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THE VIEWS OF "CHARTERISTS" AND "SKEPTICS" ON HUMAN RIGHTS IN THE WORLD LEGAL ORDER:
Two Wrongs Don't Make A Right

Lowell F. Schechter*

This Symposium on The Future of Human Rights in the World Legal Order has been sparked by the incendiary works of two authors, James S. Watson and Eric Lane. Both Watson and Lane open fire with gruesome accounts of governments abusing their own citizens. Lane cites the mass killings in Uganda and Cambodia, while Watson is somewhat more catholic in his survey, recounting many other recent incidents of governments torturing, maiming, and killing their peoples.

The two "skeptics" use these examples of extreme governmental abuse of human rights to challenge legal scholars who claim that the world legal order has widely accepted and effectuated rules protecting human rights. Watson, in particular, blazes away at the "charterists," that is, at those who maintain that the United Nations Charter and subsequent resolutions and treaties spawned by the United Nations have created an international regime of human rights. He writes:

With increasing frequency one reads of governments killing, torturing and imprisoning their citizens, almost on a routine basis. Yet at the same time one may read learned articles in the legal literature which, with practiced ease, assure us that such abuses of governmental power are subject to an international regime of human rights. This discrepancy poses serious questions

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3. Lane, Mass Killing, supra note 2, at 239-41.
4. Watson, supra note 1, at 610-12.
concerning both the validity and the efficacy of the alleged rules, questions which should be of concern to any theorist who sees the role of international law as something more than disembodied ethical statements or wishful thinking.\footnote{Id. at 610 (footnote omitted).}

Both Watson and Lane reach the same conclusion: The current legal order does not provide an effective regime for the protection of human rights.\footnote{Lane, \textit{Mass Killing}, supra note 2, at 278; Watson, \textit{supra} note 1, at 612, 620.} But, having reached this conclusion, the authors part company at the point of suggesting solutions to this problem.

Lane's course is clearly illuminated: He picks up the torch of the charterists. If the current world legal system, despite the efforts of the past thirty-five years, does not and cannot adequately protect human rights, then it must undergo radical change. If the traditional concept of state sovereignty is the major obstacle in the path of progress, this barrier must be thrust aside. Lane writes:

To accommodate the changing political realities regarding human rights in the world order requires a change in the world legal order. Until individuals are treated as the subject of the world legal order, and until procedures are provided for the vindication of their human rights, there can be no adequate safeguards against the acts of sovereigns perpetrated upon their own citizens. To accomplish this goal, sovereign power must be reduced, and plenary jurisdiction must be granted to a transnational body.\footnote{Lane, \textit{Demanding Human Rights}, supra note 2, at 295.}

Lane’s clarion call for action rings hollow. For, while he states a goal—a new world legal order where state sovereignty yields to individual rights—he admits that this goal is very difficult to reach:

The acceptance of such a jurisprudence requires a change in conception of sovereign power. This cannot be easily accomplished. In fact, it is more difficult now than when it was first considered in the aftermath of World War II and during the early years of the United Nations. Today, state tremors over sovereign atrocities have stabilized, and sovereign self-concern has reasserted itself as the dominant focus of the world legal order.\footnote{Lane, \textit{Mass Killing}, supra note 2, at 279.}

Once Lane has made this admission, one expects from him some plan showing how the difficulties will be overcome or circum-

vented and the ultimate goal reached. Lane, however, follows up his admission of the difficulties involved in changing the world legal order with only the following brief passage on how the transformation is to be wrought:

As is evidenced by the experience in Uganda and Cambodia, the legal protection of human rights continues to remain solely a state matter. This focus, however, is not without some distraction. The growing world demand for the protection of human rights is exerting pressure for accommodation within the world legal order. Additionally, the existence of the United Nations as at least a partially independent institution, with its own Charter-directed goals, creates an alternative power center which can sometimes be used for pressure as a check against wayward state activities. While these conditions may inevitably result in the necessary change in the world legal order, the pace is slow, and the course is dangerous.9

Issue can be taken with almost every statement made in this passage. Is there really a growing demand for the protection of human rights, especially as compared with the period immediately following World War II? Is the United Nations even a partially independent institution? Even if there is an increasing public demand for human rights and even if the United Nations can assert some independent pressure towards human rights protection, how do these two facts lead to the conclusion that a significant change in the world legal order is "inevitable?"

Taken as a whole the concluding passage of Lane's article sounds very optimistic. But, it resonates in a way that suggests that Lane is forced into being optimistic about the future because he has found the present so bleak. Lane, in fact, seems to be suffering from what Watson at his most perceptive has diagnosed as the occupational disease of Western human rights scholars—unsubstantiated optimism:

With depressing regularity the reader of human rights literature in the international law field will find in the concluding paragraphs of the typical article an exhortation to optimism or hope, almost invariably expressed in the passive voice in order to increase its apparent authority. What such remarks indicate is of course that the true basis for the writer's argument is not to be found within the confines of international law, but rather in his or her perception of human nature.10

9. Id. at 279-80 (footnotes omitted).
10. Watson, supra note 1, at 627 (footnotes omitted).
As to Watson's own view of the course of action mandated by the failure of the existing world legal order to provide meaningful human rights protection, we are left somewhat in the dark. There is a clear commandment, writ large in fiery letters, to all scholars and publicists: Thou shalt not take the state's role in the creation of international law in vain. Do not insist that there are effective international norms protecting human rights when these norms have not been endorsed by state practice. However, Watson provides no direct guidance as to the specific steps human rights activists might take to improve human rights protection in the world legal order.

Nevertheless, some of Watson's remarks do suggest the general approach he might advocate, if he were to abandon his role of scholarly critic for that of human rights architect. Watson maintains that in the current decentralized legal order, a norm can be effective only if other states are willing to sanction a state that has violated that norm. But Watson seems to believe that most states do not have a sufficient interest in human rights violations within another nation to impel them to take action against the violating nation's government. Only when a state's own nationals have been abused may there be a sufficient spur to action. If Watson is correct in his belief that the effective enforcement of human rights norms is doomed to failure under the current legal order, it would seem that the only way to achieve human rights protection would be to follow Lane's advice and try to change the legal order.

Watson, in contrast to Lane, however, is not eager to pick up the torch of reform. Watson is afraid that this torch may not shed more light, but, as it were, may burn those who carry it:

Even if one were to believe it possible for a few members of the English-speaking academic elite to overthrow the nation-state, the immediate question to be asked is what is to be put in its place. Here the proponents of the new international law fall markedly silent as to specifics, though many obviously favor

11. Id. at 633-35.
12. Watson appeared on a panel, Perspectives on Enforcement of Human Rights, at the 1980 Annual Meeting of the American Society of International Law (Washington, April 17, 1980), at which this author was present. Questioned as to what specific steps he would recommend to improve human rights protection, given his analysis of the limitations of the current world legal order, Watson declined to answer.
13. Watson, supra note 1, at 619.
14. Id.
"some form of central guidance . . . ." What this ominous "central form of guidance" is and how it is to be achieved by peaceful means are not fully explained. Unless we are talking about a revolution of the human spirit, the proposed system of regulating conduct will have to be by external means. This would mean that the only substitute for the horizontal international order is a vertical order, a super-state of some kind . . . . Precisely why this super-state, however administered, will be free from the ills of the present smaller states is nowhere clarified.15

Reading Watson's article is a profoundly depressing experience. If he is correct, little can be done to protect human rights in the current world legal order, and any change that is possible may well be a change for the worse.

The natural urge in responding to Watson's article is to try to find fault with his arguments, to try to prove that he is being unduly pessimistic. I have succumbed to this urge, because I believe that in certain respects Watson has overstated his case. This is especially true regarding the current status and effectiveness of human rights norms. The first section of this Article is therefore entitled, The Current Status of Human Rights: The World According to Watson?

But, in another respect, neither Lane nor Watson goes far enough in his criticism of traditional human rights scholars. Most of these writers—and Lane and Watson as well—define the issue of protecting human rights in terms of preventing governments from abusing their own citizens. Their concern is to stop the killings in Uganda or the torture in Chile. Yet, it is arguable that for every person shot to death in Uganda, one hundred starve to death in other African states. For every person who has suffered from torture in Chile, thousands in Latin America have suffered from treatable but untreated diseases. If the world legal order is to protect the individual, it is not enough to restrain governments from abusing their citizens. The legal order must also prevent governments from neglecting their citizens. The implications of this broader concept of human rights protection are discussed here in the second section, The Future of Human Rights: Taking Basic Human Needs Into Account?

One implication of a broader definition of human rights is that it may necessitate extremely radical changes in the legal order to

15. Id. at 639-40 (footnote omitted) (quoting Falk, A New Paradigm for International Legal Studies: Prospects and Proposals, 84 Yale L. J. 969, 977, 980 (1975)).
protect these rights. Here we come again to the question of whether very basic changes in the world legal order are possible. Even Lane, who advocates such changes, admits that it may be more difficult to reform the system today than it was in the period after World War II. In fact, it can be argued that it will be infinitely more difficult to make such changes in the future than it is today. Unchecked growths in population, decreased stability of governments, decaying environments, and declining economies may all block future progress in providing effective protection for human rights. These potential obstacles are dealt with in this Article's final section, The Future of Human Rights: Is a New, Improved World Legal Order Possible in the 1980's?

THE CURRENT STATUS OF HUMAN RIGHTS: THE WORLD ACCORDING TO WATSON?

