

“HUMAN RIGHTS AND DEMOCRACY” REVISITED

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Abstract

The essay is devoted to examining the relationships that exist between human rights and democracy. It is argued that “democracy and human rights” cannot be treated as a unitary and indivisible concept but should be considered as separate concepts that do not logically necessitate one another. The question of legitimacy of social policy and its relationship with public attitudes towards deviance is also considered. The position is advanced that democratically oriented social policy in some instances can be in contradiction with respect for human rights, which renders such policy problematic and invites the question of legitimacy. It is further argued that the source of legitimacy when public opinion supports measures that violate human rights can be international law, although for its successful implementation it should not be construed as a weapon of the powerful against the weak and, therefore, the international law must be enforced universally. The author’s position in dilemma of choice between democracy and human rights (when it exists) is further articulated. The author’s opinion is that human rights have priority over democracy and democratic choice of people that entail massive violations of human rights can be suppressed on these grounds, that is, democratic choice must operate within the limits defined by respect for human rights.

We encounter an expression “democracy and human rights” so frequently that this pair of concepts seems almost unbreakable, taken-for-granted, and not deserving reflection. The expression is deeply embedded in modern social and political discourses, and its referents are intended to be beacons for activities of human rights organizations and social actions of various government institutions, including those related with formation of foreign policy. For instance, current American foreign policy is filled with messianic rhetoric of proliferation of “freedom and democracy” all around the world by means of crushing evil empires and axes of evil of all stripes. Not frequently does it occur to mind that sometimes the question might be posed in a different form, with the use of logical disjunction rather than conjunction, namely: what is more important, proliferation of democracy OR human rights? In this essay I will try to address some issues concerning relationship between democracy and human rights, whose objective will lie less in making normative statements than in posing critical questions and invitation to critical thinking.

Of course, we can bend this problem by defining a democratic order as one where principles of basic human freedoms and rights along with mass participation in politics are secured but such a definition will be merely tautological and begging the question – we define democratic order through human rights and vice versa. We must separate these notions; otherwise all discussion of complex mutual relations between them will become meaningless. So, does democracy (broadly defined as ability of people to participate in decision-making processes of the state) always imply or lead to respect for human rights?

There are many examples in history proving that it is not necessary so. One obvious case in point is Germany of the 1930s. Back then in 1933 in elections to Reichstag the democratic choice of the German people brought to power a party whose politics led to an unprecedented series of human rights violations ever known to history of the human kind. Consider France of the period of the Great Revolution as another example. The politics of democratically elected Convent was accompanied by the Big Terror and mass executions of those who opposed or were thought to oppose the regime; the situation changed only when the Republic fell and Napoleon Bonaparte came to power. Despite its militarist orientation the policy of the newly established French political regime brought about liberation from feudal oppression for many European peoples. The legislation was also passed that facilitated emancipation of Jews. In more recent times the revolution in Iran, which was supported by large masses of people, led to significant reduction of women’s rights and rights of ethnic and religious minorities. One can continue this line of reasoning and find other examples putting into question a common sense idea that people’s democratic choice realized either through parliamentary elections or through revolution will necessitate respect for human rights.

We can now turn to less dramatic examples of relationship between human rights and democracy and consider more specific relations that exist between social policy and democratic order with the purpose of examining what such relations may entail for observance of human rights. Social policy towards social

phenomena defined in a given society as “deviant” and people who are assigned “deviant” roles will serve an example. As we know from the works of Howard Becker and other scholars who belong to “labeling perspective” in the study of deviance, such phenomena and types of people that occupy deviant roles are not ontological categories but products of social conventions and historical circumstances, reflecting various categorizing practices of dominant institutions, - in other words the questions of “what is deviance?” and “who is deviant?” are necessarily shaped by relations of power. Social constructionist approach to deviance and understanding of its arbitrary character helps to promote tolerant and humane attitudes to those who were successfully defined as deviant, whose only “guilt” sometimes consisted in transgression of community’s morality. One may think of homosexuals, drug users, prostitutes, or religious sectarians as instances of such socially constructed deviant roles. Tolerance towards difference and “deviance” depending, of course, on its nature and on extent to which such deviance may pose a threat to safety of society’s members is, in my view, an important indicator of the society’s position with respect to human rights.

