Human Rights: Conceptual Explorations

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[The issue of Human Rights has attracted the attention of the world ever since the First World War. For the western world it was like revisiting the values of the enlightenment when it was widely discussed after the Second World War against the backdrop of the holocaust. Many also found in the principle of human rights echoes of the natural rights tradition in European political philosophy. In a world labouring under colonialism and fascism, the lure of human rights was irresistible. However, after decolonisation and subsequent flourishing of economy in South-East Asia and East Asia the conceptual moorings of human rights came under increasing attack from many critics in Asia. The appeal of human rights has however remained undiminished for the people as a whole in all corners of the world. This article seeks to explore the issues that define such conceptual divides and argues that human rights cannot be trumped under the excuse of promoting order, discipline, and communitarianism. Editorial Board]

… .....all human beings must have some common values or they cease
to be human, and also some different values else
they cease to differ as in fact they do.
Isaiah Berlin

The language of "Human Rights" has stirred the imagination of the peoples of the world ever since it has entered the lexicon of international relations/politics during the Second World War. It is not that the humankind was not aware of the rights of the human beings before this. But the concept of a universal principle of human rights was certainly a new way of approaching the issue from an internationalist perspective. For a world waking up from the monstrosities of a war that primarily arose out of neglect for human rights (the violation of which led to violence and bloodshed, as it was anlaysed and understood by the leading actors of international politics of the time), human rights emerged as one of the most fundamental principles of international solidarity. The colonized millions around the world on the threshold of independence also found in this principle hope for their early freedom from years of servitude and assurance that the international politics of the future will ensure observance of this fundamental principle and perpetuation of the condition of freedom for all peoples and all nations. This is not to say that there was zero resistance to the attempts at universalizing the fundamental principle of human rights when discussions at international level began after 1945.[1]

Political philosophy has tried unsuccessfully over the years to reconcile the concept of autonomy of the individual with the restraining capacities of the group/society/state. The contractualist[2] view of human beings surrendering part of their rights (naturally bestowed upon them) and autonomy to build up the society or state pledged to safeguard some of the vital

rights had sought to conceptualise the difference between individual rights and state rights. The natural urge of the humans to be autonomous and the equally dominating passion of the humans, as what Aristotle would call zoon politikon, to come together in groups and establish societies and states— which evolve their own principles, ethical and moral codes and prescriptions for human behaviour limiting the autonomy of human being— have amused political philosophers throughout the history.

The perennial fight for autonomy and agency by human beings suggests that the authority of the groups (society, states, religious communities, ethnics etc.) have always sought to circumscribe the area of human autonomy and have provoked the elemental human right to rebel. There have been moments in history when human beings have come together in groups to challenge the authority of existing societal/state principles and emphasise the fundamental principle of human autonomy and have sought to reorder groups and societies. The poets have rendered it beautifully: "the old order change the yielding place to new…..lest one good custom would corrupt the world".

The issues defining the moments of such crisis may however be far more complex and the differences between the forces attacking human rights and the forces upholding them may be far too subtler than can ever be imagined. However, it is in the violation of human rights that the seeds of such crises are sown.

Ever since the language of human rights was introduced in the realm of discourses on international politics, the world has seen concerted efforts going on around the world to keep tabs on human rights violation across states and societies around the world. The proliferation of such groups has also underscored the importance of a set of human rights which are regarded as too sacrosanct to be trumped by the rules/customs/laws of societies/groups/cultures/states merely because they question at times certain principles held immutable from the 'group' perspective and thus deemed as inimical to group interests because they could threaten the survival of the group. From such a perspective 'human rights' is seen as an 'insurgent creed' for it problematizes the whole issue of privileges of the group.