In the course of attacking the charterists for letting wishful thinking blind them to current realities, Watson points out certain pitfalls that confront scholars working in the international law field:

The scholar in international law is engaged in the selection of material from a vast reservoir which is then interpreted and presented in some coherent manner . . . . At all stages the process is very subjective, and the eventual outcome cannot help but be affected by an unconscious predisposition of the writer, either towards a particular conclusion, or else towards the genteel pastime of reaffirming one's own beliefs at a universal level . . . .

Over and above the problem of unconscious bias, one finds in some international law literature the displacement of the academic function to a greater or lesser extent by advocacy of a particular proposition or support for the legitimacy of a particular state's foreign policy.

Curiously, while Watson clearly recognizes the dangers these pitfalls present to others, he himself plunges headlong into them. He is so intent on pressing his attack, on showing that the charterists' vision of the world is distorted, that he refuses to stop to examine any evidence that might impede his attack or conflict with his own world view. This section will focus on two key areas in his dark portrait of the world, where Watson the "advocate" seems to have overpowered Watson the "scholar": His depiction of the cur-

16. See Lane, Demanding Human Rights, supra note 2, at 279-85.
17. Watson, supra note 1, at 637 (footnotes omitted).
rent human rights situation as one of growing violations met by almost totally ineffective international action, and his prophecy that the current situation cannot improve because a state's violation of its citizens' rights is never of sufficient interest to other states to impel them to sanction the wrongdoer.

Is Watson's bleak assessment of the current state of human rights protection an accurate one? It must be noted that he is not the first surveyor of the human rights scene to give a pessimistic appraisal. Others before him have noted a wide discrepancy between rights granted on paper and wrongs inflicted in practice, and have claimed that such violations are, in fact, increasing.

For several reasons, these pessimistic assessments cannot be conclusively disproved. First, in weighing the efficacy of current human rights protection, it is relatively easy to find violations that have occurred and to place them on one side of the scale. It is much more difficult, however, to produce the evidence for the other side—that is, violations that have not occurred or have taken a milder form because of the existence of international standards and enforcement machinery.

Second, even if all the evidence on both sides of the issue could be produced, there would remain the problem of weighing each piece of evidence. How, for example, does one balance the return of free elections to 600 million people in India with the slaughter of 1 million in Cambodia? If Watson or Lane were to argue on the basis of these two factors that the world human rights situation on balance had deteriorated, could anyone prove them wrong?

Third, any assessment is influenced by the scope of the inquiry, that is by how broadly rights are defined. Watson and Lane both confine themselves to discussing political and civil rights. If social and economic rights were included in the weighing process, it is possible that different results might be obtained.

18. Id. at 619.
19. Id. at 624.
23. For an attempt to develop a system of assessment, including political and
This problem is brought home by the editors of the annual Freedom House survey of *Freedom in the World*. While they attempt to make an objective survey and assessment of changes in political and civil rights throughout the world, they recognize that their conclusions are subject to challenge.

A common criticism of the Comparative Survey is that it does not address the crucial concerns of most of the world's people. Some critics believe that the values represented by civil and political freedoms are not as important as other values such as food, health, artistic creativity, religious experience or sense of community. For example, Charles Yost says: "... the American position focuses almost all of its attention on political and civil rights, where its own traditions are clear and its performance, at least recently, excellent, while minimizing economic and social rights which, to a large part of mankind that is never sure where its next meal is coming from, are far more urgent." This objection may lead to the assertion that our definition of freedom is too narrow, that it should include enabling freedoms such as those provided by the welfare state, or even to the assertion that equality is more important than freedom.

Even if pessimistic assessments cannot be conclusively disproved, they are, however, open to challenge in several respects. In response to those who maintain we are in an era of increasing human rights violations, it can be argued that what has increased is not the violations themselves, but the attention given to them. To cite an analogous domestic situation, in the last decade there has been a tremendous increase in the number of reported cases of child abuse in the United States. Few maintain that there has been a correspondingly massive increase in the incidence of abuse. Rather, it is generally accepted that new reporting laws, more publicity, greater public sensitivity to the problem, and broader defini-
tions of what constitutes abuse have lead to an increase in the reported cases. Similar factors are at work on the international level. These include the growth of comprehensive reporting of human rights violations by Amnesty International and other private organizations, legislation mandating reports by the United States State Department, and the attention focused, albeit intermit-tently, by the Carter administration on human rights.

Note might be taken of the results of the Freedom House survey over the last decade. While reports in the early 1970's came to generally negative conclusions—that on balance there was an erosion of human rights—the reports issued in 1978, 1979, and 1980 were much more positive, suggesting that on balance progress was being made in reducing violations. In short, a case can be made that the newspaper headlines that lead Watson to utter cries of woe document not a growing problem, but rather a growing awareness of the problem.

Admittedly, even if human rights violations did not grow worse in the 1970's, they were still bad enough. In fact, the most grievous of these violations—the mass killings in Cambodia and Uganda—have been used by Lane and others to demonstrate the inadequacy of the current system of protection. These gross violations clearly demonstrate that the current international system is far from fully effective. But do they prove the current system is totally ineffective?

Many would say yes. For them, mass killings are the litmus test of effectiveness. The obvious initial objective in any drive to protect human rights is the elimination of extreme, large-scale violations. The experiences in Cambodia and Uganda show that even this, the most basic objective, has not been achieved. On the other hand, it can be argued that the development of an effective international regime protecting human rights is still at an early or intermediate stage. While logically it would be nice to begin by

eliminating the worst violations and proceed from there, in practice, the efficacy of the system is determined not by the magnitude of the violation, but by other factors.

As both Watson and Lane point out, we are living in a system where sanctioning human rights violators is basically left to other states. Asbjorn Eide of the International Peace Research Institute in Oslo, Norway, suggests that the effectiveness of sanctions will depend on two factors:

When an incumbent regime in a country has firm control of its population, it seems unlikely that external human rights reactions will have a significant impact. If, on the other hand, the incumbent regime of the addressee country has an insecure position... the impact of external reactions will depend upon the influence of the reacting country. Where the addressee country is heavily dependent on the reacting country, the impact will often be positive...

While Eide’s analysis helps to explain why international reaction, especially from the West, would be particularly ineffective in the case of Cambodia, it ignores another critical factor. When Eide states that violating governments will curtail their behavior when confronted with sanctions the harmful effects of which outweigh the benefits of continued violations, he assumes that there are rational decisionmakers at the head of the governments. All sanctions, short of outright invasion, may fail if the leadership is irrational—if it is incapable of applying a cost-benefit analysis. Cutting off aid, stopping coffee imports, and other economic and political sanctions may have no effect on an Idi Amin, for instance. The necessary action—direct military action to remove the irrational leader—is the sanction most difficult to achieve in the current states’ rights-oriented system. Given these factors, Uganda and Cambodia represent the types of cases where the international response to human rights violations is the least likely to stop the violations. However, they do not necessarily mean that the current system will fail in all cases.

Turning to Watson’s article in particular, the most serious flaw in his presentation is his failure to consider any positive evidence in evaluating the current scene. For example, he does not mention the European Convention on Human Rights or the case law being developed under that convention by the European Commission of

Human Rights and the European Human Rights Court. Nor does he mention the impact that other Western European countries have had on the progress toward greater political and civil rights in Spain and Portugal. Nowhere does he discuss the successes, however limited, of bilateral government actions. Nor does he devote any space to the successful work of private organizations in the human rights field. Watson might still have weighed in with the same assessment, that there is no effective system of protection, if he had placed all the evidence on the scales. But, as he has not done so, he cannot expect others to accept his short measure.

If Watson is guilty of suppressing evidence when dealing with the current status of human rights, he is also guilty of an equally serious offense—presenting no evidence at all in dealing with future prospects for human rights protection. Watson repeatedly asserts that the situation cannot be improved within the current state-centered legal order because when one state violates the rights of its citizens the violation is of insufficient interest to other states to provoke action against the wrongdoer. He never pro-

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35. See Medina, Spain in Europe, 11 GOV’T & OPPOSITION 143 (1976).
36. See text accompanying note 46 infra.

A first problem in judging effectiveness is that there is no material product that the organization sells in a market, the allegedly “hidden hand” of which sets a variable price that supposedly puts supply and demand into equilibrium. How is one to put a price on the value of human life? And there is no way to repay a person for years of wrongful imprisonment for political thought and association. Therefore, even if the World Council of Churches seems to be making an excessive budgetary expenditure to gain the release of a small number of political prisoners and even if it is not successful, nevertheless, the external publicity it receives may save those prisoners from summary execution, may prevent the secret police from engaging in the worst forms of torture, or may bring even a brief pause in the regime’s systematic repression. And how does one qualify such results in terms of dollars and cents?

Id. at 195-96 (emphasis in original).
38. See text accompanying notes 14, 19 supra.
vides any evidence to support this assertion, but seems to take it as self-evident. Admittedly, there are situations where third-party states have little interest in a human rights violation, and, even if a third-party state does have some interest, there may be reasons why it may still refuse to take action. Yet there are also situations where one state's treatment of its nationals may be of great interest to other states, and there are forces that may impel these interested states to take measures against the wrongdoer.