A question may arise in this point, to what extent social policy towards deviants may or should reflect the public attitudes to them? In modern democratic society the role of public opinion is of paramount importance, it often serves as a legitimizing principle on which preservation or change of a given social policy is grounded. No doubt that social policy is only partly based on public attitudes and views on deviance, to a considerable degree such policy appears as a result of competition and struggle between different institutions for material and symbolic resources, observance of international agreements and other factors, but in the democratic society where political role of public opinion is very significant, as a rule, a moment comes when public attitudes to deviance are translated in some form into the state policy. The social attitudes to various aspects of deviance, therefore, is a background against which various agencies of social control compete with each other exploiting public opinion as a mobilization and legitimation resource. When a gap between public opinion and institutional practices is very large certain groups or claims-makers are likely to appear for whom this gap serves a cause for action; on the basis of legitimacy of public opinion in the democratic state these groups will call for public policy change so as to remove or reduce the structural breach. Hence, the importance of public opinion - despite that it does not strictly determine the social policy it outlines directions and front lines where ardent battles for definition of the situation take place, thereby designating zones of possible victories and defeats.

As long as public consciousness is tolerant and demonstrates respect for human rights everything goes smoothly, social policy is *both* tolerant and has popular support (democratic), the problem arises when the opposite is the case. We can easily imagine a situation when public polls show that majority of the population support repressive measures with respect to those on whom a label “deviant” was applied, be they drug users, sexual minorities, or dissidents.

And this situation is neither hypothetical nor imaginary. In Russia public opinion polls that have been conducted since times of perestroika show that around 70% of the population support death penalty and do not approve of moratorium on executions that was enacted by the Russian government in 1997. In that time president Yeltsin signed a decree that forbade execution of death penalties despite the staunchest opposition of the Russian parliament and negative stance of public opinion on this point. In the United States many proponents of death penalty argue that its abolition will contradict the “public will,” as public opinion polls indicate that in many states majority of the population speak in favor of death penalty. And executions of whomever directly violate the UN declaration of 1948 and numerous European conventions, stipulating the right to life as one of the basic and inalienable of human rights. Death penalty cannot be justified on the grounds that it facilitates the right to security for “normal” society’s members who do not perpetrate crimes, as numerous studies show that there is no correlation between application of death penalty and the crime level. Even if an individual on the grounds of committed crimes is considered to present permanent and grave danger to life and security of other individuals he or she can be sentenced to life imprisonment and the “menace to society” will be eliminated. Turning to the case of Russia again we may see that for majority of people repressive measures towards the drug users are considered legitimate and met with approval. In particular, my own studies show that 73% of high school students and 78% of their parents expressed their opinion in favor of public funds spending on toughening

of repressive measures towards the drug users, whose principal harm is harm to themselves. Public opinion polls also suggest that significant part of the population (and majority of those who had opinion on the topic) holds views that sexual minorities should be isolated from society. In addition, 64% of those who took part in yet another poll believe that policy “Russia for Russians” should be implemented in the country in some form. So should the state in all these instances heed to public opinion and enact policy that violates human rights of various social groups but has popular support, and, therefore, match the criteria of democratic participation of society’s members in decision-making processes?

And if not, will we not face the problem of legitimacy of social policy? Why in some cases when claims-makers believe that a given policy or social reform is “progressive” and humane and at the same time “popular” they mobilize public opinion in their support thereby giving social legitimacy to their claims, while at other times when “reactionary” or outright racist measures are under consideration, which have massive backing, they become strangely forgetful of public opinion? As a group of claims-makers, who are interested in victory of our definition of the situation, we may stay blind to any arguments that do not give validity to our point and employ everything that supports it, but can we pretend to be oblivious of the contradiction between democratic principles ideally governing decision-making processes in the modern society and respect for human rights if we assume the mantle of social scientists, whose own legitimacy rests on objectivity and disinterestedness?

