Human Rights in Africa: The Limited Promise of Liberalism

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Introduction

I would like to begin by expressing my deep gratitude and humility to the board of directors of the African Studies Association for inviting me to deliver the 2007 Bashorun M. K. O. Abiola Lecture on the momentous occasion of the fiftieth anniversary of the ASA. This singular honor makes me conscious that I follow in the hallowed footsteps of several giants of African politics and studies including Ali A. Mazrui, Gertrude Mongella, and Thandika Mkandawire, among other distinguished thinkers who preceded me on this podium.[1] As most of you know, I am trained as a legal scholar, but my work has benefited tremendously from the support of several senior students of Africa in the audience, including Joel D. Barkan, John W. Harbeson, Frank Holmquist, and Ali A. Mazrui. Nor would I forget to thank Athena Mutua, my spouse, who is here with me. But I know that this meeting would not have been possible without the indefatigable work of Pearl Robinson, the president of the ASA; Carol L. Martin, the executive director of the ASA; Kimme Carlos, the program manager of the annual meeting; and Stanlie James, the program chair.

This is a special occasion for all those who study and love Africa. The ASA is fifty, which is a historic milestone by any count. Ghana, one of the first African countries to free itself from the yoke of colonialism, is also fifty. We thus take stock of the continent after the first half century of decoloni-

zation with an appropriate theme—"Twenty-First Century Africa: Evolving Conceptions of Human Rights." Because of this theme, I have chosen as my topic "Human Rights in Africa: The Limited Promise of Liberalism." I have done so for two reasons: first, to provoke, because that is partly our job description as thinkers, and second, to reflect the ferment of human rights in the context of postcolonialism. You will agree with me that fifty years is a sufficient time to gauge the utility of any ideology, creed, or doctrine. Human rights contain within them all three of these phenomena.

The last fifty years represent the entire period of the African postcolonial state, and give us a fantastic window through which to interrogate the performance of the human rights project in Africa. But first, I want to lay aside some misconceptions about the human rights corpus and the movement. At the outset, though, I want to level with you about the subject of intellectual bias or normative location. Even though objectivity is the name of our game, we are nevertheless products of the legacies and heritages that have forged our identity and philosophical outlooks. In that sense, true objectivity is an academic fiction, for no one could be truly objective. In any case, if we were truly objective, we would be truly boring. And so, I want to plead my biases at the outset. But I also want to warn you that with respect to the subject at hand—that of the utility of human rights and liberalism in Africa—I adopt the view of an insider-outsider, an engaged skeptic who completely believes in human dignity but is not sure about the typology of political society that ought to be constructed to get us there (see Mutua 2000).

Third World scholars like myself come to the study of human rights with a considerable degree of discomfort and an in-built sense of alienation. Neither human rights, nor liberalism, has been germinated in the African garden. To be sure, my native ears are not deaf to many of the substantive issues addressed by both disciplines. I have a keen interest in the relationships between states and citizens. My alienation comes not from these facts, but from the particularized historical, cultural, and intellectual traditions and tongues in which both human rights and liberalism law are steeped. It is in that sense that I am an outsider. Though an outsider to human rights and liberalism, I am in a very real sense an insider to both. I am part of the international elite that benefits personally from the norms and structures of international liberalism. My reality is not that of marginal and downtrodden citizens in Latin America, Africa, Asia, or for that matter, North America. I do not strain under the daily avalanche of the cruelties of globalization, state repression, and abuse.

But I am also an outsider because of that other consciousness which I carry, the consciousness of the historical, political, and cultural realities of the Africa that I am a part of, indeed of the Third Word to which I belong, as distinct from the West. In human rights, I see a system of ordering the world, of understanding the world, a system and normative edifice that makes me accurately aware of my subordinate and marginal place in it,

as the "other." This is not to say that I completely reject the human rights project or dismiss its redemptive impulses and purposes. It is rather to say that human rights are not for me a final, inflexible truth, or a glimpse of eternity, so to speak. That is to say that I do not see the human rights project as some kind of a sacred gospel with armies of missionaries poised to save savage cultures from themselves so that they can stop churning out victims (see Mutua 2001). Human rights do not have a holy writ, nor could they, because like all rights regimes, they are just a genre of socially constructed tenets that have come to define modern civilization. Nor should human rights be, as its most dominant proponents have constructed them, a part of the colonial project that forms the unbroken chain of the Christian missionary, the early merchant of capital, and the colonial administrator. I guess these observations mean that I am not a true liberal, a label that I do not want to wear anyway.

But nor do I agree with those who say that the human rights project "is so over" that we must abandon it altogether. That is the view of a small number of postmodern, postcolonial thinkers who believe that nothing is really knowable or doable in a very complex world. There is a strain in some of these thinkers that objects to any reconstructionist project as a reintroduction somehow of oppressive values, structures, or institutions. For me, such a view is an abdication by some of us who are comfortable in our personal and professional lives and who seek to paralyze ourselves intellectually so that we can have a rational excuse for doing nothing. This is ultimately cowardly, opportunistic, or even anarchistic. I believe that Africans and Africanists ought to reject such nihilism.

But I want to suggest also that human rights are imprisoned in universality, one of the central proclivities of liberalism. This fact alone should give us pause about human rights because we ought to approach all claims of universality with caution and trepidation. I say this because visions of universality and predestination have often been intertwined throughout modern history. And that intersection of universality and predestination has not always been a happy one: with an alarming frequency, liberalism's key tenets have been deployed to advance narrow, sectarian, hateful, and exclusionary practices and ideas. So, at the purely theoretical level, we are chastised to look not once—but twice, and again—at universalizing creeds, ideas, and phenomena. This is not to suggest that universality is always wrongheaded, or even devious, although it has frequently been those things as well—but it is rather to assume that the universality of social phenomena is not a natural occurrence. Universality is always constructed by an interest for a specific purpose, with a specific intent, and with a projected substantive outcome in mind.

