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Untangling the Indivisibility, Interdependency, and Interrelatedness of Human Rights

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Abstract

Human rights are said to be "indivisible, interdependent and interrelated." However widely used within UN parlance and among scholars and activists, these terms are rarely unpacked and often used interchangeably. This short paper attempts to untangle the meanings and values these terms represent and reflect, based on a careful reading of the history of especially the two "grand categories" of human rights—civil/political, and economic/social/cultural—as those rights are expressed in the two main human rights covenants.

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The Box of Wires

That all human rights are “indivisible, interdependent, and interrelated” is taken as “given.” This formulation is ubiquitous in the scholarly literature, the language of advocates and activists, and United Nations reports. It is a “boilerplate” recital in literally hundreds of resolutions adopted by UN bodies. These adjectives come as a package, and are often used interchangeably. Craig Scott (1989) urges us not to pay too much attention to “semantics” when we consider the different meanings that the terms “indivisible,” “interdependent” and “interrelated” may convey.¹ This sentiment is widely reflected in many, if not most, scholarly arguments and authoritative interpretations² on the indivisibility, interdependence and interrelatedness of human rights.

I think we should ignore this advice, because a great deal of confusion persists about what these adjectives tell us about human rights. Do they say something about how human rights function, or what they mean conceptually? Do they say something about the historical development of contemporary human rights? Do they say something about the politics of human rights? Are these adjectives merely symbolic?

I liken the package of “indivisible, interdependent, and interrelated” human rights to the box of wires in my closet. I need an extension cord, so I go to my box, and hunt for one. I find one, but upon attempting to retrieve it, I pull up a mass of wires: my extension cord is intertwined with telephone cords, TV cable, speaker wires, audio cables, other extension cords, a surge protector, and other bits of wire. I only want the extension cord, so I struggle to untangle it from the rest, which I eventually do. I throw the mass from which I extracted it back into the box, muttering to myself that I really should clean up that “mess.” Doing so, however, will take a while. I don’t have the time right now. I’ll get around to it at some point. Of course, this will happen again. And again. And again. The

¹ Scott (1989, see especially footnote 26, p.779). While Scott acknowledges that the terms are used interchangeably, he notes a preference for the singular term “interdependent,” “although this observation is only impressionistic.” He cites Van Boven’s (1982) sole use of the word “indivisible.”

² These would include the *travaux préparatoires* of the ICESCR, declarations of World Conferences (such as Teheran in 1968 and Vienna in 1993), interpretive statements made by recognized “experts” such as the International Commission of Jurists or those who drafted the “Maastricht Guidelines” ((1998); see also Dankwa, Flinterman and Alston (1998)), and the General Comments and other statements issued by the Committee on Economic, Social and Cultural Rights, which monitors states-parties’ compliance with the ICESCR.

tangle will be thrown back into the box. Each time I will think about the need to address the problem, but not do it.

This short paper is my attempt to untangle the mess and try to bring some sense of organization and clarity to the box of wires that is “human rights.” The language of invisible, interdependent, and interrelated (sometimes “interconnected”) human rights first emerged in the late 1940s and early 1950s in relation to the two “grand categories” of civil/political, and economic/social/cultural rights. More recently, the U.N. has declared that *all* human rights are interdependent, indivisible, and interrelated. This includes other categories of human rights that have been recognized in treaties that have been adopted since the 1960s, including the rights of women, of children, and of vulnerable populations, such as refugees and migrant workers. The concept has also been extended to include broad, highly generalized rights, such as the “right to development.”

Are the terms really interchangeable? I would like to start with the premise that these adjectives actually do convey distinct characteristics about human rights. I would like to first separate “interdependent” and “interrelated” from “indivisible.” The prefix “inter-” means “between,” whereas “in-” means “not.” So we have to begin first with dependency and relatedness, and deal with division (or divisibility) second.

Interdependent Rights

This is perhaps the least problematic aspect of our tripartite formulation. In the legal and policy-oriented literature on human rights, it predominates. To say that rights are interdependent despite their distinctiveness as particular rights means that the enjoyment of one right (or group of rights) requires enjoyment of others—which may or may not be part of the same “category.” For example, freedom of movement (a civil right) is a necessary precondition for the exercise of other civil rights (such as freedom of assembly), political rights (e.g., the right to vote), economic rights (the right to work, for example), and so forth. The language of interdependency accepts division and categorization, and does not seek to overcome or ameliorate it. It takes rights as they are categorized. It is, in this sense, transcendent of categories.