First, a state may see a link between today's internal suppression in a neighboring state and tomorrow's external aggression. One of the motivating factors in establishing the European Convention on Human Rights was the belief that maintaining individual rights within each of the member countries would help to forestall the rise of totalitarian regimes that might threaten other states in the community.40

Second, violations of rights in one state may directly impact on other states in many ways. Watson's assertion that "one state's treatment of its citizens is of little interest to other states" seems rather ludicrous in light of recent developments in the United States—such as the influx of political refugees from Cuba and "economic refugees" from Haiti, the continued flow of impoverished Mexicans across the border, and the political assassinations taking place in Washington.42 The ideas put into practice in one state may also impact on neighboring states—be they new methods of protecting rights or new ways of violating them.43 Drawing on his experience with the Freedom House Comparative Survey of Freedom, Gastil concludes that political trends in neighboring or related states are frequently copied.44

39. The classic case is the United States' relationship with the Republic of South Korea, where the concern over human rights violations has been counterbalanced by the fear of weakening the South vis-a-vis the North. For a critique of the Carter administration's attempt to balance idealism and self-interest in its human rights policy, see Forsythe, American Foreign Policy and Human Rights: Rhetoric and Reality, 2 Universal Human Rights 35 (1980).
41. Watson, supra note 1, at 619 (footnote omitted).
43. Consider, for example, the rapid spread of the technique of having opponents of a governing regime in South America simply "disappear." N.Y. Times, Dec. 10, 1979, at 9, col. 1.
44. Freedom House 1979, supra note 32, at 10.
Third, national boundaries do not necessarily cut off vital links of interest and communication between peoples. It is doubtful whether many other Africans would maintain that South Africa’s policy of discrimination towards its black majority is of “little interest” to them.

Fourth, there are political and ideological forces that may impel governments to actively oppose human rights violations in foreign countries. In the United States, for example, outspoken opposition to human rights violations may serve both the domestic and foreign policy objectives of an administration: It plays well with audiences at home and provides a useful ideological weapon in international fora. In the case of the smaller Scandinavian nations, human rights may give their governments an opportunity to have a positive impact on international affairs.\footnote{Eide, \textit{supra} note 33, at 246-47.}

It is often difficult to evaluate the effectiveness of measures taken against a wrongdoer. On the rare occasion when one state has used force against another, such as the Indian invasion of East Pakistan, it may be possible to say that one state’s actions did halt another state’s violations.\footnote{While on this occasion India’s action was clearly effective in ending human rights violations by Pakistan, the purity of India’s humanitarian motivation was questionable in light of her traditional hostility to Pakistan. For a discussion of the legitimacy of the Indian intervention, see R. LILLICH \& F. NEWMAN, \textit{INTERNATIONAL HUMAN RIGHTS} 485 (1979).} In situations where economic or diplomatic pressures have been employed, it is almost impossible to demonstrate conclusively that any improvement in the human rights situation was caused by the pressure. Self-serving statements of Carter administration officials as to the effectiveness of United States pressure for change must be viewed with skepticism. Much more compelling is the testimony of those whose rights have been violated, such as Soviet dissidents and refuseniks who believe that Western pressure on the Soviet Union has lead to their plight’s amelioration.\footnote{See Dean, \textit{Contacts with the West: The Dissidents’ View of Western Support for the Human Rights Movement in the Soviet Union}, 2 \textit{UNIVERSAL HUMAN RIGHTS} 47 (1980); N.Y. Times, Nov. 16, 1976, at 17, col. 1.}

It is ironic that in arguing his case that there is no effective international protection of human rights, Watson relies, in part, on examples of abuse drawn from Rupert Emerson’s article, \textit{The Fate of Human Rights in The Third World}.\footnote{27 \textit{WORLD POL.} 201 (1975).} One may agree with Emerson’s conclusion that the new states have not lived up to “the
brave hopes and expectations that marked their birth. . . .” But one must also recognize that the granting of independence from colonial rule to these states, at least from the Third World viewpoint, was the most significant advance in human rights in our time—an advance brought about in part by the very international pressures that Watson has ignored.

**THE FUTURE OF HUMAN RIGHTS: TAKING BASIC HUMAN NEEDS INTO ACCOUNT?**

Watson’s assessment of the current human rights situation is not only inaccurate, it is also woefully incomplete. Riveting his attention on the enforcement of civil and political rights, Watson never examines the enforcement of social and economic rights. Yet, as this Article’s introduction points out, if one is truly concerned with the well-being of individuals on this planet, one must be as concerned with governments that deprive their citizens of food, shelter, medical care, and education as with governments that repress their citizens by imprisonment, torture, and execution.

The idea that a government is responsible for the social and economic well-being of its citizens is not new. For example, in discussing the state’s role in traditional Islamic law, Abdul Aziz Said has written that

> if it is the duty of the leadership of the Islamic polity to regulate individuals' “right of use” of material possessions, it is also their duty to see that individuals are granted the right to life, that is, the right to have their basic needs met.

> While wealth is not a virtue in Islam, neither is poverty; for extreme poverty leads to non-belief. Muslims must enjoy a sufficiency of food, clothing, and housing for their persons and families.

> Thus Islam emphasizes the obligation of the state to meet the people’s essentials of life: in the public treasury there must be a fixed portion for the poor, needy, and distressed.

Since the end of World War II, the importance of fundamental social and economic rights has come to be recognized, not only by the governments of Socialist and Third World countries, but by

49. *Id.*

50. See text accompanying notes 15-16 supra.

Western governments as well. Even the United States government has acknowledged the importance of including the satisfaction of basic economic and social needs within the definition of human rights. As Secretary of State Cyrus Vance remarked, in making one of the Carter administration's first major policy statements on human rights:

Let me define what we mean by "human rights."

First, there is the right to be free from governmental violation of the integrity of the person . . . .

Second, there is the right to the fulfillment of such vital needs as food, shelter, health care, and education. We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation's economic development. But we also know that this right can be violated by a government's action or inaction—for example, through corrupt official processes which divert resources to an elite at the expense of the needy or through indifference to the plight of the poor.

Third, there is the right to enjoy civil and political liberties . . . .

Our policy is to promote all these rights.

The right to fulfillment of basic needs must be considered not only in assessing the current status of human rights protection, but also in forecasting developments in the 1980's and beyond. This section of the Article is devoted to considering both the prospect for progress in meeting the right to basic needs and the relationship between the promotion of this right and the advancement of civil and political rights.

The problem of meeting basic human needs is a major theme in the Council on Foreign Relations' 1980s Project—a series of interrelated studies designed to forecast and analyze issues likely to be of major international concern in the next ten to twenty years. Studies in two of the volumes, Rich and Poor Na-


53. Address by Secretary Vance, Law Day ceremonies at University of Georgia (April 30, 1977), reprinted in 76 DEPT. STATE BULL. 505, 505 (1977); see Derian, HUMAN RIGHTS AND UNITED STATES FOREIGN RELATIONS: AN OVERVIEW, 10 CASE W. RES. J. INT'L L. 243 (1978). For the change in European views over time, see COUNCIL OF EUROPE, WHAT IS THE COUNCIL OF EUROPE DOING TO PROTECT HUMAN RIGHTS? 8 (1977).
address the problem of "absolute poverty." In her introduction to *Reducing Global Inequities*, Catherine Gwin explains the concept "absolute poverty":

The term *absolute poverty* as used here and in the essay by Gunnar Adler-Karlsson refers to a standard of living below what would universally be recognized as a minimum tolerable standard. As defined by the World Bank, absolute poverty is equivalent to a level of annual per capita income of $250 or less. In describing the global dimensions of absolute poverty, however, Adler-Karlsson relies not on a per capita income figure alone but on an analysis of its manifestations—i.e., deficiencies now being suffered by the poor in developing countries in basic human needs, including food, health care, housing, education, and remunerative employment.

In his study of the dimensions of the absolute-poverty problem, Gunnar Adler-Karlsson estimates the number of people currently deprived of basic human needs as between 500 million and 1.2 billion.

While several studies in these two volumes discuss possible economic strategies for dealing with the problem of absolute poverty, Roger Hansen's *The Political Economy of North-South Relations: An Overview and an Alternative Approach* is the one most directly concerned with the human rights implications of such strategies. Hansen concludes:

Finally, there is the human rights issue which is bound to be linked to the development and implementation of any basic human needs strategy. The strategy is nothing if not one that focuses on the basic socioeconomic needs of individuals. In this sense it is non-state-centric in the extreme; its entire raison d'être is permanently to elevate the living conditions and life chances of the poorest segments of all developing-country populations. With its emphasis on asset transfers or asset accumulation in the form of educational, health, and other production-

54. COUNCIL ON FOREIGN RELATIONS, RICH AND POOR NATIONS IN THE WORLD ECONOMY (1978).
56. Gwin, Poverty and Inequities—Strategies for Change, in W. WRIGGINS & G. ADLER-KARLSSON, supra note 55, at 1, 2 n.1.
specific benefits for the poorest, it is a policy that, without ever saying so, begins to put some flesh on the skeleton of the second half of the UN’s Universal Declaration of Human Rights.\(^{58}\)

Hansen suggests that a commitment by developed states to eliminate absolute poverty in developing nations might have a significant positive influence on the protection of political and civil rights in the international community:

If the North were willing to extend substantial financial support at the global level for an effort of this kind, might not that very strategy offer an opportunity to bridge the widening chasm between developed and developing countries on the issue of human rights in its broadest sense? At the present time the North (and especially the United States since the advent of the Carter administration) has pressed vigorously for universal recognition of those human rights found in the first half of the Universal Declaration: political, legal, and civil rights that are rooted in the evolution of Western civilization. But this concentration on one segment of human rights, no matter how important, may prove to be counterproductive even in the narrowest sense of expanding the acceptance of those cherished Western values and norms.