This critical view has special implications for Africa because it questions both the fit and utility of liberalism and human rights for the continent. If we agree that all social truths are initially local—even truths about the so-called natural attributes of human beings or the purposes of political

society—what does that say about the assumptions of liberalism in Africa? If social truths are contextual, cultural, historical, and time-bound, how can one find the relevance of the human rights project in Africa? This is not to say that local truths cannot be transformed into universal truths. They can, but the question for students of Africa is how one gets from here to there—in other words, what are the limitations of liberalism in general, and human rights in particular, as transnational projects? How do we turn local claims into universal human rights claims? If it is desirable to put liberalism in the service of Africa, how does one do so?

Liberalism, Democracy, and Human Rights

Political democracy—no matter its iteration—is the most critical realization of the liberal tradition. Perhaps there is no better foundational articulation of liberalism and politics than John Locke's seminal works (1988 [1689]). Formal autonomy and abstract equality, its twin pillars, underlie the notion of the bare republican state, popular sovereignty, and ultimately a limited constitutional government (see Steiner & Alston 2008). Even though Locke thinks of the individual as living in society, he nevertheless is the center of the moral universe (see Strauss 1999:248). This emphasis on the individual as an atomized artifact frames the development of political society in the West, and forges a normative project that produces the human rights corpus. As I have argued elsewhere (1996:601), in the "historical continuum, therefore, liberalism gave birth to democracy, which, in turn, now seeks to present itself internationally as the ideology of human rights." It is granted that the theory and practice of political democracy are not static, nor can they be. Even so, both rise on several fundamental principles and assumptions. First, the individual, for whom the system ostensibly exists, is abstractly endowed with certain formal inviolable—sometimes called unalienable—rights. These are historically constructed from culture, religion, tradition, citizenship, and economic modes of production. There is nothing *natural* about such rights. However, such rights are normatively presented as the quintessence of human dignity, another elusive terminology that is loaded with cultural and political bias. Second, political society must be constructed in such a way that it protects and nurtures this vision of the ideal individual.

   Political democracy is the moral expression of human rights. Political democracy, as understood today, describes a normative typology of government that is characterized by certain procedural attributes. Even though it is a regime of institutions, political democracy is not consequentialist in substantive terms. Rather, some of its well-known theorists and proponents have defined it in purely procedural language (see Dahl 1956; Schumpeter 1984 [1942]). Democracy is at some level a *method* that yields a particular *system.* As Samuel Huntington puts it, the democratic method has two key dimensions: contestation and participation. It is through these dimensions

that the "most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote (1991:7). This definition does not problematize democracy and its proclivity for machine politics and the vested class interests that encumber the state through the media and other institutions of social control. But that is largely the point—democracy is mostly about process that on its face looks fair and ostensibly permits popular participation. What happens underneath the process, or its outcome, is not the major concern of democracy.

What is important is that contestation and participation—as critical pillars of the system—imply the existence of a number of vitally significant rights. These rights, which are referred to as *democratic* rights, are necessary for free and fair elections. Among others, these freedoms include the rights to speak, assemble, organize, and publish. But these rights only make a polity a democracy provided universal suffrage is granted, real political opposition is permitted, and the elections are free and fair. According to Huntington, therefore, "Elections, open, free, and fair, are the essence of democracy, the inescapable sine qua non" (1991:9). This means that the elected leaders will be responsible for addressing—or not—the most pressing issues once they assume office. It is not difficult to see why this limited vision of democracy is problematic. What if the elected leaders—or the political class—are not concerned about certain forms of powerlessness or assaults on human dignity? Is the populace then doomed? This minimalist definition of democracy hearkens to liberalism's cardinal commitments— formal autonomy and juridical equality. Henry Steiner (1998:109) has captured this commitment well:

> Under the traditional understandings of liberal democratic theory, the correlative duties of government do not obligate it to create the institutional frameworks for political debate and action, or to assure all groups of equal ability to propagate their views. Rather, those traditional understandings require governments to protect citizens in their political organization and activities: forming political parties, mobilizing interest groups, soliciting campaign funds, petitioning and demonstrating, campaigning for votes, establishing associations to monitor local government, lobbying.

Thus traditional understandings of liberalism or political democracy are not concerned about the asymmetries of power among citizens, or the ability of entrenched interests to maintain social control over politics. This *marketplace* approach to political democracy keeps impediments to actual equality and constrains the autonomous individual. Again, Steiner (1998:109–10) has identified this question:

> Government makes many paths possible, but it is for citizens to open and pursue them. Choices about types and degrees of participation may de-

pend on citizens' economic resources and social status. But it is not the government's responsibility to alleviate that dependence, to open paths to political participation which lack of funds or education or status would otherwise block.

Steiner suggests, and I agree with him, that the basic human rights conventions and treaties provide for a regime of political participation that is virtually identical to political democracy (1988:85–94). There is little doubt that the drafting of these documents drew from a century of Western liberal pluralist doctrine and practice. Human rights texts provide elsewhere for other civil and political rights—such as due process protections, independence of the judiciary, and equality and nondiscrimination norms that are essential for a political democracy. Today, the spread of the liberal constitution—and constitutionalism—is deeply rooted in the human rights corpus and its discourse. Constitutionalism defines the genus of government that is envisioned by the human rights corpus. Its pillars are popular sovereignty, an idea based on the will of the people as the basis of government; genuine periodic elections in a multiparty system; checks and balances with an independent judiciary; and the guarantee of individual rights. The bills of rights in many post-1945 constitutions are central to the spread of this genus of government. William P. Alford (2000) has correctly written that after the end of the Cold War, the United States embarked on a campaign to export political democracy, even if it was done on a selective basis. European political democracies followed suit. In this civilizing orgy, human rights were often employed interchangeably with political democracy.