Some interesting conceptual work demonstrating the interdependencies between rights has sought to demonstrate the importance of support between rights, as an instance of a grander, overall epistemology of human rights. However, as James Nickel has recently noted,

Looking at relations between particular rights is illuminating and cannot be avoided, but fully realizing this perspective requires much tedious work. If there are 40 particular human rights then combining them in pairs will yield 1560 places where supporting relations may exist. Maximal penetration comes at the cost of great complication.³

The interdependence of human rights is, to my mind, relatively unproblematic, if we assume that a right to something or to be free from something is, as a right, justiciable.⁴ It becomes more problematic when one or more of the rights that are *thought* to be interdependent are not necessarily justiciable. Thus we find ourselves in some difficulty when trying to establish the interdependency of a right to “the highest attainable standard of mental and physical health” with a right to “development.” This is where the language and rhetoric of indivisibility takes over (more on this in a moment).

Interrelated Rights

That rights are “interrelated” means that they are brought into a situation of mutual relationship or connectedness (indeed, early UN resolutions used the term “interconnected” instead of “interrelated”). Whereas *interdependency* is best suited for looking at relationships between particular rights or clusters of rights, interrelatedness has more purchase between broader categories or families of rights, given their conventional expression in treaties with a variety of functional institutions attached to them. One author describes interrelatedness (although he uses the term “interdependence”) as “permeability” between categories of rights (Scott 1989). Relatedness suggests

³ “Rethinking Indivisibility: Towards a Theory of Supporting Relations Between Human Rights,” (forthcoming, *Human Rights Quarterly*, 2008).

⁴ A right is said to be justiciable to the extent to which its claim can be adjudicated and remedy provided through the legal system. As Kelsen defines it, “[T]he essential element [of a right] is the legal power bestowed upon the [individual] by the legal order to bring about, by a law suit, the execution of a sanction as a reaction against the nonfulfillment of the obligation.” (Kelsen 1967: 125-126). While this definition is undeniably strict, Alston and Quinn contend that “it is frequently contended that a claim must be enforceable if it is to qualify as a human right” (1987: 169). They also argue that the preparatory work of the drafting of the ICESCR never intended to imply such a strict set of legal provisions as those contained in the ICCPR (1987: 170), and that ultimately comparing the two Covenants on the issue of legal justiciability would in effect attempt to “artificially mold” the nature of economic, social and cultural rights to fit a predetermined conception of rights, based on the *perceived* characteristics of civil and political rights (1987: 160).

familiarity; thus the “grand categories” of human rights may be thought of as interrelated insofar as their legal sources/foundations (like the Conventions) are “familiar” with one another. As part of the “compromise” over the Covenants, for example, the French delegation insisted that the two covenants have “as many similar provisions as possible.” Thus one notices the identical preambles of the two Covenants, and the inclusion of a right to self-determination in both instruments. Thus, human rights can be said to be “interrelated” insofar as they share common characteristics—their provenance from UN bodies, their legal character as treaties, that state limitations and obligations are expressed or implied, and so forth.

The bulk of the “indivisibility and interdependence” literature of the late 1980s and 1990s emerged to explore what I am calling here the question of interrelatedness. Among the key differences between the ICCPR and the ICESCR are the implementation and reporting obligations of States, the scope of monitoring authority held by the oversight committees for each, and the competency of those committees and other U.N. bodies to handle complaints. This literature emerged as a result of the creation of a formal committee to oversee the implementation of the ICESCR, with similar powers and responsibilities as the Human Rights Committee, which oversees the ICCPR. This was an important step in the evolution of the international law of economic, social and cultural rights, the implementation of which would now be under the direction of an international body with quasi-legal characteristics.⁵ Most of this emerging literature was focused primarily on establishing and strengthening the claim that economic, social and cultural rights were “rights” in the same sense as civil and political rights (i.e., that they are “justiciable”), and that while the obligations on states-parties to the ICESCR were different than the ICCPR, they were obligations nonetheless. Philip Alston, who would become the first Chairperson of the Committee, wrote that although the concept of economic, social and cultural rights—as well as human rights generally—had generated controversy among philosophers for some time, the controversy should have been put to rest by the adoption of these legally binding treaties in 1966 (Alston and Quinn 1987: 157-158).

⁵ Alston (1987) provides a thorough account of the history and factors leading to the creation of the Committee in 1987.

The literature focusing on the nature of state obligations under the ICESCR was necessary in order to then make comparisons with the obligations within the ICCPR—obligations that were never really disputed, because they were considered widely to have immediate effect.⁶ Much of the focus of this literature has been interpretive, especially of the so-called implementation clause within Article 2 (1) of the ICESCR, which reads:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The sheer volume of material written about this one paragraph reflects the extent to which it is open to a wide range of interpretations on the part of states. Due to the pervasive assumption that economic, social and cultural rights require the direct provision of resources by the state, one writer noted that the “maximum available resources” clause causes immense confusion: “It is a difficult phrase—two warring adjectives describing an undefined noun. ‘Maximum’ stands for idealism; ‘available’ stands for reality. ‘Maximum’ is the sword of human rights rhetoric; ‘available’ is the wiggle room for the state” (Robertson 1994: 694). Equal attention has been devoted to exploring and interpreting the meaning of “taking steps;” the role of (especially technical) cooperation; “progressive achievement;” and the content of “all appropriate means.”⁷ Scott Leckie contends that problems of perception and resolve, rather than a problem of jurisprudence, are at the heart of the “poor-cousin” status of economic, social and cultural rights compared to civil and political rights (Leckie 1998: 81).