If, on the other hand, Northern countries were jointly to advocate and make a substantial financial contribution to those economic human rights (needs) of the poorest in the developing countries, they would then be in a far better position to draw those countries into a serious discussion of political human rights which seem to be of greatest importance to the developed countries. For the first time since the signing of the Universal Declaration, progress might be made at the global level specifically because Northern and Southern human rights concepts would be linked both programmatically and conceptually.\(^{59}\)

Hansen’s picture of a new, more people-oriented international economic order leading to a new, more people-oriented international legal order is a bright one, especially when compared to Watson’s dark view. Perhaps the inclusion of basic human needs in the human rights agenda for the 1980’s will actually help bring about the changes in the world legal order that Lane demands.

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59. Id. at 250 (emphasis added).
Unfortunately, while Hansen presents a very desirable ideal for the 1980's, it is an ideal unlikely to be attained.

The first set of obstacles to improving human rights through meeting basic human needs lies in the developing countries. Hansen himself recognizes that the governing class in many developing countries may feel threatened by a basic-human-needs approach to economic development because it would redistribute income to the benefit of the poor and the detriment of the elite. He also recognizes that the governing classes may not adopt a basic-human-needs approach because they are more concerned with overall economic growth or with economic freedom from Western domination. Hansen sees active economic assistance from developed countries as the carrot to lure the governing classes into accepting his approach. There is no guarantee, however, that this particular carrot is tempting enough to cause the governing classes of developing countries to accept an approach that would undermine their economic dominance as well as a political and civil rights program that would undermine their political dominance. On the contrary, attempting to include political and civil rights along with basic human needs might lead to their rejection of the entire package.

I suggest that there may be a negative, rather than a positive, association made by developing countries between basic social and economic needs and political and civil rights. In other words, developing countries may assert that abolishing absolute poverty is their first priority, and that in order to meet people's basic needs, it is necessary to sacrifice some political and civil rights.

There are those, especially in the West, who will reject any such claim as unjustified. For example, Nigel Rodley, Legal Advisor for Amnesty International, states: "I have yet to see, in any case, a clear, convincing presentation of why, in a given situation, particular measures to improve the enjoyment of economic, social, and cultural rights necessarily entail infringements of specific civil and political rights."外
However, clear, convincing examples of situations where political and civil rights might have to be sacrificed to meet basic human needs have been presented by Neville Linton, a senior lecturer at the Institute of International Relations, and William Demas, President of the Caribbean Development Bank. After discussing why he believes that economic rights should be given priority, Linton provides specific examples of the type of political rights that may have to be sacrificed:

The process of development is a harsh and demanding one. I know of no state which has developed, in the sense of achieving a satisfactory standard of living for the majority of its citizens, without extreme exploitation either at home, abroad or both . . . .

Today, with the advantages of technology and science, the process should be easier but, even at best, it remains painful. It remains a process which cannot, for instance, afford the luxuries of full freedom of choice or of movement. As for the first, a state with limited educational facilities may find it necessary to say to a young person “You will be an engineer and not a doctor”—in the manner of Japan, which in its early days allocated careers to its bright young people. And as for the second, I am firmly of

64. These were views at a 1977 Seminar on Human Rights and their Promotion in the Caribbean organized by the International Commission of Jurists and the Organization of Commonwealth Caribbean Bar Associations.

65. [T]he new states have appeared on the scene in the second half of the twentieth century when it is an accepted purpose of the state to advance, in the widest sense, the welfare of its citizens. This is a responsibility which implies broad powers of control for the state, to such an extent that even in Western capitalist states there is increasing centralization and governmental participation in the economic sector. Now in many of the old Western states, it might be possible to accomplish such governmental control without necessarily treading too hard on individual rights. This can be done in part because of surpluses from the past, usually purloined through imperialism, and because of technological advances which permit a high level of living for all of the citizens. But in new states, with struggling economies, mass welfare cannot be delivered without a system of control and centralization which would hardly permit the play of individual rights in the classic tradition.

Against this background then I am arguing that, for most Third World states, social and economic rights have a priority, at the domestic level, over the traditional civil and political rights, a rightful priority both because of the objective conditions within and without these states and because the traditional rights are not necessarily culturally relevant. This is not to suggest that civil and political rights are unimportant: they are necessary but are subject to limits within a context of developing an effective welfare state which benefits all of the people.

the opinion that a “developing” state has the right to prevent a citizen who has been educated at state expense from emigrating unless he has given adequate service at home. Beyond this, whether or not a citizen has been educated at state expense it can be argued that, in a “developing” state, he should be subject to the duty of service in hardship areas if his skill is called for. This suggests that a “developing” state should be somewhat like a mobilized state—as indeed it is, if properly conceived. It is like wartime, and a discipline akin to wartime discipline is needed for the war on want, on hunger, on ill-health, on ignorance and on insecurity, for the war on the depressing cycle of poverty which kills and maims as effectively as bullets.

William Demas discusses both political and economic rights that will probably have to be “qualified” in order to meet the basic economic and social needs of the people living in the Caribbean area, such as the absolute right to national self-determination, the absolute right to property, the absolute right to work, and the absolute right to free collective bargaining. Demas’ most telling argument involves the right to free collective bargaining:

In the developing countries with market or partly-planned economies, it is now generally realized that because of the need to maximize the rate of saving and investment in both the public and private sectors, to promote employment opportunities for all, to promote agricultural and rural development, to protect the balance of payments, and to promote social justice both between workers and the higher income groups and as between different categories of workers (in the light of large differences of productivity between economic sectors), free collective bargaining must be circumscribed by law and that a Prices and Incomes Policy for the whole country needs to be adopted and implemented. For in the absence of such legal circumscription and of such prices and incomes policies the enjoyment of certain economic and social rights by highly-paid workers must mean the denial or abridgement of these same economic and social rights to other less fortunate workers and peasants and the young unemployed.

While Linton and Demas argue that some rights may have to be curtailed, they both acknowledge that there are other rights

66. Id. at 21.
that need not be sacrificed on the altar of human needs. Linton, writing in the New Zealand Law Journal, sums up what he considers to be

... the irreducible minimum in basic rights—the right to peaceful assembly and expression, the right to a government based on the expressed will of the people, the right to take part in the government, the right to a fair trial, the right to be not subjected to arbitrary arrest, detention or exile, the right to education and the right to freedom of information.68

Demas’ list is longer, but somewhat more qualified:

In a developing country... it should be possible to have a wide-range of civil and political rights granted immediately. As a minimum, I suggest that the following human civil and political rights should be immediately guaranteed, with as few qualifications as possible in their application:

(a) the right to the fullest possible participation of the masses of the people in governmental planning and implementation and in the election of both local and central governments;
(b) the right to freedom of thought, assembly, expression, association, and religious worship;
(c) the right to freedom from arbitrary arrest and imprisonment, and to the enjoyment of the Rule of Law; subject to any temporary infringement of these rights that may be necessary under a State of Emergency;
(d) the right to freedom from forced labour, coercion, and inhuman or degrading forms of punishment such as the barbarous practice of torture.69

In adopting this two-tiered approach, Linton and Demas attempt to prevent using basic human needs as an all too handy, but unjustified, excuse for massive human rights violations. Unfortunately, once it is admitted that some rights are subject to sacrifice, it is very difficult to draw a firm line in protecting others. Linton’s and Demas’ lists of inviolate political and civil rights are not in complete agreement.70 More important, there is no guarantee that

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69. Demas, supra note 67, at 11-12 (emphasis in original).
70. For example, Linton’s proposal for forced career choices and forced service in hardship areas might violate Demas’ prohibition of “forced labor.” But see Iversen v. Norway, [1963] Y. B. EUROPEAN CONVENTION ON HUMAN RIGHTS 278.
either list would be acceptable to the governing classes in developing countries. For example, Dunstan Wai, in “Human Rights in Sub-Saharan Africa,” describes how the basic-needs argument has often been used by African leaders to justify the curtailment of free information, a right both Linton and Demas hold inviolate.

A[n] . . . argument is that the priority of African states is economic development and elimination of hunger, disease, and illiteracy. In pursuit of such a policy of human advancement, African presidents have contended that they are entitled to formulate developmental ideologies and strategies that will bring their aspirations and hopes into realization. Hence, critics are detractors and must be locked behind bars to prevent them from “misleading” the masses and from disrupting the efforts of the government in nation-building and economic development.71

A second set of obstacles to realizing Hansen’s ideal lies in the developed countries. The crucial question is whether the governments of these countries will accept a share of the responsibility for the well-being of the millions who live in absolute poverty—people who are not their own nationals, who come from different racial, cultural, and social backgrounds, and who live in countries thousands of miles away. Surely, such acceptance would involve a drastic change in the world legal order. We would be moving from the current situation where there is still vociferous debate over the extent of each state’s international responsibility for its treatment of its own nationals to a system where each state would agree to be held at least somewhat responsible for the well-being of foreign nationals. It can be argued that the developed countries should assume part of the legal responsibility for people living in absolute poverty because the developed countries have been at least partially responsible for their impoverishment. This argument has been made with great force by Oxford economist Keith Griffin:

It is our belief that underdeveloped countries as we observe them today are a product of historical forces, especially of those forces released by European expansion and world ascendancy. Thus they are a relatively recent phenomenon. Europe did not “discover” the underdeveloped countries; on the contrary, she created them. In many cases, in fact, the societies with which Europe came into contact were sophisticated, cultured and wealthy.72