Ideology and Human Rights

Perhaps no other moral idea has exerted more influence over the internal character of the state than human rights in the last sixty years. As put by Louis Henkin, "Ours is the age of rights." To emphasize the point Henkin states, without qualification, that "Human rights is the idea of our time, the only political-moral idea that has received universal acceptance" (1990:ix). Such categorical statements from one of the most respected voices in the academy must be taken seriously. There is no doubt that the idea of human rights has proven seductive to many societies and traditions in the last half century, although Henkin's unequivocal statements appear to be aimed at critics of universalism. But whether cultures across the globe have given the idea what Henkin calls "universal acceptance" is a different matter. Distinction must be made between the ratification of human rights treaties by states and the internalization of the norms of the human rights corpus by the cultures on which those states stand. Even if one were to concede the point, the tension does not resolve the question about the politics of human rights.

It is my contention that the birth of the modern human rights movement during the Cold War irrevocably distorted the true identity and raison

d'être of the human rights corpus. It is certainly true that human rights scholars and activists have been reluctant to ask uncomfortable questions about the philosophy and political purposes of the human rights movement. Such questions are often taken as a mark of disloyalty to the movement, or an attempt to provide cover and comfort to those states that would violate its norms. Unfortunately, only a handful of critical thinkers have seriously engaged this debate. The result is a paucity of good critiques about one of the most powerful ideologies of modern times. At the very least, it is irresponsible for thinkers to avoid such conversations, precisely because human rights norms have become a blunt instrument in the hands of imperial states (see Anghie 2005). Of all the branches of international law, human rights scholarship appears to have suffered the most from zealous advocacy as opposed to critical analysis. In their role as thinkers, which ought to be largely compartmentalized and protected from proselytism, scholars have become unabashed advocates blurring the invisible line between thought and action.

The failure of critical analysis is not accidental. While not conspiratorial, it is historical, strategic, and the unavoidable result of the internal logic of the human rights corpus. The founders of the human rights movement—most principally the drafters of the Universal Declaration of Human Rights (UDHR)—could only have succeeded by presenting the human rights idea as universal, nonpartisan, acultural, ahistorical, and nonideological.[2] Mary Ann Glendon attempts to show that the founders struggled with this dilemma, but in the end she concludes that "the principles underlying the draft Declaration were present in many cultural and religious traditions, though not always expressed in terms of rights" (2001:73–78; also see Morsink 2000). Nevertheless, the fact that they decided to cast the text in the Western idiom of the rights language is a telling choice. Surprisingly, there was not an extended discussion about the political nature of the society that would be yielded by the UDHR. Nor are there any extended philosophical postulates or ideological justifications in the UDHR, or in any of the two principle human rights covenants.[3] These are glaring omissions, especially for the launch of a universal creed.

Although the reasons for the failure to explicitly identify the human rights corpus with a particular political ideology, typology of government, or economic philosophy are complicated, the silence does not mean that such identification is completely absent. A critical study of the corpus places it squarely in the liberal tradition and firmly in the genre of the state known as a political democracy. This is the floor below which human rights norms do not permit an observant state to fall. But within this iteration, where a bare political democracy is the minimum, a maximalist political society is a mature welfare state. In other words, a political democracy passes the human rights test for meeting the basic normative and institutional requirements for that typology of government. At their most rudimentary, these can be characterized by bare republicanism, as would be the case, for example, in

some of the new democracies of Eastern Europe. At its most sophisticated, political democracy is complemented by social democracy, or a "thick welfare state," as has been the case in most Scandinavian countries. In contrast, a political democracy could also be a "thin welfare state," such as the United States, in which marginalization is largely seen as an individual moral failing.[4] In any case, both the *thin* and *thick* welfare states exceed the minimum normative standard set by the human rights corpus.

My point is that no matter how biblical and humanist, the rhetoric of the human rights corpus is a project of political democracy. Whether wittingly—or unwittingly—the framers of human rights doctrine sought to vindicate values and norms that incubate political democracy. This should not be very surprising, given the identities of the conceptual framers of the UDHR. Virtually all were either drawn from, or steeped in, the liberal tradition (see Donnelly 1990:31; Leary 1990:15). Africa, for instance, was not represented at the drafting table. Even though Glendon (2003:27) has pointed to a significant contribution by Latin America to the UDHR, she is not referring to the input of native Latin American or non-European actors. In the late 1940s, when the UDHR was formulated, the Latin American officials at the table were decidedly Eurocentric. But even Antonio Cassese, one of the most influential Western scholars and practitioners of human rights, has flatly admitted that the West was able to "impose" its philosophy of human rights on the rest of the world because it formulated the post-1945 international order and dominated the United Nations (1992:31). It is true that later human rights texts, particularly after decolonization in the 1960s, were more participatory because of the entry into the United Nations of states from the global South. However, it would be a mistake to conflate inclusivity with a radical normative shift in the basic character of the human rights corpus. Subsequent texts built on the normative script of the founders.

It is very strange that the founding documents of the human rights movement studiously avoided—did not even mention once—the most important words and terms of the past several hundred years. They still don't. Is it not very curious that neither the UDHR, the ICCPR (International Covenant on Civil and Political Rights), nor the ICESCR (International Covenant on Economic, Social and Cultural Rights) uses the terms "capital," "market," "colonize," "imperial," "political democracy," "liberalism," or any of their derivatives? The exceptions are the oblique and dubious references to "democracy" in the UDHR and the ICCPR.[5] The UDHR appears to sanction political democracy as the presumptive choice of the human rights corpus, although it does not explicitly say so, or explain why. The reference to "democracy" in the ICCPR is similarly vague. There are possible explanations for these omissions, or the reluctance to identify the human rights movement with a particular normative tradition, philosophy, or ideology. Were any of these deficits deliberate or calculated? Whatever the case, the lack of extended theories and philosophical justifications for the human

rights corpus has left the doctrine vulnerable to attack. Importantly, it has mystified and obfuscated the normative and cultural gaps in the corpus.