All this compels me to arrive to conclusion that democracy per se unsupported by respect for human rights on the part of the society cannot in itself guarantee observance of human rights. Sometimes legitimacy of obligatory character of adherence to human rights lies elsewhere. Where, then? One possible answer is it lies in the domain of international agreements like the Universal Declaration of Human Rights and its successor, the International Covenant on Social, Economic and Cultural Rights. The problem here consists in perceptions of many in the world (including Russia) that human rights issues are often used selectively as a weapon of the powerful against the weak. For instance, after recent events in Andijan, Uzbekistan where Uzbek government crushed demonstration of the opposition who was blamed in fundamentalism and armed mutiny, which resulted in severe casualties among the local population, many politicians around the world required international investigation of the incident; on the other hand, despite power abuses on the part of the United States army in Iraq and on Guantanamo base in Cuba, reported by many human rights organizations, such as Human Rights Watch and Amnesty International, there are virtually no calls in the international community to subject these actions to international scrutiny and, if necessary, to press charges against those who are guilty in crimes against humanity and organize hearings in the international tribunal in Hague. The least willing to do so, of course, are the United States officials themselves, who, on other occasions, call for international investigations of power abuses and human rights violations. This is not to imply, most certainly, that the sides here are “right” or “wrong,” – it does not follow from our discussion that the Uzbek side is right, when denying the international community knowledge of what really has happened in Andijan or the American side is wrong, when it pushes for it. It simply means that the politics perceived as “politics of double standards” seriously undermines the legitimacy of the international law in protection of human rights and hinders its efficient enforcement. Unless the international agreements are implemented not selectively but universally, to those who wield strong international power, as well as to those actors, who feel they lack it, the legitimacy of the international law and international agreements will continue to be contested and cast in doubt. One of the principal elements of legitimacy and respect for the law is its universal applicability to any subject that is under its jurisdiction, the powerful and the weak alike – and the international community has still a long way to go to achieve these goals.

I do not believe that human rights are “natural,” as every element of our culture and conceptual apparatus is socially constructed, that is, not inevitable. We can imagine society and civilization where the notion of human rights is absent; indeed it was the case in the human history before the times of Enlightenment. And I do not suppose that Enlightenment was inevitable, the human history could have taken another turn. But the fact that the notion of human rights is socially constructed and imagined does not make it imaginary or less valid – after all the ability to take seriously “the fruits of our imagination” be they religion or art and culture is a primary feature that distinguishes humans from animals. We should

treat this concept as part of our culture, along with le Louvre, Bolshoy Theatre, pyramids of Aztecs and other innumerable products of human genius.

Working as a social scientist I usually eschew making explicit normative statements, preferring instead analyzing phenomena in question, trying to point to various inconsistencies and problems that accompany ideological constructions of the phenomena and explicate miscellaneous implicit assumptions that are hidden below the surface of rhetoric. In this essay I tried to demonstrate that uncritical consideration of a phrase “democracy and human rights” as a unitary and indivisible concept can be challenged on various grounds, and that we should treat these concepts as separate phenomena, sometimes bound and sometimes not. However, as any human being I am entitled for my personal opinion on the issue. In particular, when confronted with dilemma of choosing between observance of human rights and implementation of democratic principles of people’s participation in politics, I would choose the former. In my view, human rights have priority over democracy and democratic choice of people that entail massive violations of human rights can be suppressed on these grounds, in other words, democratic choice must operate within the limits defined by respect for human rights. Such normative position entails several logical consequences.

First, we should stop treating democracy as an end in itself, but to consider it as an instrument, which as any instrument sometimes works and sometimes does not. Second, only those political forces that support observance and respect for human rights can be included in the political process; those political parties that uphold ideology of hatred, racist and religious extremism of any kind should be banned from participation in politics, whatever their popular support. Third, if there are serious grounds to believe that some autocratic regime would respect observance of human rights in significantly greater degree than the forces that oppose it (even if they have massive popular appeal), the international community should support the autocratic regime and the regime itself may feel justified in temporary curtailing of democratic institutions (for instance, elections). Harking back to the case of Nazi Germany, I strongly believe that the Weimar government should have cancelled the elections of 1933 and have tried to retain the power by any means necessary so as not to allow coming to power the forces that overtly declared their disdain for human rights, which resulted in tragedy unheard of in the history of human kind. This lesson has been learned at too high a price and humanity cannot ignore its implications.