None of the preceding discussion should be taken to imply that all of the underdeveloped countries were once wealthy societies and advanced civilizations. Some of the people with whom the Europeans came into contact were, of course, relatively primitive. But nearly all of the people encountered in today's underdeveloped areas were members of viable societies which could satisfy the economic needs of the community. Yet these societies were shattered when they came into contact with an expanding Europe.\footnote{73} There are some who would carry Griffin's argument a step further, charging that even in the post-colonial era the Western impact on the newly independent Third World countries has created greater social inequity; that those Third World countries in which the West has invested most heavily and which have attempted to develop along Western lines have driven more and more of their own people into the ranks of the impoverished.\footnote{74} In their book, \textit{Economic Growth and Social Equity in Developing Countries}, Irma Adelman and Cynthia Morris present statistical evidence that economic growth in the noncommunist Third World has often been accompanied by an increase in the number of absolute poor—of not merely a relative, but of an actual decline in the living standard of the poorer segments of the society.\footnote{75} Adelman and Morris find that social inequality is greatest in those countries having an abundance of natural resources controlled by foreign interests.\footnote{76}

\footnote{73} \textit{Id.} at 41. \textit{See also} Linton, supra note 68, at 243-44.  
\footnote{74} Diaz-Alejandro presents a graphic account of the negative impact of Western values on lesser developed countries (LDC):  
\ldots LDC upper and middle classes will feel grievously deprived if they do not have access to the goods and services provided by the transnationals and others in the capitalist centers. Their youth in particular will be seduced by that center's glitter. In those LDCs where demonstration effects are also transmitted via tourism, the children of the rich will dream about parties at the local Hilton, while the children of the poor will dream about the chance to wash dishes there if they are unable to get the opportunity to do so in New York or Paris.  
Under those circumstances \ldots trying to motivate the best and the brightest youth by material incentives will doom the developing country to persistent, or even growing inequality. Diaz-Alejandro, \textit{Delinking North and South: Unshackled or Unhinged}, in \textit{COUNCIL ON FOREIGN RELATIONS}, supra note 54, at 85, 101.  
\footnote{75} I. Adelman & C. Morris, \textit{Economic Growth and Social Equity in Developing Countries} 189 (1973).  
\footnote{76} \textit{Id.} at 186.
It can also be argued that, even if the developed nations bear no historical responsibility for the absolute poverty existing in the developing world, it is still in their best interests to attempt to eliminate this problem with a development program designed to meet basic human needs. The authors of the 1976 Report to the Club of Rome, *Reshaping the International Order*, argue that we are all living in a highly interdependent world; problems such as absolute poverty require international, not national, action. They reason that the political and social upheavals that may result from failing to take action will affect all nations.\(^7\) In short, when developed nations resist change, poor nations and impoverished peoples may resort to precipitating wars, irregular acts of violence, and terrorism, "the last resort of the weak and desperate."\(^8\)

Even assuming that both developed and developing states are willing to accept the obligation of working together to meet basic human needs, there remains the obstacle of creating the legal and economic infrastructure to implement this commitment. Presently, as Richard Falk points out:

All governments affirm their commitment to the abolition of poverty as a matter of national policy, just as all governments deny the perpetration of any severe domestic violations of human rights. With basic human needs, however, there are no adequate procedures available to brand a particular government as a violator, although a persuasive consensus can often be obtained by media coverage, NGO reporting, and the activities of governments and international institutions.\(^9\)

Such ad hoc methods are commendable, but clearly inadequate. If the commitment in principle is to be translated into ef-

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77. Club of Rome, *Reshaping the International Order* (A. Dolman ed. 1976). *But see* the dissenting comment of Helmut Hesse:

Although I am fully convinced that the present world economy is in disorder, due to the problems described in this Report, and though I agree with the argument that global cooperation, as elaborated, is needed to overcome these problems, I cannot agree with some of the value judgments, arguments, and proposals made. Especially, I cannot agree with those value judgments which come near to egalitarianism. I cannot blame the Western industrialized countries for the severe inequalities in the world in the way suggested in this Report.

*Id.* at 322.


flective action in practice, there will have to be international agreement as to the precise obligations imposed on each state, the procedures for determining whether a state has violated these obligations, and the methods of enforcing such a determination against a recalcitrant state. Before such agreement can be reached, many difficult problems have to be resolved. For example, what should be the standard of liability imposed upon governments? Will they be held liable only when they intentionally deprive people of basic human needs or even when they are merely negligent?\(^{80}\) Who will be allowed to bring a claim that a government is violating the basic economic rights of its poor—governments of other states, intergovernmental organizations, private nongovernmental groups, and/or the poor themselves?

Complicating matters is the fact that even with a consensus on making basic human needs an overriding goal of the international community, there still may be sharp disagreement as to the appropriate economic strategies for meeting this goal. For example, if a country lacks sufficient food to feed all of its people, the goal of meeting this basic need is clear. But whether this is best achieved by importing food in an attempt to meet the immediate shortage or by importing agricultural technology in attempting to deal with the long-term problem is open to question.\(^{81}\)

Are states likely to accept or move toward such an agreement on basic human needs in the 1980's? The answer is no. The reasons for this pessimistic appraisal lie both in the implications of a basic-human-needs agreement and in other trends occurring in the international community.

There are two long-term implications inherent in a human-needs agreement that make acceptance by developed and developing states highly unlikely. First, a successful agreement will inevitably result in significant inroads on state sovereignty.\(^{82}\) The idea that failing to meet basic needs will be considered a human rights violation puts constraints on the way a state can manage its own resources and economic development programs. Furthermore, supporters of a basic-human-needs approach agree that it will be

\(^{80}\) For discussions of possible standards of liability, see \textit{id.} at 224-26; Schechter, Book Review, 72 AM. J. INT'L L. 161, 161-63 (1978).

\(^{81}\) The economic problems involved in trying to develop effective programs to uplift the impoverished without further enriching the rich are discussed in \textit{CLUB OF ROME}, supra note 77, at 24-86; Adler-Karlsson, \textit{supra} note 57; Hanson, \textit{supra} note 58.

\(^{82}\) \textit{CLUB OF ROME}, \textit{supra} note 77, at 82.
necessary to endow an international organization with the authority to manage transfers of resources from developed to developing nations.\textsuperscript{83} In monitoring the use of these funds, that international organization is bound to put additional constraints on decisionmakers in developing countries. To ensure the collection of adequate funds, the organization will require the power to tax the developed nations.

One view of the ultimate outcome of such an approach is presented in the \textit{Reshaping the International Order Report} to the Club of Rome:

Ultimately there is a need for the equivalent of a World Treasury, the resources of which are derived from international taxation and ownership of international productive resources (such as the resources of the oceans). The basic objective of the World Treasury would be to promote equitable world development and the eradication of world poverty.\textsuperscript{84}

It is highly doubtful that even those developing states standing to benefit most from such an agreement would be willing to surrender the amount of sovereignty required.\textsuperscript{85} The developed states probably will be even more intransigent. While in the short term they might be surrendering less of their sovereignty, the developed states would be more frightened by the second long-term implication of adopting a basic-needs agreement: The possibility that the developed states’ economic growth and material consumption would have to yield to the goal of meeting basic human needs. There are already claims that limits on economic growth and consumption in the developed countries are necessary:

No one’s affluence should increase until everyone’s essential needs are fulfilled. This means in practice a maximum income or

\begin{itemize}
\item \textsuperscript{83} \textit{Id.} at 131, 218.
\item \textsuperscript{84} \textit{Id.} at 133-34.
\item \textsuperscript{85} \textit{Diaz-Alejandro, supra} note 61, at 155-56 suggests that developing countries might indeed be extremely skeptical of the supposed benefits:
\item Why not argue for a worldwide war on poverty and oppression? To those familiar with the rise and fall of the Alliance for Progress, the answer is obvious: no Northern government has both the credibility and the resources to launch and lead such a program seriously and globally, not now and not in the 1980s. Proposed global bargains between Northern and Southern elites of the type involving more aid in exchange for more redistribution and democracy are at best utopian and at worst a new version of an old confidence game.
\end{itemize}
at least a maximum level of consumption for the rich, until the poor have at least the minimum of absolute necessities.\(^8\)

The amount of transformation of the world economy which would foster a healthy pattern of development in third and fourth worlds is such that there is bound to be a restrictive effect in the first world . . . that is the natural price of equity or providing human economic and social rights for all.\(^7\)

A pessimistic appraisal is reinforced by other trends in the international community. Decreasing stability of governments, growing populations, decaying environments, and declining economies may block progress in enforcing political and civil as well as social and economic rights. These trends, therefore, are the subject of this Article’s next section.

THE FUTURE OF HUMAN RIGHTS:
IS A NEW, IMPROVED WORLD LEGAL ORDER POSSIBLE IN THE 1980's?

The 1980's appear more a decade of menace than of promise for human rights. There are a number of interrelated factors which will hinder the current state-oriented system’s improvement, and will almost certainly prevent the adoption of a more ambitious, centralized system of protection.

Perhaps the most important of these factors—the one presenting the greatest single threat to human rights in the 1980's—is the continued growth of world population. While there is some evidence that the growth rate may be slowing down,\(^8\) world population in the 1980's will still increase by 800 million and possibly by 1 billion people.\(^9\) This will occur primarily in less-developed countries; at least seven out of every eight additional individuals will live in the Third World. Demographic experts say the increase is inevitable.\(^9\) This poses a threat to human rights on many different levels.