That is why I contend that the human rights corpus is a moral project of political democracy, and that the failure of the framers to openly base the doctrine on this irrefutable premise has done more damage than good. First, it leaves human rights discourse as a project that orbits in space, not anchored in historical, cultural, and ideological choices. This abstraction is either debilitating, if you are critic, or empowering, if you are a true believer. As a critic, one starts from the disadvantage of disproving a negative. But as a believer, all one has to do is deny the negative. Second, the distortion of the true identity of the corpus masks its deficits, and makes it difficult to debate them in the open. It is an exercise that is akin to shadow boxing. The target is elusive, and the energy expended is not productively applied. Third, because of historical delinking of political democracy from human rights, a critique of the former is not necessarily the unveiling of the latter. Soon the problem becomes obvious. The human rights corpus has a mercurylike quality: elusive and slippery. This is not a fingerprint that augurs well for a truth-searching inquiry. Nor does it render the corpus to a reformist impulse. My argument is that identifying—*equating*—political democracy with human rights would provide us with a solid foundation for debating, articulating, and formulating an ideology that can better respond to powerlessness, human indignity, and the challenges of markets and globalization.

The human rights movement is presented by its scholars and advocates as above politics. Even though its basic texts assume a genre of political and social organization, the literature and discourse of human rights are divorced from self-interest, ideology, materialism, and partisanship. Instead, movement scholars and activists paint it as a universal creed driven by nobility and higher human intelligence. The idiom of human rights is tinged with metaphors and language that suggest eternity or a final resting point in human history. The basic human rights documents are not presented as either instrumentalist, utilitarian, experimental, or convenient. Rather, the authors speak as though such documents are the final truth. This elusive, yet lofty, idealism is almost biblical in its forbidding language. It implies that questioning its doctrine is perverse and unwelcome. The reality, however, is that human rights norms address mundane human problems and are routine politics. That is why the veneration of human rights, together with the attempt to clean the movement of partisanship, requires close and critical scrutiny.

To understand why its proponents are shy to assert the ideological and historical signatures of the human rights corpus, one need not look further than their cradle. Admittedly, many of the ideas in human rights find analogies in other cultures and traditions, but this *particular* human rights corpus has its specific identity. It is that identity that yields certain societal typologies. As David Kennedy has aptly noted, the "human rights movement is the

product of a particular moment and place." He then indicts the origins of the human rights movement as "post-enlightenment, rationalist, secular, Western, modern, capitalist" (2002:114). Kennedy talks about the ways in which these origins could be problematic for the movement—legitimacy in other cultures, the type of society that is created by the movement, and the social and other costs associated with this vision. Unlike most Western legal academics writing on human rights, Kennedy has no problem in identifying it with the politics of the modern, liberal, capitalist West, or political democracy. One can certainly conjecture as to why Kennedy is not invested in the general mystification of human rights that is the norm among Western writers and policymakers. The reason, as Kennedy himself suggests, is that he is not fully committed to the human rights project and he sees a movement in crisis: "The generation that built the human rights movement," he says, "focused its attention on the ways in which evil people in evil societies could be identified and restrained. More acute now is how good people, well-intentioned people in good societies, can go wrong, can entrench, support, the very things they have learned to denounce (2002:125).

Yet even in this article, much of which I agree with, Kennedy falls prey to the dichotomous matrix of the human rights movement in which the "good" secular West civilizes the "evil" or savage South, or "the other" (see Matua 2001). For what does he mean by "well-intentioned people in good societies?" Is that not the kind of language that excuses, legitimizes, and apoliticizes human rights without picking apart its political agenda? Ironically, though, I think this kind of language makes the point that the human rights movement *does* have a political agenda. After all, the "good society" is itself a normative project, and "well-intentioned people" are driven by the norms of the good society. What those norms are is what constitutes the political project of the human rights movement. Even so, Kennedy would probably object to the comments that Kenneth Roth, the executive director of Human Rights Watch, made in 1998 at conference organized by the Carr Center for Human Rights Policy at the JFK School at Harvard.[6] In response to my critique of human rights as a Eurocentric project, Roth likened human rights norms to antibiotics that must be administered to the sick, in this case the global South, even if they are unwilling to cooperate. For me, that was a revealing moment. Roth might as well have said explicitly that human rights were the antidote to political despotism, a regime of rules that would produce a secular, rights-based, modern political democracy. But he did not. The response by Roth betrays the deep-seated Eurocentrism of international law and its civilizing projects (see Gathii 1999).

But not all human rights activists refuse to own up to the political program of the movement. Ian Martin, a former head of Amnesty International, the one organization whose name is synonymous with human rights, called for the grounding of the movement in the "Universal Declaration of Human Rights and the two principal covenants on civil-political rights and social-economic-cultural rights." He was emphasizing the universality and

equal importance of both sets of rights, and arguing against a bias for the former over the latter. But he also warned that the human rights movement should not identify with the new Western rhetoric of "democracy, human rights, and the free market economy" (2002:114). But Martin's admonition appears to be tactical—if not strategic—although it is not based on principle or a sophisticated analysis of the relationship among human rights norms, democracy, and free markets. He seems to be saying that the movement should not be associated with the rhetoric of Western states. He is not saying that the rhetoric has no justification, philosophical foundation, or that it is wrong-headed. Rather, he is opposed to an *open* alliance between the human rights movement and the foreign policy objectives of the West. Nevertheless, he directly associates human rights norms with democracy:

> Of course the human rights movement works to guarantee democracy. Universal human rights principles subsume democracy. They provide, however, a more precise definition of rights than can be derived from the hazier notion of promoting democracy, which itself can lead to too great a tolerance of human rights violations of governments which have been popularly elected—whatever the conditions and larger context for the elections. (2002:21–22)

These assertions by Martin are unusual for a Western human rights crusader. They should be taken seriously, and then further interrogated. One might ask Martin to expand on what he thinks constitutes political democracy, and where he sees a divergence, if any, between democracy and human rights. To the extent that he sees democracy as the *subset* of human rights, can he envisage other political systems, apart from political democracy, that are acceptable to human rights norms? Henkin seems to suggest this as a possibility, although he does not elaborate. In an apparent contradiction, Henkin (1990:7) writes that human rights norms point to a particular political society, although not its form:

> The idea of rights reflected in the instruments, the particular rights recognized, and the consequent responsibilities for political societies, imply particular political ideas and moral principles. International human rights does not hint at any theory of social contract, but it is committed to popular sovereignty. "The will of the people shall be the basis of the authority of government" and is to "be expressed in periodic elections which shall be by universal and equal suffrage." It is not required that government based on the will of the people take any particular form.