It goes to the defence of the advocates of the human rights around the world that the language of human rights has now become universal. It is also widely understood to have appealed to the people who perhaps need them the most— the ones who would feel threatened by the predominance of group rights. Interestingly quite, the inclusion of social and cultural rights within the ambit of human rights has enlarged the scope of human rights and sought to defend the rights of the minority groups in multi-cultural societies against the majoritarian reflexes of the state. Such defence cultural rights of the groups, however, should not be presumed as endorsing preference of group rights over rights of individuals. As Michael Ignatieff says, "the ultimate purpose and justification of group rights is not protection of the groups as such but the protection of the individuals who compose it….Rights language cannot be parsed or translated into non- individualistic, communitarian framework".[3] The concept owes its universal appeal perhaps to its capacity to question the legitimacy of the groups/societies/cultures/states. By championing the rights of the individuals it has appealed to people of all cultures, societies and civilizations, and as Ignatieff would say, human rights "have gone global by going local, empowering the powerless, giving voice to the voiceless". It basically reinvents the European

enlightenment tradition and acknowledges that "the people probably are best suited, and in any case are entitled, to choose the good life for themselves".[4] As also Isiah Berlin noted that true freedom "refers to non-interference with individual's choices about how best to live one's life".[5]

There has been a counter-perspective that the issue of universality ought not to be accepted uncritically for it tends to offer an imperialistic view (culturally speaking) and seeks to impose a value system that dilutes the very norms that hold societies/groups/ states together. The human-rights-centric discourse is regarded as too disintegrative and dangerous to be promoted universally and it is often construed to be a clever western invention to disturb non-western societies/groups/states perennially. In fact, many advocates of cultural rights and cultural relativism arguing in favour of evolving their own approach to the issue have found it difficult to fully endorse 'human rights' for they have seen the emotive power of the appeal to human rights of people in multi-ethnic and multi-cultural societies/states in the non-western world and the crystallization of dissent along demands for economic, cultural and social rights (under the garb of basic human rights) by pluri-cultural groups threatening to tear up societies/states. There is yet another perspective that atomization of cultures/groups/ societies in the name of human rights by emphasizing on rights of individuals alone does not fully comprehend the equally important issue of necessity of survival of the group/society/state.

UN and UDHR

During the second world war, the realization had dawned upon the leading actors of the world that it was primarily violation of human rights that led to such a large-scale war and death and devastation. The concern for future led to the formation of an international body— the United Nations— that built upon the experience of the League of Nations. The Charter of United Nations made a mention of "fundamental human rights" without defining precisely what it meant by the expression. The UNESCO subsequently convened a special Committee on the Philosophic Principles of the Rights of Man to draft the proposed Declaration on Fundamental Human Rights in early 1947. The aim of the Committee was not to achieve doctrinal consensus among all cultures and groups but to isolate grounds of convergence whereupon an international bill of rights can be framed. The Committee concluded:

"Human Rights have become, and must remain universal. All the rights which we have come slowly and laboriously to recognize belong to all men everywhere without discrimination of race, sex, language and religion. They are universal."[6]

This common respect for the principle of human rights in subsequent days led to the final drafting of the Universal Declaration of Human Rights (UDHR) comprising of thirty articles. However, in the process of accommodating plurality of views, the drafting committee sought to bridge diverse approaches and thus had to be vague and bland. The drafting committee was perhaps aware of its limitations and confined itself to the task of just 'proclaiming a vision' that would 'inspire subsequent action' as a statement of principle with no legally binding authority.

Even during the final stages of the process of drafting of Universal Declaration of Human Rights, there were differences among delegates to the UN debating the draft declaration. The

Saudi Arabian delegate had raised objections over the issue of marriage (Art.16 of UDHR) and freedom of religion (Art.18 of UDHR) and held that cultural sensitivities should be taken into account while framing any document that would claim universal acceptability. Even within the Western block the initial enthusiasm of victory that the liberal west shared with the Soviet Union, ideological fissures had become more visible and in the drafting committee the erstwhile delegate from Soviet Union had started advocating inclusion of socio-economic rights over which consensus regarding the evolution of the UDHR seemed to break. Finally when the UDHR was adopted at the Palais de Chaliot in Paris, France on 10 December 1948, there were 48 votes in favour and Saudi Arabia apart from the six-member Soviet block[7] and South Africa abstained. The UDHR was passed without any dissenting vote.