\(^8\) Adler-Karlsson, supra note 57, at 166-67.
\(^7\) Linton, supra note 68, at 246.
\(^8\) Hauser, Introduction and Overview, in WORLD POPULATION AND DEVELOPMENT 1, 11 (F. Hauser ed. 1979).
\(^9\) “The demographic situation in 1990 as we have described it will be the result of an ineluctable evolutionary pattern that no demographic policy, however coercive, can alter in such a brief period of time.” Tapinos, supra note 89, at 74-75.
First, this population explosion will have a direct and potentially devastating impact on attempts to meet basic human needs in developing countries. The connection between population and poverty has received a great deal of attention.91 While there has been considerable debate about the causal relationship—whether overpopulation causes poverty or poverty causes overpopulation—92 there has been widespread acknowledgement that rapid population growth in the developing countries, featuring large numbers of dependent young people, makes the task of meeting basic needs much more difficult. Regarding basic nutritional needs, it has been said that

[t]he future is not promising. It is possible that the nutritional gap between the more developed and less developed countries will increase, because in poor countries rapid population growth has continued, and unless very drastic steps are taken, the possibilities of increasing food production are slight. It has been calculated that during the seventeenth century two million people died of hunger. In the eighteenth century this number increased to ten million and in the nineteenth century to 25 million. What has happened and is happening in this century makes one suspect that the number of people dying of hunger will be still larger.93

Insofar as population increases are due to high birth rates, rather than declining death rates, educational needs will be difficult to satisfy. Even if the birth rate is finally reduced, this reduction’s im-

92. On the political side the population debate is intense and is closely related to the broader debate over the conditions of human betterment. One side of this debate holds that population growth is a relatively separable problem that can be addressed through direct and specialized agencies promoting fertility control. The other side holds that population growth is a problem derived from a basic inequality in the distribution of wealth. From this position the problem is addressed through major efforts to restructure the world wide political-economic system.

To the extent that excessive population growth is caused by the maldistribution of wealth and by the large number of people living in absolute poverty in the developing world, this is an additional argument for adopting an effective basic-human-needs approach as outlined in the second section of this Article.
93. Mönkeberg, Food and World Population: Future Perspectives, in WORLD POPULATION AND DEVELOPMENT, supra note 88, at 124, 126 (footnotes omitted).
impact on the number of school-age children and the resulting education costs will not be felt for almost another decade.\textsuperscript{94}

Second, the population increase may have a less direct but nevertheless devastating impact on the protection of political and civil rights within developing states. For, "as governments feel increasingly hard pressed in their efforts to cope with burgeoning populations, they are more likely to direct repressive power against those who disagree with their goals or their means of achieving them."\textsuperscript{95} While the relationship between population and political repression has received less attention than the relationship between population and poverty,\textsuperscript{96} there has been discussion of three specific problems that will be of growing concern in the 1980's.

One problem arises in countries with a heterogeneous ethnic composition and a significant difference in the rate of population growth of the different ethnic groups. In such countries, the threat of losing majority status may upset an already unstable condition and provoke the threatened ethnic group, presently in power, into repressing its rivals.\textsuperscript{97}

The second problem arises in the large number of developing countries in which there has not only been a significant population increase, but also a major influx of people into urban areas. This shift in population distribution has caused additional social and economic stresses. The 1975 World Population Conference Report, for example, remarks:

\begin{quote}
Urbanization in most countries is characterized by a number of adverse factors: drain from rural areas through migration of in-
\end{quote}

\textsuperscript{94} Tapinos, \textit{supra} note 89, at 64.


\textsuperscript{96} The political significance of population dynamics has received little attention to date, in part because the visibility of the population problem is such a recent phenomenon, in part because questions relating to population have traditionally remained within the domain of demographers, biologists, or nutritional experts, and in part because the recent emphasis upon the environmental problems occasioned by rapid growth has detracted from a focus upon the less spectacular consequences of population dynamics.

N. CHOUCRI, \textit{POPULATION DYNAMICS AND INTERNATIONAL VIOLENCE} 3 (1974) (footnotes omitted). While it is generally recognized that the pressure of population upon resources tends to contribute to internal instabilities and dislocations, the precise nature of the consequences are rarely specified in empirical terms. \textit{Id.} at 203.

\textsuperscript{97} Tapinos, \textit{supra} note 89, at 69-71 (discussing situations in Lebanon (Christians and Moslems), Israel (Jews and Arabs), Belgium (Flemish and Walloons), and USSR (Russians and non-Russians) as examples); see N. CHOUCRI, \textit{supra} note 96, at 201.
dividuals who cannot be absorbed by productive employment in urban areas, serious disequilibrium in the growth of urban centers, contamination of the environment, inadequate housing and services and social psychological stress.\textsuperscript{98}

The Conference Report goes on to recommend that remedial programs "[s]hould be avoided which infringe the right of freedom of movement and of residence within the borders of each state as enunciated in the Universal Declaration of Human Rights and other international instruments."\textsuperscript{99} Despite this recommendation, it is likely that as population maldistribution intensifies in the 1980's, some Third World governments may restrict movement into urban areas or force resettlement out of urban areas in ways that conflict with and abridge individual rights.\textsuperscript{100}

Third, the population increase may escalate tensions between states, making it more difficult to achieve international cooperation in protecting human rights. Just as a rapidly increasing population in a country with limited resources may lead to internal instability and repression, it may also lead to external conflict and violence. Based on a comparative cross-national study of conflicts in developing areas as well as a review of the literature on population dynamics, Nazli Choucri concludes:

When viewed in the context of a relatively constrained resource base, the consequences of rapid population growth appear similar to those of population pressure and increased density . . . . In some cases, such pressures contributed to internal political instabilities. In others, where the effects were primarily external, expansionist tendencies and hostile behavior appeared to emerge from internal pressures.\textsuperscript{101}

Perhaps the most oft-cited example of population pressure as a causal factor in international conflict is the El Salvador-Honduras War of 1969. Both countries had very high population-growth rates, but El Salvador, with only one fifth the land of Honduras,


\textsuperscript{99} United Nations, supra note 98, at 15, para. 46(a).

\textsuperscript{100} For a detailed discussion of the human rights issues raised by controls on internal migration, see Partan, Human Rights Aspects of Population Programs, in World Population and Development, supra note 88, at 486, 520-31.

\textsuperscript{101} N. Choucri, supra note 96, at 203.
had one and one half as many people. Because of the tremendous pressure of population on scarce resources in El Salvador, approximately 300,000 Salvadorens had migrated to Honduras. The expulsion of some of these migrants from Honduras after rioting at a World Soccer Cup match between the two countries helped to precipitate the armed conflict.\textsuperscript{102} The key factor in the El Salvador-Honduras example—large-scale international migration caused by a population growing too fast for domestic resources to keep pace with basic needs—will become increasingly significant in the 1980's. It has been reported that

\begin{quote}
[i]nternational migration will certainly increase in numbers in the 1980s. The bulk of this migration will be from the developing countries to the developed countries. In fact, legal migration from Africa, Asia and Latin America to Australia, Canada and the United States doubled during the 1960s and will probably double again by the 1980s. Western Hemisphere immigration, legal and illegal, into the United States from Mexico and the Caribbean will surely increase. Even now Mexico's annual population increase of 2 million (over a population base of 60 million) exceeds the U.S.A.'s increase of 1.7 million (over a population base of nearly 220 million). In fact, estimated illegal immigration into the United States of nearly 1 million annually, if accurate, almost equals the natural increase of present United States citizens . . . .

By the 1980s, international migration will be a major issue. It will seem to some nations as important politically as their own national boundaries and as important economically as the price of their major commodity exports.\textsuperscript{103}

International migration not only creates a specific class of people who are more at risk and need greater human rights protection,\textsuperscript{104} but also presents a more general threat to cooperation be-
\end{quote}

\textsuperscript{102} Id. at 148-60.
\textsuperscript{103} Piotrow, \textit{Population Policies for the 1980s: Meeting the Crest of the Demographic Wave}, in \textit{COUNCIL ON FOREIGN RELATIONS}, \textit{supra} note 89, at 81, 147.
\textsuperscript{104} There are three classes of migrants who are at special risk. First, migrant workers who, while nominally protected by legal guarantees and international agreements, may nevertheless find their rights sacrificed to the economic interests of the countries of employment and of origin:

In Europe, the problem arises largely, though not exclusively, from the recruitment of migrant labour to run the industrial undertakings. They are to make up for the shortages in labour in Europe or for the refusal of its indigenous population to do certain unpleasant tasks. The surplus available in the poorer developing countries is regarded as a “reserve labour force,” to be
between developed and developing states in protecting human rights. The seeds of conflict are planted in the differing attitudes toward this movement of people. For governments of developing states, the free flow of emigrants may represent a safety valve for population pressures. Migrant workers may also provide needed foreign exchange. Developing states can argue that the developed states’ "obligation" to help create a more equitable international order should be met by taking people in as well as giving out aid.

For governments of developed states, the flow of immigrants represents an unfair imposition brought about by the developing countries’ failure to deal responsibly with their own population problems. People in developed states may view such immigration with hostility. For instance, "some scholars see in this country [U.S.] a kind of neo-nativism that perceives present-day immigrants as contaminating society. That attitude is said to be especially strong now, at a time of doubts and fears over inflation, limited resources and the country’s ability to provide for its own."

used or disregarded as necessary. It is viewed almost entirely in terms of the dynamics of the European capitalist industrial economy. The countries of origin of migrant labour do not often show any greater interest in the migrant. Migrant labour is seen as an export whose remittances provide foreign exchange and whose absence from the State ease the pressure from Governments unable to cope with problems of neo-colonialism, corruption and inefficiency. It is, therefore, doubtful if there is any State or institution which is truly concerned about the plight of the migrant in Europe. The fragility of convention and legal guarantees before the forces of the market is a basic factor to be taken into account.