It is not clear what Henkin is talking about when he uses the word *form* here. It appears that he is referring to different forms of political democracy such as presidential or parliamentary systems, or different electoral systems (proportional representation as against a first-past-the-post system).

These are types or iterations of the genre known as political democracy. As Steiner points out (1991:930–31), and I think Henkin would agree, open political dictatorships, sham democracies, inherited leaderships, monarchies, and one-party states would violate the associational rights central to human rights and political democracy. A more direct and honest conversation about the political purposes of human rights can be had once these admissions are openly made. This would allow us to debate the values of the human rights, its deficits, and ultimately the reformist project that must be undertaken to fully legitimize it. Whether that reformist project is really possible—as a pragmatic matter—is a different question.

What is important at this point in the history of the human rights movement is not whether its norms call for the installation of a political democracy. Movement scholars and activists should outwardly acknowledge this inherent conceptual and philosophical link so that attention can be focused on the meaning of that linkage. Are there, for example, some normative problems that are caused by this linkage? Do those problems deny the human rights movement—or political democracy—an opportunity to redeem their shortcomings? What are those shortcomings, and can they be tweaked, or is there a necessity for a radical transformation of the human rights regime? It will be difficult, if not impossible, to get at some of these pressing questions if full disclosures are not made by the guardians of the human rights movement.

Human Rights and the African Reality

Assuming these basic philosophical difficulties, how can human rights as conceived be of any help to the reconstruction and recovery of the African postcolonial state? Five decades after decolonization, the African state is still haunted by crises of geographic, political, and moral legitimacy. It is beset by the protracted reality of national incoherence and the ills of economic underdevelopment. At its dawn, the African postcolonial state was handed a virtually impossible task: Assimilate the norms of the liberal tradition overnight within the structures of the colonial state while at the same time building a nation from disparate groups in a hostile international political economy. Instead, the newly minted African postcolonial elites chose first to consolidate their own political power. We can blame them now, as I have, but we must also understand that the first instinct of the political class is to consolidate itself and concentrate power in its own hands.

In the Cold War context, this frequently meant stifling dissent, dismantling liberal constitutions, retreating to tribal loyalties or sycophantic cronies, and husbanding state resources for corruption or patronage purposes. In other words, any viable fabric of the postcolonial state started to crumble even before it was established. We know the rest—coups and countercoups, military regimes, and one-party dictatorships with the inevitable results of

economic decay; collapse of infrastructure; the fragmentation of political society; bilious retribalization; religious, sectarian, and communal conflicts and civil wars; and state collapse in a number of cases. The achievement of political independence from colonial rule turned into a false renaissance as one African country after another experienced transitional difficulties. While the African state retained some form of international legitimacy, its domestic writ was wafer thin. It was a miracle that many African states did not implode altogether, given the challenges to internal legitimacy. Whatever the case, the liberal tradition failed to take hold as human rights were violated across the board (see Zeleza & McConnaughay 2004).

However, the 1980s saw a resurgence of civil society and the reemergence of the political opposition. This started what has come to be loosely referred to as the Second Liberation. The entire continent was rocked by a wave of political liberalization not witnessed since the 1950s and 1960s. Virtually all states succumbed to some version of political reform. In all cases, the civil society and the political opposition sought a new social compact framed by the tenets of the liberal tradition. These were the rule of law, political democracy through multipartyism, checks on executive power, limitations on the arbitrary use of state power, judicial independence, directly elected and unencumbered legislatures, separation of powers, freedoms of the press, speech, assembly, and association—in a word, the whole gamut of civil and political rights or the full complement of so-called basic human rights.

It was as though Africans were asking to go back to the liberal constitutions imposed by the departing colonial powers. In some cases, new constitutional orders were established to respond to these demands. But a decade and a half after the frenzy to reintroduce the liberal tradition to the politics of Africa, we cannot count many blessings because the tumult of political liberalization has yielded very mixed results. Optimists see a steady progression, even though the reversals have been many and discouraging. Pessimists, or what one might even want to call realists, see an African state that is a stubborn predator, unable and unwilling to accept reform. For every one step forward, there seem to be several steps back. The near meltdown of Kenya in the aftermath of the December 2007 election is only one case in point.

Is the African state impervious to human rights and the liberal tradition, or is the problem much more serious? The fault is variously placed on a bankrupt elite or political class; structural impediments within the state (ethnicity, religious zealotry, underdevelopment, the failure to establish a legitimate political order, social cleavages); an unyielding international economic order. Whatever the case, the jury on the current process of political liberalization, which is taking place simultaneously with economic globalization, is still out. It is still too early to say for certain whether the African postcolonial state is out of the woods.

The Limitations of Human Rights

The human rights corpus is defined by a variety of pathologies—both of choice and substance—that are limited and limiting. Many of these pathologies arise not only from the internal logic of the corpus but also the tactical and strategic choices that its proponents have made over the past sixty years. One of these is the equation of the containment of state despotism with the attainment of human dignity. This "hands off" logic is an integral, if not the essential, signature of the corpus. Without going into a discussion about the critique of rights—indeterminacy, elasticity, and their double-edge signature—suffice it to note that the human rights project basically polices the space between the state and the individual, and not between individual citizens. As put by Karl Klare (1991:97), the dominant understanding of "the human rights project is to erect barriers between the individual and the state, so as to protect human autonomy and self-determination from being violated or crushed by governmental power." Yet there is nothing intrinsic about human beings that requires only their protection from the state and not the asymmetries of power among them.

