

***Proposal for a Faculty Human Rights Workshop on the  
Indivisibility and Interdependence of Human Rights, April 12, 2008.***

The notion that all human rights are interdependent and indivisible (I/I) originated in UN circles in the 1950s, and in the intervening period has been the topic of various World Conferences on Human Rights, Declarations, and disputes among legal and academic scholars, and activists.<sup>1</sup> The idea has some conceptual grounding, at least a *prima facie* one, in the works of Henry Shue and Amartya Sen.<sup>2</sup> For those scholars, subsistence and security needs and basic capabilities all require the whole mix of human rights to assure a life with human dignity. Nevertheless, the bulk of defenders of the I/I claim base their argument largely on empirical grounds (i.e., “I/I exists because international law says it does”). Opponents of the notion of I/I dismiss it either implicitly or explicitly. For instance, Aryeh Neier and Kenneth Roth both doubt the efficacy of economic, social, and cultural rights, largely on procedural grounds.<sup>3</sup> And those espousing “Asian Values” and the “right to development” often dismiss, or at least ascribe an inferior status to, civil and political rights.<sup>4</sup>

As a conceptual matter, it seems that there are three distinct possibilities. First, the conceptual foundations of human rights themselves could provide the origin for I/I. As a simplistic illustration, if we were to take dignity as the foundation for any human right, then dignity might further require that we accept all human rights. The second conceptual possibility is that I/I is a conceptual “add-on” to the foundations of human rights. In this case, the justification for human rights and the justification for saying they are interdependent and indivisible are separate and distinct. This possibility would require an entirely new conceptual foundation for I/I; we are unaware of any such efforts. The third possibility is to say that I/I is just rhetoric and that whatever the philosophical foundations of human rights, I/I has none. Even in that case, I/I could still be important (say on pragmatic grounds) but that would point to a meaning that is solely legally or politically positivistic.

The issue begs important questions, which will provide the basis for our workshop. We will refine the list over the next fifteen months, but several important ones follow.

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<sup>1</sup> See Daniel Whelan, 2006. *Interdependent, Indivisible, and Interrelated Human Rights: A Political and Historical Investigation*, Unpublished Ph.D. Dissertation, University of Denver. The I/I concept was central to deliberations at the 1968 first World Conference on Human Rights at Teheran; to the drafting of the 1986 *Declaration on the Right to Development*; and to deliberations at the 1993 second World Conference on Human Rights. Scholars interested in economic rights implementation have addressed I/I in the 1986 *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* and in the 1997 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*. For full text of the Limburg and Maastricht documents, see, respectively, *Human Rights Quarterly*, 9, 2 (May 1987): 122-135, and *Human Rights Quarterly* 20, 3 (August 1998): 691-705.

<sup>2</sup> Henry Shue, 1996. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Princeton: Princeton University Press; Amartya Sen, 2001. *Development as Freedom*, NY: Alfred A. Knopf.

<sup>3</sup> See Aryeh Neier, 2006. “Social and Economic Rights: A Critique,” *Human Rights Brief* 13; and Kenneth Roth, 2004. “Defending Economic, Social and Cultural Rights: Practical Issues Faced by International Human Rights Organization,” *Human Rights Quarterly* 26, pp. 63-73.

<sup>4</sup> On Asian Values, see the views of Lee Kuan Yew in: Fareed Zakaria, 1994. “Culture is Destiny: A Conversation with Lee Kuan Yew,” *Foreign Affairs* 73, 2 (March/April 1994): p. 113. The idea that economic and social rights are functionally prior to civil and political rights is exemplified in the 1968 *Proclamation of Teheran* at the 1<sup>st</sup> World Conference on Human Rights (see Whelan 2006, p. 5).

1. *How can I/I enhance our understanding of the theory of human rights?* This question refers to the conceptual distinctions above, i.e., does I/I have the same foundations as human rights themselves, separate foundations, or no foundations at all? Any complete theory of human rights would have to be able to address this question.
2. *Would a correct understanding of I/I entail removing certain “rights” from the human rights lexicon? Would it entail adding others?* Of course this question is of immense practical significance. What if a proper understanding of I/I necessitated exclusion of certain civil and political rights? In that case, we might need to find other conceptual foundations, or, as a practical matter we might choose to keep them for historical, legal, political, or cost reasons. But a clearer understanding might be different than our current one. In contrast, a proper understanding of I/I may necessitate inclusion of rights not explicitly included in the Bill of Human Rights, such as “Third Generation Human Rights” like the right to development, or “emergent rights” like environmental rights or the rights of sexual minorities. If we could better answer this question, we could better prioritize our policies and better align our policy institutions. Headway on this question might also allow us to better address the critics of human rights who complain of rights proliferation.
3. *How does acceptance (or rejection) of I/I affect our interpretation of the obligations stemming from different types of rights?* Scholars and advocates interested in economic rights, in particular, have explored the concept of I/I as it relates to state obligations to respect, protect and fulfill economic rights. Would accepting I/I strengthen the obligation of industrialized countries to “provide international assistance and cooperation” as specified in Article 2, paragraph 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)?<sup>5</sup> Would acceptance create a stronger obligation on states to enhance the mechanisms for monitoring economic rights? Or does rejection of the concept of I/I justify the status quo with respect to monitoring and implementation of economic rights?<sup>6</sup>

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<sup>5</sup> For related arguments concerning the legal status of this obligation, see Sigrun Skogly and Mark Gibney, “Economic Rights and Extraterritorial Obligations” in Shareen Hertel and Lanse P. Minkler, editors, *Economic Rights: Conceptual, Measurement and Policy Issues* (Cambridge: Cambridge University Press, forthcoming).

<sup>6</sup> Historically, the institutional mechanisms for monitoring and implementing economic rights have been weak compared to those available for implementing civil and political rights. A treaty monitoring body for the 1966 *International Covenant on Civil and Political Rights* (ICCPR) was envisioned in Article 28 of the ICCPR; that body -- the Committee on Human Rights -- began functioning as soon as the treaty entered into force (i.e., in 1976). The first *Optional Protocol* to the ICCPR (also opened for signature in 1966) created an individual complaint mechanism for monitoring the treaty, and it, too, came into force in 1976. By contrast, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) did not provide for a treaty monitoring body and there remains no individual complaint mechanism for the treaty. The monitoring body for the ICESCR -- called the Committee on Economic, Social and Cultural Rights -- was not created until 1986. For details, see Philip Alston, 1992. *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, 1<sup>st</sup> edition. See also Peter R. Baehr, 2000. “Controversies in the Current International Human Rights Debate,” Denver University Human Rights Working Papers #3 (<http://www.du.edu/humanrights/workingpapers/index.html>), especially pages 8-10.