The UDHR has been further strengthened over the years by other UN international covenants like International Covenant on Civil and Political Rights(ICCPR)[8] and International Covenant on Economic, Social and Cultural Rights(ICESCR)[9] . Together they are regarded as the International Bill of Rights. The United Commission on Human Rights, which has 53 countries representing all regions of the world, has acted as a forum for continuous discussion on human rights and kept international community focused on the theme. The UDHR has emerged as a model and influenced national legislations across the world. In fact in the wake of the UDHR has emerged as a "world-wide secular religion"[10] , as "the yardstick" to measure human progress'[11] , "the touchstone, the creed of humanity that surely sums up all other creeds directing human behaviour". The very idea of human rights and the sense of legitimacy and sanctity that has gone with these rights have also led to what Carl Wellman has called "a proliferation of rights" around the world.[12] In fact, UDHR has strongly influenced many international legal instruments that have come up at regional levels.[13]

Asian Values Argument

The appeal of human rights is universal. Yet, the condescending attempts at ushering non-western societies to the so-called "Human Rights Era" have provoked intellectual and political resistance in many non-western societies. Many of them— multi-cultural, multi-ethnic and plural and yet undertaking nation-building efforts to assimilate diversity and build uni-national 'nation-states'— are labouring under threats of disintegration, political and economic upheavals and they have discovered the explosive potential of the principle of human rights and suspect the western enthusiasm over the matter as a deliberate effort to promote dissension in these societies and weaken them in all respects. At another level, intellectuals in these societies have contested the western argument the human rights is alien to many cultures and held that the values and principles that sustain a human rights culture is not the monopoly of the West and such patronizing attitude only weakens the case of its universal acceptance.

There has been in fact lot of condescension among intellectuals in the developed, western nations while explaining underdevelopment in Asian states and in most of the cases reference was made to Asian values which supposedly stood in the way of Asian progress and development. The success of the economies in South East Asia seemed to disprove such positions and leaders like Mohammad Mahatir of Malaysia and Lee Kuan Yew of Singapore came to the other extreme of criticizing western values and suggested

that development could be possible and sustainable in Asian states only if cultural values of the Asian societies are not tampered with. In fact, they rather said that unthinking borrowing of ideas from the West in matters concerning economic and political organisation may adversely affect socio-political solidarity and integration and jeopardise order and harmony in Asian societies which provides the basis for development. The western emphasis on 'respect for human rights' was thus ignored and regarded as an unnecessary evil, which could play havoc with highly desirable communitarian values, the preserve of Asian societies.

In contrast, the following aspects of Asian values have been emphasized by the critics of attempts at universalizing the movement for human rights and democracy.

   • Stress on community rather   than the individual
   •Preference for order and harmony over personal freedom
   •Refusal to reduce the effect of religion from the public sphere
   •Emphasis on savings and thriftiness
   • Insistence on hard-work
   • Respect for political leader-ship
   • Emphasis on family loyalty
   • Government and business need not be adversaries
  •There is a need to ground economy and politics in these countries in the traditional values of
     the specific countries
  •Persistent and excessive stress on individual rather than the community in western societies
     could be disquieting for states from the Asian perspective for it could lead to indiscipline and
     disorder and disrupt society, polity and economy in Asian states.

Many critics have argued that fall of Asian economies in late 1990s "punctured the idea of Asian exceptionalism"(Francis Fukuyama) and laid to rest "the unquestioning worship of Asian values"(Diane Coyle) and proved that "Asian values" were "Asian liabilities". However, the crisis of Tiger economies of South East Asia in the late 1990s, as also the triumphalist arguments from the West, have not affected the core of the 'Asian values' argument at all. Lee for example argued that if Asian values were to be blamed for the crisis, then Singapore and Hong Kong would have failed too. The causes of the crisis— nepotism, corruption, favouritism— were universal human deficiencies and not unique to Asian values. If at all they are so manifest now in South East Asia it is because of 'debasement of Confucian values'(what he left unsaid but could have added was perhaps due to steady incursion of western values). The fact that a democratic Philippines has not done much compared to other South Eastern states in the crisis, he argued, would give a lie to the western hypothesis that sustainable development is the preserve of democratic and liberal societies.[14]

Mohammad Mahatir of Malaysia went even further in stating that since the capitalist mode of economy that failed was not intrinsically 'Asian' it is wrong to argue it failed because of Asian values. Rather he would suggest a racist western conspiracy at work behind the failure of Asian economies and urged Asians to come together at this moment of crisis in further emphasising the importance and unity of Asian values. The elemental Asian values like 'hard work, discipline, a strong commitment to community, thrift and moderation', which contributed to the Tiger and Dragon economies in Asia would help them in pulling out of the crisis, Mahatir argued.