This definition of the nature of human dignity, which draws heavily from liberalism and political democratic theory, has an atrophied understanding of the role of the state. Admittedly, the thick welfare state is an attempt to emphasize a more robust view of liberalism. In human rights doctrine, this fuller iteration of liberalism is ostensibly contained in the ICESCR. However, the flaccidity, impotency, and vagueness of the ICESCR are evidence of the bias of the corpus to the more limited vision (see Bentham 1995:41). As is the case with political democracy, the human rights regime appears to be more concerned with certain forms of human powerlessness than with others. This has certainly been the practice of human rights by the most influential human rights NGOs and institutions. In fact, there does not exist a major human rights NGO in the West that focuses on economic, social, and cultural rights. The problem is not simply one of orientation, but a fundamental philosophical commitment by movement scholars and activists to vindicate "core" political and civil rights over a normative articulation that would disrupt vested class interests and require a different relationship between the state and citizens and among citizens. It seems to have been convenient for human rights NGOs to shy away from questions of economic powerlessness during the Cold War because charities and Western governments frowned upon them. If so, it was a bias that was more than strategic—it was ideological.

One of the more interesting pathologies of the human rights texts is their avoidance or reluctance to employ a certain vocabulary to describe powerlessness. What is striking about the key human rights documents is their failure to use some of the most important terms of the modern era to describe and formulate societal responses. In terms of power or lack of it, and the consequent violations, there are no more important words

than "capitalism," "imperialism," "colonialism," and "apartheid." Yet the UDHR—the single most important human rights document—sanctions the right to private property (Article 147). How credible is a document that calls itself a "common standard of achievement for all peoples and nations" (Preamble) if it does not recognize that at its writing most of the global South was under European colonial rule and subject to the vilest economic exploitation by the merchants of capital? It is difficult to believe that such an omission was an oversight. At the time, there was an epochal contest between socialism and capitalism. This too appears to have been conveniently overlooked in the basic texts. Or was it? My submission is that there was a surreptitious recognition of secularism, capitalism, and political democracy through the guarantee of the rights that yield a society framed by those systems.

The failure to wrestle with the types of economic philosophies and systems that would best protect and nurture a fuller definition of human dignity has had a devastating effect on the human rights movement. From the start, the movement and its founders did not see themselves as charged with the responsibility to address economic powerlessness. Even though the UDHR addresses some economic, social, and cultural rights, it is clear that they are an afterthought and marginalized within the document. Only the last six articles are devoted to these rights. But even so, the rights are not scripted in a way that directly confronts powerlessness and exploitation. The rights relating to work and labor assume, for example, the fact and legitimacy of capitalism and free markets (see Articles 23–25). Working people are therefore expected to fight for their rights *within* those systems and structures. The same logic is the basis for the ICESCR, which presumably grants rights within a system of free enterprise that protects workers from the worst excesses of global capitalism. In this regard, the ICESCR should be understood as a normative project for a thick welfare state within a market economy. It is a document that seeks to mitigate the harshness of capitalism and give it a more human face.

This failure of imagination and acquiescence to a free market vision of political democracy has robbed the human rights corpus and the movement of the impetus to think beyond markets and systems of exploitation that produce ugly social structures. Fundamentally, the human rights corpus has no philosophy on money and whether, for example, the creation of a Bill Gates would itself be a violation of human rights norms. In political society, an absolute dictator would be impermissible under human rights norms and contemporary understandings of political democracy. Analogously, Bill Gates is the market equivalent of the political dictator, although that is not how he is understood in a political democracy or by the human rights corpus. In fact, Gates is a celebrated and venerated individual, the pinnacle of *success* in society. Yet the existence of his economic empire, which he holds personally, is a radical perversion of any egalitarian or equitable notions of human dignity. The multiplication of Gates by the number

of other obscenely rich individuals and corporate interests yields a graphic over-concentration of power in the hands of a tiny majority. It is very difficult, if not impossible, to articulate a plausible argument of how a system that permits such vast differences among citizens does not violate basic notions of human dignity. In an era of globalization, in which capital knows no borders and is virtually unaccountable, questions of economic justice and fairness should obsess the human rights corpus and the movement. It is not enough to decry, as human rights NGOs do, the worst excesses of globalization, or the most shocking practices such as sweatshops and cruel labor and slavelike conditions of work. The corpus must develop a defensible normative project to address economic and social arrangements and systems. Rather than treat the government simply as the regulator of markets—as is the case in a political democracy—human rights norms must do more.

Perhaps one way of addressing this pathology is to reassess the place and role of the individual in society relative to the greater public good of the community and the environment. One of the problems here is the elevation of the individual and his placement above society. This runaway notion of individualism, which is a central tenet of liberalism, has retarded the capacity of human rights thinkers to moderate selfishness with community interests. In other words, the individual should be placed within the society and constructed in such a way that he does not overwhelm his fellow beings or the society itself. There is nothing natural, inevitable, or frozen in time about how the individual ought to be constructed. Nor should a reconstruction of the individual necessarily wreak havoc with more defensible notions of popular sovereignty, individual autonomy, and political freedom. But this is an exercise that will require thinkers to look beyond Eurocentric lenses to build a more universal vision of the individual. The individual need not necessarily be placed at the center of the moral universe. Otherwise, the vices and abominations of globalization are bound to overcome the human race.