Much of this literature argues that economic, social and cultural rights are really rights. Thus, the language of interrelatedness demonstrates *equality of importance or legitimacy* of economic, social and cultural rights in relation to civil and political rights.

⁶ Many recognize that a focus on the immediacy of obligations under the ICCPR was a bit of a red herring. In many cases, political, legal and judicial reforms are necessary to give effect to civil and especially political rights.

⁷ This literature is quite extensive, and includes: Alston and Quinn (1987); the International Law Commission/International Commission of Jurists (1987); Scott (1989); McGoldrick (1991); Beetham (1995); Craven (1995); Gomez (1995); van Dijk (1995); Chapman (1996); Kent (1997); McCormick and Mitchell (1997); Dankwa, Flinterman and Leckie (1998); Leckie (1998); and Scott (1999).

The language of interrelationships between human rights, in my view, is really about how human rights have been expressed institutionally. This is most evident in the evolution of institutions to promote economic, social and cultural rights, and making them as similar as those for civil and political rights, despite the differences between the two different regimes. The latest development in this sense is the effort to elaborate an Optional Protocol to the ICESCR that will allow the Committee on Economic, Social and Cultural Rights to receive individual and collective complaints. This move toward greater institutional interrelatedness, in the minds of many advocates, has symbolic value as well, bringing economic, social and cultural rights “one step closer” to indivisibility between the two “grand categories” of human rights (Whelan 2008).

Indivisible Rights⁸

We are left now with indivisibility—the adjective that does most of the conceptual and symbolic work of our tripartite formula. The word itself—meaning “incapable of being divided, in reality or thought”—conjures powerful forces: the indivisibility of the Holy Trinity—God the Father, the Son, and the Holy Spirit comes to mind. The American “pledge of allegiance” declares that Americans constitute “one nation, under God, indivisible.” Thomas Hobbes contended that that awesomeness of the sovereign was dependent on the indivisibility of his sovereignty. While the words “interdependent” and “interrelated” suggest the bringing together of two or more things into a mutual harmony, they still acknowledge separateness. If something is “indivisible,” dividing that thing renders it impotent. To claim that human rights (civil and political rights, and economic, social and cultural rights) are indivisible suggests restoration—to correct a wrong or repair an unnatural breach.

The concept first emerged during the late 1940s and early 1950s, when the United Nations was engaged in a deep debate about how to codify the rights contained in the Universal Declaration of Human Rights in international law. At first, it was the intention of the U.N. Commission on Human Rights—which was mandated to draw up a legally-binding instrument—to include only civil rights in

⁸ This section is drawn entirely from my Ph.D. dissertation, *Interdependent, Indivisible, and Interrelated Human Rights: A Political and Historical Investigation* (2006).

the Covenant. The General Assembly then requested that the treaty include economic, social and cultural rights alongside the already-drafted civil rights. After significant debate, the following year the General Assembly reversed its prior decision, and requested the Commission on Human Rights to draft two separate treaties. This controversy was the primary genealogical root of the contemporary rhetoric of indivisibility.

The discourse of indivisibility has shifted since the early 1950s. One thing that has not changed is its central importance to understanding the nature and scope of *economic, social and cultural rights* in particular, as they are understood as a category alongside, above, or below the category of “civil and political rights.” During the debates over one or two covenants, the term “indivisible” was used primary in reference to the “unity” of the Universal Declaration of Human Rights—that since the Declaration did not define categories, nor create any real “divisions” within the document, but rather enumerated a wide-ranging category of rights, all should be included in a single, legally-binding Covenant. In this sense, then, the term “indivisible” harkens back to the unity of the Declaration and the “artificial” nature of the division of human rights into two conventional categories.

A second meaning of the rhetoric as it first emerged was the idea that economic, social and cultural rights in particular were indispensable to broader international policy goals especially of post-colonial states in Latin America, the Middle East, Asia, and (later) Africa. Economic and social rights became a rhetorical touchstone for a move to include a “right of self-determination of peoples” as a human right. Those countries that lobbied for a single legally-binding covenant including both categories of human rights were particularly concerned about two things: that if the Covenant did not include economic, social and cultural rights, they would never be expressed in a binding treaty. Second, they wanted the “West” to give as much attention to the cause of securing economic, social and cultural rights as they did to civil rights, with a strong system of implementation and a complaints procedure. The importance to those states of a single treaty would be in its instrumental value in securing development *resources* from the “West” as the post-colonial era was just getting underway. However, there were also a number of other post-colonial states, such as India, that recognized that economic, social and cultural rights were still *individual* rights, and that

governments of post-colonial states would be primarily responsible for their implementation—not the international community.