Ridiculing the Human Rights concerns of the western commentators, Mahatir in his own characteristic refrain would say that the two world wars, the holocaust, the dropping of atom bombs on Asian cities, and the killings of Bosnians were not perpetrated by Asians.[15]

But critics in the West have countered such position with the argument that it is a highly elitist, ideological construct of the Asian leadership, which seeks to camouflage its aversion for democracy and personal freedom with arguments of cultural exceptionalism. The UN Secretary General, Mr. Kofi Anan indirectly supported such a view when he said: "Human Rights are foreign to no culture and intrinsic to all nations. They belong not to a chosen few, but to all people….It was never the people who complained of the universality of human rights, nor did the people consider it as a Western or Northern imposition. It was often their leaders who did so". It is also pertinent to mention here that the general public in such states do share the arguments proffered up by their leaders. They are deeply suspicious of western culture, values and idioms. David Hitchcock's exploratory survey of the value preferences of officials, business people, scholars and professionals in US and East Asia in 1994 suggested that even if there was a near unanimity of views on the issue of personal freedom, most of Asians said they preferred an orderly society and harmony. Similarly Joel Kahn's survey of one hundred and twenty three middle class persons in Malay between 1992-94 suggests that majority of them expressed their concern about the modernization process underway and were critical of the western culture for the following: lack of family values, individualism and selfishness, lack of cultural values, permissiveness, secularization and uncaringness.[16]

The basis of deep suspicion of human rights as a western hence alien value has been explored by many scholars too. A series of exchange of views in conferences held between East Asians and North Americans between 1994 and 1998— which was later brought out in the form of a book edited by Joanne R. Bauer of Carnegie Council on Ethics and International Affairs and Daniel bell of University of Hong Kong[17] — reveals that the deep legacy of colonialism is the root cause of such suspicion. Onuma Yasuki of Tokyo University says in the book, "for those who have experienced colonial rule and interventions under such beautiful slogans as 'humanity' and 'civilization', the term 'human rights' looks like nothing more than another beautiful slogan by which great powers rationalize their interventionist policies".

However, such clash of views does not delegitimise the importance of human rights. Human Rights are best conceived by Richard Rorty as "devices used to prevent the strong from having their way with the weak and thereby, to prevent the weak from suffering as much as they would have otherwise". The arguments of 'cultural imperialism' and 'cultural relativism' in the case of promotion of human rights only obscure its importance and expose the 'cattle to the wolf', howsoever gaudy and sound the arguments to the contrary may appear. Human rights cannot be trumped in the name of communitarianism any more than it can be promoted as a typical western value 'ought' to be imposed on inferior cultures. As Rorty, would suggest— in spite of his chauvinistic western position that "Human Rights are like anaesthetics, recent, ingenious western inventions"— "the much discussed quarrel between liberal individualism and communi-tarianism is a tempest in a philosophical teapot". He would argue that it is supremely human duty to come to the help of any member of the species who is suffering unnecessarily". Criticising the cultural-relativistic perspective as humbug he would say: " When cultural traditions start making people unnecessarily miserable, they have outlived their usefulness and

need to be replaced by other cultural traditions… The value of free discussion of possible changes by participants in a culture should always take precedence over the value of cultural identity. Without such discussion, nobody will ever know which cultural traditions are excuses for the strong to oppress the weak and which are traditions even the weak would, given an option, prefer to preserve…any non-Western elite that treats itself to such modern Western conveniences as Swiss Bank accounts, organ transplants and jet travel cannot use preservation of cultural identity as an excuse for keeping democracy out of the reach of the masses."[18]

In another important contribution to this debate on Asian values, Amartya Sen, without belittling the points of view, has emphasized on the shallow foundation on which such an argument stands. He has hinted at the diversity within Asia and questioned the basic argument that Asian values put a premium on 'order' and 'harmony'. He has employed selective quotations from Confucius, from Indian narratives to buttress his argument that even in these civilizations there was place for dissent. He has also come out with his own findings of the constitutive elements of individual and political freedom in Asian traditions and would burst the bubble of western monopoly over the concept of human rights. He says: "The view that the basic ideas underlying freedom and rights in a tolerant society are "Western" notions, and somehow alien to Asia, is hard to make any sense of, even though that view has been championed by both Asian authoritarians and Western chauvinists".[19] Rights to be universal have to base on separate traditions and no tradition is entirely unexposed to the values of individual autonomy, he would argue.