Second, illegal immigrants who are subject both to legal discrimination and extralegal exploitation.

In the United States, for example, the State of Texas does not provide free public school tuition for the education of illegal alien children. Tex. Educ. Code Ann. tit. 2, § 21.031 (Vernon) (Supp. 1979). In practice the state law deprives the children of the basic right to education, since the tuition required is beyond the means of most illegal alien parents. The statute has recently been struck down on equal protection grounds. Doe v. Plyler, 458 F. Supp. 569 (E.D. Tex. 1978). See also Blum, Illegal Aliens in New York: A Life of Fear, Costly to All, N.Y. Times, March 18, 1979, at 1, col. 2.

Third, Political and economic refugees who can find no refuge.

Haupt, World’s Refugees Finding No Refuge, 7 Intercom 1 (June-July 1979).

CHARTERISTS AND SKEPTICS

The validity of the views held on both sides is certainly open to question. It can be argued that emigration is bad for developing countries and that immigration is good for the developed. Nevertheless, it is clear that the migration problem is already a source of strain between some developing and developed countries, and that during the 1980's the strain will become more severe. For international migration policies will be under the same pressure as fertility and trade policies in the 1970's to move out to the strict context of national sovereignty and to take account of economic and social pressures. In other words, immigration and emigration policies will not long continue to escape the cry for social justice or a new international order. Yet at the same time the economic capacity of the developed world to produce jobs and the political capacity of any nation to absorb large ethnically different, and highly nationalistic populations will decline.

Migration problems will complicate and possibly subvert attempts to achieve further international cooperation in meeting basic needs and protecting political and civil rights. If, for example, at the onset of a recession, developed nations immediately begin laying off and expelling Third World migrant workers, they may cause economic chaos in the Third World countries and jeopardize human-needs programs. Additionally, when developed nations do

106. There are disadvantages to the country of origin. Because international migrants are usually more skilled or more enterprising than those who remain behind, they leave a gap, especially in fields such as science, medicine, and engineering. The developing countries are loath to lose these professionals and try to restrict their departures, but so far they have proved sufficiently clever and persistent to evade restrictions from their own countries. Even other types of immigrants, for example, guest workers who come from southern to northern Europe on a temporary basis or Pakistanis and Egyptians who find jobs in the Middle East, are semiskilled technicians who are able to adapt to new jobs quickly. Basically, they represent the cream of the labor force in their native countries. Is their departure really a boon to their homelands? Do the cash remittances they send home really compensate for the initial costs of raising and educating them and the later loss of their personal initiative and enterprise? Does their departure speed the fall of birthrates and encourage the remaining families, communities, and even nations to hasten the development process?


107. Especially between the United States and Mexico. Shabecoff, supra note 106.

108. Piotrow, supra note 103, at 149.
not treat illegal aliens with a minimum degree of dignity, it undermines their argument to the developing states that human rights must be protected.

Finally, as population problems worsen, governments in developing countries may increasingly adopt more coercive population-control policies. In the 1960's and early 1970's the struggle for human rights and the drive for population control appeared to be largely complementary efforts. In an era when many governments still had pro-natalist legislation and policies, both human rights and zero-population-growth advocates could agree that parents should have the "right" to limit the number of their children. Both groups could advocate for the removal of restrictions on family-planning information and technology. Both could demand that governments actually provide the means for parents to engage in family planning. Nevertheless, there was some recognition that governments might go even further in an anti-natalist direction and that coercive measures by governments trying to limit reproduction might create a serious human rights dilemma. This dilemma was addressed by Luke T. Lee, commenting on the language in the 1968 Teheran Proclamation on Human Rights that "[p]arents have a basic human right to determine freely and responsibly the number and spacing of their children."

The question may be raised as to whether the language of the Teheran Proclamation would allow couples to have as many children as they want. The Proclamation specifically provides that family planning must be made not only "freely," but also "responsibly." Involved in a responsible parenthood is the balancing of the "individual" with the "collective" right just as the "individual" right to freedom of speech must take into account the "collective" right whether in time of peace (e.g., libel, defamation, nuisance, obscenity) or during war or emergency (e.g., treason, sedition, censorship), so must the "individual" right of family planning be harmonized with the "collective" right under certain circumstances as, for example, where the resources, both actual and potential, of a country dictate the limitation of the size of its population in the interest of all. The question of when


exactly does the "individual" right give way to the "collective" right is always difficult to answer . . . ." 111

The 1974 United Nations Symposium on Population and Human Rights was deeply divided on the issue of whether and to what extent governments are entitled to use coercive measures on behalf of this "collective" right:

Throughout the course of the Symposium there was concern among some participants about the possibilities and dangers of States using coercion. Most participants considered that coercive policies were unjustified and would amount to a serious denial of important human rights . . . . Other participants argued that it was impossible to take a categorical position on that matter. There was first the problem of defining coercion. Some forms of action, like compulsory sterilization, might well be regarded as unjustifiable coercion, but it might be otherwise with fiscal and other measures which penalized parents of large families. 112

Wherever the line may be drawn between the "individual" right to reproduce and the "collective" right to an adequate environment, human rights will be at special risk as governments adopt more coercive population policies in the 1980's. Coercive measures are all too likely to be applied in arbitrary or discriminatory ways. 113 For "[e]ven if compulsory sterilization were acceptable on a theoretical basis, administration of such a policy would present . . . serious problems. [I]t is difficult to imagine a birth quota policy that could be developed without the introduction of some discriminatory rule against underprivileged groups." 114 The problem of unfair discrimination is not limited to compulsory sterilization. It is also endemic to the use of "incentives" to reward small families and "disincentives" to penalize large ones. An argument can certainly be made that it is fair to penalize parents who irresponsibly produce too many children. But, far too often, disincentives, such as denying educational benefits to the fourth and

113. For a discussion of the arbitrary implementation of sterilizations in India, see Nanda, India's Compulsory Sterilization Laws: The Human Right of Family Planning, 8 CAL. W. INT'L L.J. 342 (1978).
subsequent children, will result in unfairly punishing children for the sins of their parents.\textsuperscript{115}

The population increase in the 1980’s, therefore, poses multiple threats to the protection of human rights. Some of these threats might be mitigated by rapid economic development. The economic prognosis for the 1980’s, however, suggests that declining rates of economic growth may intensify, rather than ameliorate, these problems.

In the 1970’s, the direct and indirect impact of massive oil-price increases sabotaged the economic-development plans of many non-oil-exporting developing countries.\textsuperscript{116} Scarce resources had to be diverted into paying the higher cost of fuels and fertilizers. At the same time, higher oil prices helped to fuel inflation and recession in the developed nations, limiting their trade with and assistance to the developing nations.\textsuperscript{117} The United Nations forecasts little improvement for the first half of the 1980’s.\textsuperscript{118} High oil prices (slow growth in the developed countries lowering their demand for goods from the developing countries), continued inflation, and lack

\textsuperscript{115} The prime example of using disincentives is Singapore. In August 1973, the following disincentives went into effect: Higher delivery fees; limitation of paid maternity leave to cover two children only; reduction of income tax relief to cover three children only; lower priority for choice of primary school admission for children of fourth birth order and above; and elimination of priority for large families in the allocation of subsidized housing. Këe & Loh, \textit{Singapore, 5 Studies in Family Planning} 145 (1974). For a discussion of the ethical issues involved in the use of incentives, see Veatch, \textit{Governmental Population Incentives: Ethical Issues at Stake}, 8 \textit{Studies in Family Planning} 100 (1977).

\textsuperscript{116} Miller, \textit{In Poor Lands, Oil Price Increases Shock Economies and Erode Hopes}, N.Y. Times, July 4, 1979, at 1, col. 4.


\textsuperscript{118} [P]rospects for economic growth in the world economy in the immediate years ahead are generally expected to be somewhat gloomy. 1980 is a year of economic deceleration for the world economy as a whole . . . .

Growth prospects for the developing market economies in 1980-82, are expected to differ significantly in the oil-exporting and the oil-importing groups . . . .

The immediate prospects for the oil-importing developing countries are not encouraging. A number of adverse factors will be working against them: the expected slow growth in the developed market economies will put a brake on their volume of imports and, together with protectionist tendencies, will limit exports of the developing countries; high rates of inflation will lead to a continuous increase in world prices of manufactured goods . . . and services required to support their growth. Added to these adverse features are uncertainties about the future volume of capital inflows and concessional aid from the industrial countries.

\textit{Id.}
of sufficient aid and investment will cause economic distress to many developing countries. Other forecasts for the decade predict major jumps in oil prices, further debilitating the non-oil-exporting developing nations.119

Another malady, environmental decay, may complicate these economic ills. The recently released Global 2000 Report to the President insists that environmental decay is already a major problem in some developing countries:

Examples of serious deterioration of the earth's most basic resources can already be found today in scattered places in all nations, including the industrialized countries and the better endowed LDCs . . . But problems related to the decline of the earth's carrying capacity are most immediate, severe, and tragic in those regions of the earth containing the poorest LDCs.