By 1968 and into the 1970s, a third meaning of indivisibility emerged (closely following what had transpired during the debates over one or two covenants)—that the realization of economic, social and cultural rights had *priority* over civil and political rights. This was first reflected in the 1968 Proclamation of Teheran, issued at the close of the first World Conference on Human Rights:

Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development...⁹

By the late 1970s—after the Covenants had entered into force—the United Nations brought a whole host of global issues under the umbrella of human rights, including the “unjust international economic order,” the proliferation of arms, continuing colonialism and “imperialism,” and the problems of underdevelopment and global poverty. The indivisibility rhetoric first articulated at Teheran was institutionalized further, clearly prioritizing economic, social and cultural rights in terms of these other global concerns, beginning with General Assembly Resolution 32/130 (1977) and eventually leading to the 1986 “Declaration on the Right to Development,” which was declared as an inalienable human right, an indivisible and interdependent part of international human rights.

By the time of the second World Conference on Human Rights in 1993, the passage of time, the end of the Cold War, and a dramatic increase in the number of civil society organizations dealing with human rights reflected another shift in language and meaning:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.¹⁰

⁹ Proclamation of Teheran, Final Act of the International Conference on Human Rights (Teheran, 22 April to 13 May, 1968). U.N. Doc. A/CONF.32/41, 3, para.13.

¹⁰ Vienna Declaration and Program of Action (adopted by the World Conference on Human Rights on 25 June 1993) U.N. Doc A/CONF.157/23 (12 July 1993), para. 5.

The Proclamation of Teheran uses the sole term “indivisible” in the strongest sense: that choosing civil and political rights and ignoring economic, social and cultural rights renders the enjoyment of the former *impossible*. The following sentence further contends that economic and social development are prerequisites for the realization of human rights—which, given the wording, suggests a privileging of economic, social and cultural rights over civil and political rights. The Vienna Declaration introduces the familiar, quadripartite formulation of “universal, indivisible, interdependent and interrelated” rights—a formulation that is now standard fare in official U.N. documents, and widely used by scholars, advocates and practitioners. But there are two emphases here: one is about the equality of different categories of rights as rights (note that it does not mention “civil and political” and “economic, social and cultural” by name); the second is about the nature of obligations on states—that they are universal despite differences or particularities between states.

These are but two small examples of the different meanings and contexts that these terms carry with them. The 1968 example subtly reflects U.N. politics on the question of international development at the time. By 1993, the emphasis seems to have shifted to the universal nature of human rights and state obligations—an important move that will open a door for some scholars and advocates to begin to identify “violations” of economic, social and cultural rights.¹¹

Clean-Up Time

It is my hope that this brief exploration has succeeded in untangling the mess that confronts us when we treat the concepts of indivisibility, interdependency, and interrelatedness as interchangeable or meaning the same thing. The fact that so many do so should tell us something about the use of language to confuse and gloss over issues that require some deep thinking. To return to my metaphor of the box of wires, we simply need an extension cord, so we find it and throw the rest of the mess back into the box. There is no time to untangle and clean up. I hope I have untangled and

¹¹ See especially Chapman (1996), Leckie (1998), the *Maastricht Guidelines* (1998), and Dankwa, Flinterman and Leckie (1998).

cleaned up. Here's what I see as I begin to return the wires—now bundled, rolled up, and organized—back into the box:

The interdependency of human rights describes the extent to which the enjoyment of one particular right (the right to a fair trial), or a cluster of rights that are related to one another (criminal procedural rights, for example), are dependent upon the realization of other rights or clusters of rights. This language is strongly tied up with the concept of justiciability of rights.

The interrelatedness of human rights constitutes the bulk of the literature on human rights generally, for its subject is on institutions and procedures. The language of interrelatedness is about the ways in which categories or families of rights—most of which are expressed in distinct treaty regimes—resemble one another. The literature and advocacy related to bringing the institutions and procedures for economic, social and cultural rights more in line with those accorded to civil and political rights is most evident here.

The indivisibility of human rights is much more conceptual, symbolic, and political. Because the very word suggests that there is something deeply wrong with division, separation, and categorization, it requires the deepest of thinking. The concept of indivisibility holds both the greatest promise and opportunity for developing theoretical approaches to the concept of rights as it relates to modern institutions (the State, Civil Society), but as politically powerful rhetoric, it also has the potential to relegate human rights to meaningless “sloganeering.”

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