Taking on the arguments of Lee Yuan Kew and other such advocates of Asian values who would argue that "people won't care about democracy if their government sees that they are properly fed, housed, educated and given medicine for their children", Sen would argue that empirical investigation proves the contrary that poor have expressed equal interest in achieving basic freedoms. In his brilliant endorsement of democracy and human rights he says that there is no empirical support for the view that suppression of individual liberty leads to significant benefits in terms of economic performance. In his famous finding Sen has argued that rather no significant famine has ever taken place in any country with a free media and democratic government, while authoritarian governments have been the only nations to have suffered famine for long years.

Endorsing the point that human rights are universal, and disputing in his own words "the usefulness of a grand contrast between Asian and European values", Sen argues that "the notion of human rights builds on our shared humanity. These rights are not derived from the citizenship of any country, or the membership of any nation, but taken as entitlements of every human being. For example the human right of a person not to be tortured is independent of the country of which this person is a citizen".[20] Sen concludes rightly that the authoritarian readings of Asian values do not survive scrutiny and the "grand dichotomy between Asian values and European values adds little to our comprehension about the normative basis of freedom and democracy".[21] Amartya Sen argues out this case more forcefully in his later book Development as Freedom where he argues that development has to be measured in terms of human freedom. The sole measure of development cannot be income levels, but rather capabilities, i.e., the ability to value life as one values it.

Conclusion

It is interesting to note that the leading actor in international politics today, the United States of America, which was one of the primary advocates of Human Rights agenda of the United Nations during its initial years, withdrew its moral support from the global Human rights campaign and even many Americans in the early 1950s declared UN Human Rights documents as "completely foreign to American law and tradition".[22] Even the then Secretary of State, John Foster Dulles withdrew Eleanor Roosevelt, earlier Chairperson of the Drafting Committee of the UDHR, from the UN Human Rights Committee, proclaiming that US "would not become a party to any human rights treaty approved by the United Nations".[23] The shadow of cold war loomed large over the horizon of international politics and all talks of human rights had to be relegated to the background.

As one commentator has said 'human rights' has descended from a the level of a "cause" which America sought to promote actively, to one "interest" among many which it would promote only if it was felt expedient to do so and safeguarded other important interests. This may well sum up the US position on human rights since the 1980s (during Carter presidency) when US took up promotion of human rights as one of the predominant principles guiding its foreign policy. Since then, it has chosen to respond extremely selectively in cases of violation of human rights. Thus one finds it has ignored the cases of violations in many corners of the world while it has intervened in Afghanistan and Iraq. All this suggests that the campaign for "human rights" has become a legitimizing adjunct to other vital interests in US foreign policy. This has been the case the world over. Far from being a principle guiding state actions it has emerged as a defence of unjust policies of the state. Michael Ignatieff has even gone to the extent of posing a question: "Has Human Rights Era ended?".

The human-rights-centric discourse has given rise to a particular type of semantics and a particular politics as well. The more 'Human Rights' have been elevated as a principle, the more they have been violated. As Michael Ignatieff would say more than a principle it has become a language due to the 'global diffusion of human rights talk' and since this language articulates the moral equality of all the individuals it increases the level of conflict over the meaning, application and legitimacy of rights claims because "the world of moral equality is a world of conflict, deliberation, argument and confrontation".[24]

The conflict over the language and interpretation of human rights hides more than it reveals. The violation of human rights all over the world in recent years suggests that the attempts at contesting the interpreted as an apology for regressive values that all civilizations have shed over time. Endorsement of human rights does not necessarily mean universalizing patterns of socio-cultural development or forced standardization of social and moral values. It does not also seek to undervalue any culture or its principles of social organization. It just seeks to inform all cultures with the fundamental principle of human rights that may strengthen its moral foundations. The suspicion that it is an explosive principle is an overblown myth for only autonomous individuals can form a strong and self-respecting community/state/group. Only a society committed to human rights can come up as a truly civilized nation.

Endnotes and References

1. The discussions on human rights during the course of the drafting of Universal Declaration of Human Rights revealed that there were differences in perspective among the 18 member drafting committee, which included representatives from all cultures and civilizations. However, the commonalities far outweighed these differences and the realization that there was an absolute need for isolating the fundamental principles of human rights that should guide the behaviour of states both at internal and external levels.

