations General Assembly, and thus do not have the force of law. Literally speaking, they have moral force but no more. Indeed, such is the case for the Universal Declaration itself. Other human rights instruments do have force of law in that they call for legislative ratification by the States that sign on as Parties. In such cases, the instruments are in effect treaties, and are enforceable in the national courts of the signatory Parties. Two key examples are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, each with an associated Optional Protocol, that along with the UDHR make up the International Bill of Human Rights. But even the instruments that are ratified have visible weaknesses. They do not apply in non-signatory countries. Countries may, and often do, sign but with their own stated reservations. And the way the instruments are interpreted and enforced will almost certainly vary from one country to the next.

Nevertheless, these procedural limitations of human rights do not mean that they are irrelevant or are little more than political cliches. There is little doubt that human rights have come to play an increasingly important role in public affairs in most countries. Nations give clear evidence that they take the non-binding United Nations General Assembly very seriously. Proposed instruments are vigorously and even fiercely debated. The very process of debating a proposal obliges a government to clarify its stand on issues, for itself as well as for other countries. In addition, it may be observed that in some countries the leading declarations such as the UDHR are coming at times to be cited as having weight in national judicial proceedings.

More importantly, as the human rights institutions have developed during recent decades, increasing attention has been given to enforcement. The first decades after World War II were primarily concerned with identifying and formulating human rights. More recent concern has been with the strengthening and use of mechanisms designed to assure more accessible and effective remedies to human rights violations. Formal review of countries' performances in living up to their commitments has become increasingly routinized, especially with respect to civil and political rights. These review procedures have created a forum for what has aptly been called a "mobilization of shame" directed at countries that seriously violate rights. The experience is that most governments take the matter very seriously. Moreover, the review process is no longer restricted to governments alone; non-governmental organizations are increasingly permitted to participate.

Finally, there is growing use of formal tribunal procedures to remedy human rights violations in conditions of war and civil disturbance, as in the cases of Rwanda and Yugoslavia, among others. Human rights violations are increasingly the justification for multi-lateral military interventions. Indeed, the recently emerged practice of using human rights proceedings to seek and obtain indictments against current and former heads of states for rights violations is seen by some observers as going too far. They fear that such actions may impede negotiated compromise and in the long run exacerbate rather than resolve conflicts.

A second general criticism that has historically arisen is the debate about the respective importance to be given to civil and political rights as opposed to social and economic rights. Broadly speaking, civil and political rights specify certain kinds of behavior that no government should permit or engage in—discrimination on grounds of race, color, sex and so on; slavery; the use of torture; lack of due process and equal protection under the law; limitation of freedom of thought, conscience, religion and expression. Social and economic rights itemize things that governments should provide to their citizens as a matter of right—employment; rest and leisure including periodic holidays with pay; free universal elementary education. Clearly, there is a substantial difference in the two kinds of rights. Civil and political rights need not depend in any significant way on a country's level of development. A citizen's right to due process and to not be subject to torture should not depend on his or her country's per capita gross national product. On the other hand, social and economic rights are necessarily highly contingent on a government's level of prosperity. Indeed, in a country where substantial proportions of the population are engaged in small-scale agriculture or are self-employed artisans, it is not very clear what any government can do to assure paid holidays. Social and economic rights may appear to be more in the nature of community goals than of rights as such. At the same time, many observers argue that civil and political rights can not be meaningful in a situation where minimum levels of social and economic development have not been achieved. They view civil, political, social and economic rights as indivisible.

The debate on this issue reflected the global alignment of forces during the cold war. The countries of the West tended to emphasize civil and political rights; the communist countries and many of the developing countries emphasized social and economic rights. This debate was particularly sharp during the 1960s and 1970s. The issues have not been resolved, but the debate appears to be less pointed, as a result of the end of the cold war. Attention in the global human rights forums appears to have shifted toward greater focus on civil and political issues.

An issue that is currently rather more sharply debated concerns the universality of human rights. Just as the nation-state system purports to cover all geographic areas and all persons in the world, human rights are designed to apply equally to all human beings and all nations. The criticism of human rights' averred universality has come from two main sources.

One consists of scholars who reflect an important school of thought in the contemporary academic community. This school, which is sometimes referred to as post-modernist or post-colonialist, views virtually any claim to universality with skepticism. On social and political issues, it adopts a relativist perspective, arguing that any propositions such as those found in the human rights instruments can only be meaningful in their particular cultural and historic contexts. Further, it is argued that the body of human rights instruments is no more than a product of Western liberal thought, and that they have no intellectual or moral validity outside that context. Rather, they are little more than a reflection of a continuing imperialist predilection on the part of the West.

The other leading critics are the representatives of a number of developing countries, especially several in East and Southeast Asia. Beginning around the early 1990s, this group has challenged what they see as the excessively individualistic orientation of the

various United Nations human rights instruments, as well as the over-emphasis on liberal democratic political institutions. They claim that in their countries, at least, a different approach to human rights is more appropriate, and that the representatives of other (especially Western) countries should not try to impose their individualistic values. The "Asian Values", as described by former President of Singapore Lee Kuan Yew, are more communitarian in nature, where the interests of society take precedence over those of the individual. The goal of the state is to maintain political stability and achieve rapid economic growth. When necessary, dissent may be suppressed by such means as are necessary. The countries that have most strongly identified themselves with the Asian Values have been Singapore, Malaysia and China.

The scholarly criticism from the post-modernist/post-colonialist perspective is useful in helping recall how widely different human cultures are, and how approaches to rights may vary—a point also of course borne out by the protracted and difficult debates that normally precede the adoption of such instruments. However, others have argued that this criticism may err in privileging, in virtually reifying, the concept of culture as the dominant force that determines the way in which people from various parts of the world view human rights.

The larger debate over "Asian" as opposed to "Western" values that is has gone on in the various human rights forums also reflects important differences in values, those that appear at the intergovernmental level. And quite clearly, very real differences in values are revealed. Again, though, many observers have argued that the debate involves a good deal more than cultural differences alone. A communitarian orientation that emphasizes the subordination of the individual and the suppression of dissent in the interest of political stability may also be used by an elite merely to maintain its power. Protection of local cultural values can also be the rhetoric of state censorship. At the same time, calls for greater protection of human rights in countries with newly emerging economies may also used by threatened interests in the already industrialized countries to try to limit competition and to penetrate new markets.

The defenders of human rights also reject the view that they are no more that a reflection of contemporary Western liberal values. Many analysts have made great efforts to find the common roots of the essential concepts of human rights in the historic values of a wide range of human societies. Others have pointed out that the existing human rights formulations are the outcome of long and often very difficult negotiations in the intergovernmental legislative bodies—probably the best one can do under existing world circumstances in order to reach a kind of practical universality. The claim to universality may continue to pose problems at a purely theoretical or ontological level. However, as a pragmatic means to set minimum standards of human decency that a substantial and increasing number of governments feel they should try to comply with, the established human rights system can quite plausibly be considered universal.

Finally, an examination of the record of ratifications of the international human rights instruments strongly suggests that they are by no means merely a reflection of Western liberal democratic values. Some Western liberal democracies have ratified few more of the instruments than some East Asian countries. There are sharp differences of opinion on human rights issues within the Western liberal democracies, and although more muted,

within many of the Asian countries as well. And while it is true that countries of some regions, most notably those of the Arab Middle East and of Southeast Asia, have generally ratified fewer instruments than have the countries of the other regions, the pattern of differences is far less marked than the debate would imply.

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