Finally, the human rights corpus and movement focus too much on process and rights at the expense of politics and substance. This distinction is both a product of the rights idiom in which the corpus is expressed and tactical and strategic choices by movement activists. The movement sees itself as vindicating rights that are coded in positive law. In contrast, politics is partisan, sloppy, and lacking in neutrality. By casting themselves as doing the work of the law, movement activists perpetuate the myth of objectivity. In fact, during the Cold War the human rights community in the West deliberately distanced itself from the overt promoters of democracy in the global South and the Soviet bloc (see Carothers 1994). Instead, human rights activists presented themselves as a community interested in process and the rule of law, not politics or the ideological project of democracy.

Partly this was a reaction to the perceived danger of being seen as supporting the crusade of the West, particularly under President Ronald Reagan, of rooting out communism in favor of pro-Western market or political

democracies. Even so, the human rights movement in the West relentlessly attacked Soviet bloc states and Third World countries for their closed or authoritarian political systems. In this, they worked with prodemocracy human rights advocates in those countries. Objectively, human rights groups were pursuing an agenda very similar to that of the Reagan administration. Rather than playing such a game, human rights groups should only advocate consequentialist and outcome-based agendas instead of hiding behind process and rights. Such a full disclosure approach would demystify human rights and offer a clearer basis for critical thought.

There is little doubt that in the last half century the world has seen substantial progress in addressing state tyranny. Part of this success is clearly attributable to the human rights movement and its marketing of the liberal constitution and the values of political democracy. But the successful march against state despotism has been conducted as a cloak-and-dagger contest—pushing a value system without directly stating its normative and political identity. This is unfortunate and need not have been so, even if one were to allow for the tactical and strategic choices that the movement had to make. Lost in the translation was an opportunity to think more robustly about human rights as a political project and then question its broader prescriptions for the society of the future.

This diffidence has been limiting to the human rights movement. Why hide the ball? Everything should be placed on the table so that we can openly debate questions of power and powerlessness and how to reformulate the human rights corpus to address pressing crises. Perhaps we will decide that human rights is not the right language for this struggle. Perhaps it is. In any case, we will never know until we take off the veil. What is clear today is that the movement will lose its relevance unless it can address—seriously and as a priority—human powerlessness in all its dimensions.

Can Human Rights Recover the African State?

The limitations that curtail the ability of the human rights corpus to respond to Africa's crises are conceptual and normative. The first limitation is simply one of the idiom in which the rights discourse is formulated. The language of rights, which is central to liberalism, is fraught with limitations which could be detrimental to the project of transforming deeply distorted societies. Inherent in the language of rights are indeterminacy, elasticity, and the double-edged nature of the rights discourse. All these characteristics open the rights language to malleability and misuse by malignant social elements, and they turn it into a tool in the hands of those opposed to reform. A case in point is South Africa, where a rights-based revolution has been unable to fundamentally transform deeply embedded social dysfunction and the perverse legacy of apartheid. The choice of the rights idiom as the medium of choice to unravel the ravages of apartheid has been less than successful in spite of continued economic growth (see Matua 1997).

Another problem of the liberal tradition, which has been inherited by the human rights movement, is its unrelenting focus on individualism. This arises from liberalism's focus on formal equality and abstract autonomy. The human rights corpus views the individual as the center of the moral universe, and therefore denigrates communities, collectives, and group rights. This is a particularly serious problem in Africa, where group and community rights are both deeply embedded in the cultures of the peoples and exacerbated by the multinational nature of the postcolonial state (see Matua 1995b:339). The concept of self-determination in Africa cannot simply be understood as an external problem: it must, of necessity, be understood as encompassing the many nations within a given postcolonial state. In reality, this means that individual rights of citizens within the state must be addressed in the context of group rights. Thus group rights or the rights of peoples become important entitlements if the state is to gain the loyalties of its diverse citizens.

I do not deny that individualism is a necessity for any constitutional democracy, but I reject the idea that we can, or should, stop there in Africa. That would be a stunted understanding of rights from an African point of view. Indeed, for rights to make sense in the African context, one has to go beyond the individual and address group identities in the political and economic framework of the state. Even in South Africa, for example, one of the states with an avowedly liberal interpretation of the rights language, there was an accommodation of group rights to language, culture, and other forms of identity. One way political democracy deals with the question of multiple nations within one state is to grant autonomous regimes for groups or to devolve powers through forms of federalism (see Steiner 1991:1539). But the paradox for Africa is that autonomous regimes or federalist arrangements have not worked well wherever they have been tried (see Matua 1995a:1113). These schemes have been unable to stem the combustible problem of ethnicity and reduce the legitimacy of the state. Ethnic groups retain a consciousness that stubbornly refuses to transfer loyalty from the group to the whole nation.

Second, the human rights movement's primary grounding and bias toward civil and political rights—and the impotence and vagueness of economic, social, and cultural rights—is one of its major weaknesses in the African postcolonial context. Political democracy alone—without at least a strong welfare state or a social democracy—appears to be insufficient to recover the African state. The bias toward civil and political rights favors vested, narrow class interests and kleptocracies which are entrenched in the bureaucratic, political, and business sectors of society and represent interests that are not inclined to challenge the economic powerlessness of the majority of postcolonial Africans. Yet the human rights movement assumes the naturalness of the market and the inevitability of employer–employee, capitalist–worker, and subordinated labor relations. It seeks the regulation of these relationships, but not their fundamental reformulation.

By failing to interrogate and wrestle with economic and political philosophies and systems, the human rights movement indirectly sanctions capitalism and free markets. Importantly, the human rights corpus wrongly equates the containment of state despotism with the achievement of human dignity, so that it seeks the construction of a political society in which political tyranny—not economic tyranny—is circumscribed. But in so doing, it sidesteps economic powerlessness—the very condition that must be addressed if the African state is to be recovered. Clearly, political freedoms are important, but as South Africa has demonstrated, these are of limited utility in the struggle to empower populations and reduce the illegitimacy of the state. It is an illusion to think of powerlessness and human indignity in the African context in purely political terms, as the human rights movement does, and to prescribe political democracy and the human rights doctrine as a panacea.