Sub-Saharan Africa faces the problem of exhaustion of its resource base in an acute form. Many causes and effects have come together there to produce excessive demands on the environment, leading to expansion of the desert. Overgrazing, fuelwood gathering, and destructive cropping practices are the principal immediate causes of a series of transitions from open woodland, to scrub, to fragile semiarid range, to worthless weeds and bare earth. Matters are made worse when people are forced by scarcity of fuelwood to burn animal dung and crop wastes. The soil, deprived of organic matter, loses fertility and the ability to hold water—and the desert expands. In Bangladesh, Pakistan, and large parts of India, efforts by growing numbers of people to meet their basic needs are damaging the very cropland, pasture, forests, and water supplies on which they must depend for a livelihood. To restore the lands and soils would require decades—if not centuries—after the existing pressures on the land have diminished. But the pressures are growing, not diminishing.120

These are ominous tidings for those concerned with human rights—whether the particular focus is on a healthful and decent environment as a basic human right,121 on the basic-needs aspect of human rights, or on traditional political and civil rights.

Progress in protecting political and civil rights also depends

120. 1 COUNCIL ON ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF STATE, supra note 89, at 41 (emphasis in original).
upon government stability. In countries where there are frequent extraconstitutional turnovers in government, ongoing civil wars, or extensive terrorist activities, existing rights will be at risk and there will be scant hope for extending human rights protection. The current world community contains many such unstable governments. In 1979 alone, there were at least a dozen attempts to overthrow government leaders, and almost as many instances of civil war and of countries plagued by terrorist activities.

The outlook for government stability in the 1980's is bleak. The problems outlined above—increasing population, declining economies, and decaying environments—are likely to further undermine government stability. While these problems may have their greatest political impact in the developing world, they may affect some of the poorer developed countries as well. Studies focusing on particular regions of the world, such as Africa, reinforce this gloomy forecast:

Africa's postcolonial conditions of political instability will, if anything, be greater in the 1980s than in the two previous decades. The struggles to achieve internal equilibrium within the continent's multiethnic evolving nation-states and to construct a continental security system are likely to elude early solutions.

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122. The list of coups includes: Afghanistan (successful); Argentina (attempted coup); Bolivia (coup which initially succeeded, but collapsed after two weeks); Central African Republic (successful); Chad (attempted coup); Dominican Republic (alleged attempted coup); El Salvador (successful coup); Equatorial Guinea (successful coup); Ghana (unsuccessful coup followed by successful coup); Granada (successful coup); Iraq (alleged attempted coup); Republic of Korea (President assassinated); Sao Tome (alleged attempted coup); Uganda (through outside military action).

The lists for notes 122-124 were derived from the survey of political developments in individual countries provided in POLITICAL HANDBOOK OF THE WORLD: 1980 (A. Banks & W. Overstreet eds. 1980). The reader should note that ours are rough categorizations. Arguably, some situations might fit in different categories, e.g., Northern Ireland in the list of countries with civil wars rather than those with terrorist activity.

123. The list of civil wars includes: Chad, Iran, Kampuchea (with Vietnamese involvement), Lebanon, Mauretania (involving Western Sahara), Namibia, Nicaragua, and Zimbabwe.

124. Countries with extensive terrorist activity include: Chile, Columbia, El Salvador, Guatemala, Israel, Italy, Nepal, Saudi Arabia (seizure of the Mosque), Spain (Basque), and the United Kingdom (Northern Ireland).

125. For discussion of the "catalytic effect" of economic decline on military coups, see Zimmerman, Toward a Causal Model of Military Coups d'Etat, 1979 ARMED FORCES & SOC'Y 387, 396. For a review of the literature on this point, see text accompanying notes 54-58 supra.

and will in all probability produce recurrent breakdowns within the 50-odd countries involved as well as precipitate damaging conflicts between states . . . . At the same time, the deepening economic crises facing most African countries will contribute to continental and governmental instability . . . .

The strains of growing populations, declining economies, and decaying environments are not only likely to lead to more unstable governments, but to more repressive ones as well. Furthermore, these more repressive governments may be less willing to participate in new international cooperative efforts to deal with the underlying population, economic, and environmental problems. As Professor Falk has written:

The argument . . . is that the quality of the governance structure, as it pertains to the way in which a government maintains order and promotes justice within its boundaries, influences the manner in which it acts in external relations to the world. In particular, the substitution of highly coercive rules for consensual rule tends to inhibit the impact of those social forces that would move with the tides of history to build some sort of global community policy that would alone give promise that our future will not be beset by catastrophe on an unprecedented scale. For this reason, the global trend, manifest on the state level in all sectors of world society toward authoritarian rule is at once significant and discouraging.


128. When resources are scarce, when there are too many mouths to feed, when governments feel impelled . . . to pursue programs of great austerity, then opposition grows . . . . Regimes that . . . feel hard pressed lash out to assure adherence to rules or to stifle dissent. In turn, repressive actions often generate more opposition from opponents, now even more determined, who may counter official repression with terror. And terror, in its turn, gives rise to more widespread and indiscriminate official repression.

Ullman, supra note 95, at 2.

129. R. FALK, A WORLD ORDER PERSPECTIVE ON AUTHORITARIAN TENDENCIES 3-4 (1980). Falk remains undiscouraged. “Despite this bleak outlook, there are constructive responses available to those who believe in system-change guided by WOMP [World Order Models Project] values. The overall goal is to establish patterns of humane governance at all levels of social organization (from family to planet).” Id. at 57. Watson would undoubtedly charge Falk with “unsubstantiated optimism.” See text accompanying note 10 supra.
Given the environmental, economic, and political trends described above, one is forced to be a "skeptic"—to doubt whether the 1980's will be a time for any significant improvement in human rights protection.\textsuperscript{130}

CONCLUSION

In my critique of Watson and Lane, I have suggested that Watson is too pessimistic about the current status of human rights protection, Lane is too optimistic about prospects for improving the current situation, and both are somewhat shortsighted in overlooking the importance of basic social and economic rights. To my mind, the most significant difference between Lane and Watson is in their recommendations. Lane wants us to sally forth on a crusade to change the current system; Watson wants us to stay home and leave bad enough alone.

Watson has a point when he reminds us that there is no guarantee that a new centralized authority would be free from many of the current state system's ills. Moreover, as I have suggested above, a centralized authority empowered to provide for the basic needs of the world's poor would require a substantial economic sacrifice on the part of those of us who are living in the United States and other developed countries.\textsuperscript{131}

Nevertheless, I do not find Watson's argument convincing. If, in fact, the current system is as bad as he claims, could a new centralized authority be much worse? A more positive argument for

\textsuperscript{130} It is worth noting that most of the contributors to the Council on Foreign Relation's volume on human rights in the 1980's Enhancing Global Human Rights, while pressing for major reforms, are also skeptical about how much progress is possible in the decade ahead.

For example, Nigel Rodley makes the following forecast:

\begin{quote}
I do not have the wisdom to predict how socioeconomic conditions will evolve in the developing countries. My personal suspicion is that little effective change will take place without left-wing revolutions; that such revolutions be waged by forces that have little time for the concept of human rights, with the support of powers that demonstrate little respect for human rights in their own spheres; that the forces of economic and social repression they seek to overthrow will be supported by those who claim to be concerned with human rights and indeed who largely protect them for their own populations; and that successful revolutionary movements, for a long time to come, will not be required by their populations to demonstrate compliance with standards and norms inspired by the societies that contributed to their own previous repression. If this is so, the outlook for human rights is gloomy . . . .
\end{quote}

\textsuperscript{131} See text accompanying note 85 supra.

\textsuperscript{63} supra note 63, at 128-29.
change is that a centralized authority would be more immune from the local passions and prejudices that often lead to human rights violations. This proposition is supported by the English experience with the European Convention on Human Rights. Before the United Kingdom became a party to the Convention, and again before it accepted the right of individual petition, there were many who claimed that individual rights were protected perfectly well by domestic English law. Some in England maintained that ceding the power of review to a foreign authority might well be harmful to these rights. Subsequently, the British Government's treatment of East-African Asian immigrants and alleged I.R.A. terrorists made it clear that even democratic governments can violate individual rights when dealing with unpopular groups in times of stress, and that review by an impartial, outside authority is necessary.

Therefore, I support Lane's call for the reduction of sovereign power and the grant of plenary jurisdiction to a transnational body. I do so not only because the current state-centered system cannot fully protect human rights, but because it cannot effec-

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132. Mr. Bevin:
We have not at this stage undertaken to sign the optional clause. We think that in this country, with our obligations not only at home but overseas, our procedure for appeals stand very high and we are not prepared, without further thought, to hand over these appeal rights to another body. I believe that if we proceeded to do so that there would be a very keen debate in this House by hon. Members of the legal profession. Therefore, we have not agreed to sign that clause, and that is where we stand at the moment.

170 PARL. DEB. H.C. (5th ser.) 1503 (1950).

Sir H. Williams asked the Attorney General what legislation will be signed, in view of the fact that His Majesty's Government has signed the Charter of Human Rights.

The Attorney General: It is not contemplated that any legislation will be necessary in order to give effect to the terms of the Convention.

Sir H. Williams: Are we to understand that the Charter has made really no difference as far as this country is concerned?

The Attorney General: I think that we are entitled to say that the law of this country has always been in advance of the laws of most other countries in regard to human rights.


135. See text accompanying note 7 supra.
tively meet the other global problems of our time. Moreover, as I have shown in the last two sections of this Article, significant progress in human rights protection cannot occur by itself. It is inextricably intertwined with and dependent upon improved responses to the basic social, economic, and ecological problems that confront us.