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EDITORIAL

NATURAL LAW AND THE MODERN WORLD

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We hold these Truths to be self-evident, that all Men are created equal, that they are endowed, by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness...And for the support of this Declaration, with a firm Reliance on the Protection of the divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

The American Declaration of Independence (1776)

In contrast to 1776, the concept of human rights is today often addressed as a relative rather than an absolute concept. Despite the fact that the modern concept of democracy was in part based upon a belief that human beings possess "unalienable rights," even democratic governments today disagree on how such rights must be honored in the breach. As a result, only scattered, selective, and in some cases haphazard mechanisms exist to permit the global community to intervene (if so inclined) to protect the rights of the individual against the powers of the state.

This is not where humanity hoped it would be as it viewed the smoking wreckage of World War II, and world leaders embarked upon an effort to rebuild their shattered nations.

Granted, one reason for this failure is that the founders of the United Nations decided not to give the new institution the power to create and enforce its own laws. In consequence, the United Nations then, and still today, lacks the capability to determine that violations of human rights are occurring, and then to intervene with force or sanctions against the guilty party, except through the cumbersome, slow, and often unsuccessful means of open debate.

But in a fundamental sense, such powers would be useless absent agreement on a single set of standards for determining precisely what rights human beings innately possess. Much more impressive progress has been made in this pursuit, but perhaps the effort to stem human rights abuses is being undermined not by the absence of such definitions, but by the classic case of having too many standards, each ostensibly applicable to a different situation, time or place.

For example, while 141 nations have ratified the Universal Declaration of Human Rights (first approved by the United Nations in 1948), there are numerous other conventions in force that have relevance in certain situations (such as the Geneva Conventions, which address human rights in times of war), or with respect to certain practices (e.g., the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), or within a specified geographical area (such as the European Convention on Human rights, which binds only EU nations).

The unfortunate result is that in a given context, the rights of the individual can become muddled and indistinct, and perhaps lost entirely in a fog of disputed interpretation. Is a given individual an enemy combatant, or a "terrorist?" Does that individual's rights differ with geography, and if so, can the rules change if the individual is moved? For example, if one set of rules applies at the time of capture on the battlefield, do those rules change if the individual is transferred to the U.S. facility in Guantanamo Bay, and again if transferred to the United States itself, and yet again if he is finally subjected to rendition to a country that does not observe international conventions against torture? Can it be contended that a terrorist has no rights at all, by simply contending that terrorists are not covered by any identified convention?

Today, we seem to be in danger of countenancing a retreat from the 18th century concept of "inalienable rights" in favor of a purely legalistic approach that looks only to the applicability of identifiable rules to specific situations. The logical result of referring only to rules of selective applicability is that if a place, or a category (or both) can be found where those rules do not apply, then the individual is left totally at the mercy of the state. Certainly this is inconsistent with the concept of innate human rights and the values upon which this country was founded.

It would seem that the only way to avoid such a result is to restore the concept of some baseline set of inalienable rights, rights that are unabridgeable under any circumstance, by any authority, at any time, as originally conceived by John Locke, Thomas Paine, and, indeed, the draftsmen of the American Declaration of Independence.

Only by agreeing upon such a base standard of human dignity can the individual be protected against the temptations of those in power to justify abridgement of human rights by the exigencies of the moment. Hopefully, this is one area of Constitutional interpretation upon which liberals and strict constructionists alike, upon reflection, can find common ground.

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