Real human powerlessness and indignity in Africa—the very causes of the illegitimacy of the African state—arise from social and economic conditions. That is why the human rights movement's recognition of secularism, capitalism, and political democracy must be discussed openly to unveil its true identity so that we can recalculate its uses, and the limitations of those uses, to the reconstruction of the African state. To be useful to Africa's reconstruction, human rights cannot simply be advocated as an unreformed Eurocentric doctrine that must be gifted to native peoples. Nor can it be imposed on Africa like an antibiotic, or be seen as a cure for the ills of a dark continent. I am afraid that this is how many in the West imagine what for them is a human rights crusade toward Africa. So far, this law-and-development model has not—and will not—work. Not only is it an imposition, but it would also deal mostly with symptoms, while leaving the underlying fundamentals untouched.

To be of utility to Africa, and fundamentally transform the continent's dire fortunes, human rights must address economic powerlessness and the scandalous international order. Otherwise, it will promise too much while delivering too little, as it did in the case of Rwanda with the establishment of the International Criminal Tribunal for Rwanda and a false peace within the country. It will promise too much, while delivering too little, as it did in the wave of the so-called Second Liberation. The challenge for us is to figure out how we can retool and rethink the human rights project as one of the vehicles for the reconstruction of the African postcolonial state. I am afraid that this is a task for which we have been found wanting.

Conclusion

A half century is not a long time in the life of a country, much less a continent. That is how long Africa has been free of colonial rule. It is within that time span that the African postcolonial state has had an opportunity to revisit the project of modernity under the guidance of Africans themselves.

There can be no doubt that the record of that period has been mixed, to put it hopefully. More often than not, the African state has labored under huge burdens of legitimacy and performance. In virtually every case, there have been huge disappointments. Rays of hope, whenever they have been possible, have been short and fleeting. Analysts have carried out numerous diagnoses of the African state. There is agreement on the general malaise, but not on the cure for it. At one level, there is consensus that the deficits of legitimacy, democracy, and development can be ameliorated by creating the open society. But is liberalism enough of a panacea for the African state, or do we need to imagine other solutions?

There is no doubt that the lessons of African history over the past several centuries have been discouraging. Since colonial rule, there has been a persistence and stubbornness to the crises facing the continent. There is a general consensus among proponents of liberalism that two variables, which are related, are at the center of these crises. The first, and perhaps the most important, is the African state itself. The illegitimacy and resistance of the African state to democratization are without question the key denominators in its dysfunction. Whether it is the repressive nature of the state, its disdain for civil society, its inability to perform the basic functions of statehood, or its proclivity for corruption, the African state stands at the center of the crisis. The second variable is Africa's relationship with the international legal, political, and economic order. International institutions, hegemonic states, and the culture of international law have been negligent at best, and they have been destructive at worst.

How do African states become effective and enabling actors in the lives of their citizens, instead of objects of charity and pity by the West and the rest of the world? In other words, how does the continent move from a humanitarian wasteland to developed, functioning, and democratic states? The suggestion is that the process of transformation has to be foundational and thorough. It is no longer tenable to simply prescribe cautious, band-aid, and unimaginative programs, of the type that donors and multilateral organizations have historically promoted. Instead, African states must be reengineered from the bottom up. This is a task that must begin at home, with the Africans themselves. The citizens of each state, led by their elites, must consider the normative values and foundational compact on which the state is based, and then either renegotiate them, or restructure them to create a more viable and legitimate political society. Without such reform, the African state cannot be redeemed. Internationally, Africa needs debt relief, direct foreign investment, aid, and better trade terms to couple political reforms with economic renewal.

But there are no shortcuts for Africa. African states must reconstruct their political orders, address ethnicity and group rights in political transitions, grow and nurture a vibrant civil society that is national in character, and expand the commitment of religious institutions to the full democratic

project. In some countries, the constitution-writing framework provides the perfect opportunity to begin the political renaissance of the state on all these fronts at once. There will no doubt be different entry points for a variety of states. And each of these variables will require contextual emphasis depending on the particulars of the state in question.

But will these liberal prescriptions respond to the stubborn crises of the African state? Or do we need to reimagine liberalism to make it useful for the African reality? Based on historical evidence—and taking even the most successful cases such as South Africa into account—it is clear that even boilerplate liberalism under the guise of human rights is an insufficient response to African postcolonialism. My proposal, however, is not to throw out the baby with bathwater. Rather, it is to reconstruct the liberal project and its human rights expression in order to reclaim the tortured soul of the Africa state.

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Notes

1. Since 1992, the year it was established, the Abiola Lecture has been offered by fourteen speakers, including Wande Abimola, Jacob F. Ade Ajayi, Kofi Anyidoho, Bolanle Awe, Boubacar Barry, Abena Busia, Amina Mama, Mamphela Ramphele, James Robert Rubadiri, and Atieno Adhiambo. See www.african-studies.org.
2. The Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).
3. The International Covenant on Civil and Political Rights [ICCPR], G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316

(1966); the International Covenant on Economic, Social and Cultural Rights [ICESCR], G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

4. I coined the term "thick welfare state" to refer to a state whose political, economic, and social norms and structures are designed to eliminate, to a large extent, glaring manifestations of poverty, exclusion, and privation. Usually, this is done through social security and other economic safety nets that prevent extreme forms of powerlessness. The term "thin welfare state," also coined by me, refers to a less generous welfare state in which government is more reluctant to support social programs for despised or marginalized groups.

5. Article 29 (2) of the UDHR states: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a *democratic society*" (my emphasis).

    Article 21 of the ICCPR states: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a *democratic society* in the interests of national security or public safety, public order ... , the protection of public health or morals or the protection of the rights and freedoms of others" (my emphasis).

6. The conference was the basis for an edited collection of essays on human rights. See Power and Allison (2000).