2. Three leading proponents of the theory of social contract are Thomas Hobbes, John Locke and Jean Jacques Rousseau. According to this theory state was the result of a social contract.

3. Michael Ignatieff, "The Attack on Human Rights", *Foreign Affairs*, Vol 8, No. 5, September-October 2001, p. 108

4. Jack Donnelly quoted in Ibid. Donnelly, an unapologetic advocate of universalization of human rights, would strongly endorse autonomy of individual choice. Thus while UDHR advocates that everyone has duties to the community where in alone individual can develop his full human personality. Thus Human Rights do not delegitimise traditional culture. But as Donnelly would argue in his works, this communitarianism cannot offset individual autonomy. Group right to language, religion as endorsed by International Bill of Rights cannot therefore prevent an individual for example from learning a language not his own and from leaving a religious community if he/she chooses to do so. This individual right of exit from the community has disturbed advocates of group rights.

5. Isaiah Berlin quoted by Peter Berkowitz,

   http://www.forward.com/issues/2002/02.12.20/arts1.html

6 Quoted in Paul Gordon, *The Evolution of International Human Rights: Visions Seen*, University of Pennsylvania Press, Philadelphia, 1998, cited in review essay by David Tan, *Harvard Human Rights Journal*, Volume 12, Spring 1999.

7. Byelorussia, Czechoslovakia, Poland, Ukraine and Yugoslavia

8. Entered into force on 23 March 1976, G.A. Res. 2200A(XXI) U.N. Doc. A/6316(1966), 999 UNTS 171

9. Entered into force on 3 January 1976, G.A. Res. 2200A(XXI) U.N. Doc. A/6316(1966), 993 UNTS 3

10. Elie Wiesel, quoted in a Review Essay, "Human Rights: The Midlife Crisis", Michael Ignatieff, *The New York Review of Books*, 20 May 1999

11. Kofi Annan, quoted in Ibid.

12. Carl Wellman, The Proliferation of Rights: Moral Progress or Empty Rjetoric?, Westview Press, Boulder, Colorado, 1999. He argues that there have been so far three generation of rights. The first one focused on civil and political rights (which found a place in UDHR), the second one emphasized on social and welfare rights, while the recent one is concerned with solidarity rights exemplified by the right to existence.

13. Like American Convention on Human Rights entered into force on 12 January 1951, European Convention for the Protection of Human Rights and Fundamental Freedoms,

entered into force on 3 September 1953(amended by Protocols Nos. 3, 5, and 8, entered into force on 21 Septmber 1970, 20 December 1971 and 1 January 1990 respectively), African (Banjul) Charter on Human and Peoples' Rights, adopted on 27 June 1981, entered into force on 21 Ocyober 1986.

14. Le Kuan Yew quoted in *Bangkok Post*, 15 March, 1998 and Time, 16 March 1998.

15. Mohammad Mahatir quoted in, "No gain in making others poor", *Utushan Express*, 2 October 1997; "Management of an Economy in Crisis", 6th Prime Ministerial Lecture of the Harvard Club, 5 October 1998.

16. See David Hitchcock, *Asian Values and the United States:How much Conflict?*, Centre for Strategic and International Studies, Washington, 1994 and Joel S. Kahn, " Malaysian Modern or Anti-anti-Asian Values, 1997, and some other works on the theme both quoted in Anthony Milner, "What Happened to Asian Values", available on :

http://www.amu.edu.au/asianstudies/values.html

17. Joanne R. Bauer and Daniel A. Bell, *East Asian Challenge for Human Rights*, Cambridge University Press, Cambridge, 1999.

18. All the quotations in this paragraph by Richard Rorty have been taken from his address "The Communitarian Impulse", at Colorado College's 125th Anniversary Symposium, Cultures in the 21st Century: Conflicts and Convergences on 5 February 1999.

19. Amartya Sen, *Human Rights and Asian Values*, Carnegie Council on Ethics and International Affairs, New York, 1997, p. 27.

20. Ibid. p.29

21. Ibid. p.31.

22. Republican Senator John Bricker quoted in Michael Ignatieff, "Human Rights: The Midlife Crisis, *New York Review of Books*, 20 May 1999.

23. Ibid.
24. Ignatieff, "The Attack on Human Rights", op. cit., p.116