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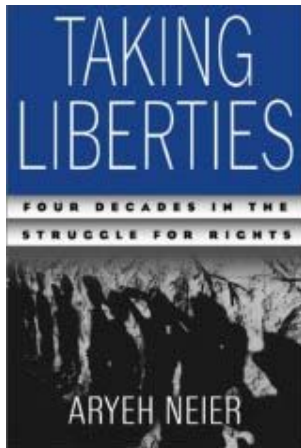
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## A Life in the Realm of Rights: A Man and a Movement's History

By Tom J. Farer

**Taking Liberties: Four Decades in the Struggle for Human Rights by Aryeh Neier. New York: PublicAffairs. 400pp.**

Neo-conservatives and liberal interventionists often sound like kissing kin. Both advocate liberal democracy as a superior form of governance for all peoples regardless of their material circumstances and traditional culture. Both wish to employ American power for the defense and promotion of democratic regimes. So why don't they ally? Why do they so cordially despise each other?

The essential reason, I wrote last year, is that, unlike neo-conservatism (or conservatism of any kind for that matter), contemporary liberalism views public policy through the prism of human rights. That refraction has two related and divisive consequences: it limits the range of means available for achieving policy goals, and it demands that the beneficiaries of supposedly benign policies be seen individually rather than as agglomerates of humanity. The zealot looks out beyond Armageddon to the Exaltation. The human rights advocate looks down and sees each of the dying and the dead. At least as a foreign policy credo, neo-conservatism can seem like a contemporary instance of the Utilitarian tradition with its concern for maximizing the aggregate of human happiness, although it substitutes a priori assumptions about how to maximize happiness for Jeremy Bentham's fastidiously inductive inquiries.

No person better exemplifies the human rights perspective, nor has more effectively battled its enemies over the past four decades, than Aryeh Neier. Taking Liberties is his highly personal account of the struggle. Being history in the form of autobiography, it has gaps one would not expect to find in a third-person narrative. For instance, institutions in which he did not participate, or with which he did not collaborate or contend, are mentioned in passing if at all. Still, Neier has been such a central figure in the human rights world that this thoughtful account of his adventures illuminates most of its perennial issues. Hence publication of this fine work provides an inviting occasion to reconsider several of them which seem to me of first importance.

### **The Man, the Present Author, and Their Time**

Before turning to those issues, like any respectable lawyer I should state my interest; that is, my connection to the relevant events and the principal personality. How it colors the discussion that follows I leave for the reader's judgment. Like Neier I have been a participant-observer during the same period of time, occasionally in formal and informal collaboration with him. Our very long

acquaintanceship began in the second half of the 1960s when he was the young Executive Director of the New York Civil Liberties Union and I was beginning my academic career as an Assistant Professor at Columbia Law School. For reasons now obscure, Aryeh invited me to join a working group he had established to review the civil liberties implications of bills introduced into the New York State Legislature. A mix of academics and practitioners, we convened monthly in Aryeh's cozy Greenwich Village apartment. Over hot coffee and warm danish, in an atmosphere retrospectively suggestive of the cultivated bourgeois culture of Central European Jewry before the Holocaust, we dissected proposed legislation, already vetted by Aryeh and his staff, which all too frequently betrayed the legislative author's oath to uphold the Constitution of the United States. Every session of the legislature witnessed bills that flagrantly ignored long-established precedents protecting the free speech, associational and due process rights of the citizens of New York. We helped to abort most of them.

After a few years, the chance and choices that make up a career, indeed a life, moved me away from New York. Neier and I remained vaguely in touch as he ascended the ladder of influence and distinction in the civil liberties movement, becoming in 1970 at the age of 33 the Executive Director of the NYCLU's parent organization, the American Civil Liberties Union (ACLU) and quickly plunging that organization into the great political-constitutional battles of the decade—including the impeachment of President Richard Nixon.

During this first, domestically oriented phase of his career, Neier exhibited all of the characteristics that would mark his efforts when, near the end of the 1970s, he left the ACLU and, shifting his principal focus to international human rights, helped found Human Rights Watch. One, in which he takes particular pride, is helping to expand received ideas about the threats to freedom and dignity that need to be confronted. Before Neier, the NYCLU and its ACLU parent were concerned primarily with threats to free association and conventional forms of speech, and to protection of due process rights in criminal proceedings. Under his leadership, their defense of civil liberties came also to embrace abortion rights (the right of a woman to choose whether and when to become a mother), conditions and procedures in prisons and asylums, and police brutality. And in the realm of speech, he defended symbolic communication like the burning of draft cards, and in this way drew the organization into the convulsive political battle over the Vietnam War. In short, he used his institutional mandate to challenge every sort of official action that, in his judgment, unreasonably limited the freedom and dignity of people living in the United States. Later, when his attention shifted to international human rights, his sense of a mandate was coextensive with most of the threats, indirect as well as direct, to the liberties enunciated or implied in the Universal Declaration of Human Rights. This would quickly lead him far beyond Amnesty International's traditional focus on persons imprisoned for non-violent political acts and, at a later point, on torture.

A second enduring feature of Neier's approach is breadth and flexibility of means. Protecting civil liberties or human rights is like war. Victory is more likely for the strategist who shrewdly deploys all available resources. If Neier ever acquires a coat of arms, its escutcheon should bear the words: "Whatever works and is ethical." While briefly indicting the post-Neier trajectory of the ACLU, he writes:

*The organization did not remember how to use simultaneously all the resources available to it: congressional testimony; meetings with executive officials; litigation; investigative reports; the formation of coalitions with other organizations; a press strategy dealing with radio and television talk-shows, meetings with editorial*

*boards, contacts with columnists, beat journalists, and feature writers, the placement of op-ed articles as well as the exploitation of opportunities for spot news; speakers bureaus; special mailings to ACLU members as well as outsiders; and so forth (17).*

In other words, his successor did not remember what Neier had done and continued doing when his mandate became not just America but the world.

According to Neier, it was the election of Ronald Reagan as President of the United States that precipitated his return from the academic life, where he had moved after leaving the ACLU, to assume the overall direction of an established human rights organization, Helsinki Watch, and a planned new one called Americas Watch. As he moved to found Americas Watch, in collaboration with Robert Bernstein (then the CEO of Random House Publishers) and Orville Schell (one of New York's most respected lawyers), Neier called to ask my opinion about the need for an NGO dedicated to defending human rights in the Western Hemisphere. I had already served four years as a member of the seven-person Inter-American Commission on Human Rights, an organ of the Organization of American States, and appeared in line to become its first Gringo President. The tsunami of official terror that struck Brazil in 1968 and then flooded into the middle-class countries of Chile, Uruguay and Argentina had awakened the Commission from a decade of torpor. Led by a debonair, immensely clever Venezuelan Lawyer-Diplomat, Andres Aguilar, by the time of my election in 1976 the Commission was beginning to challenge openly the assault on basic human rights being conducted by many Western Hemisphere governments.

The latter seemed bemused and were certainly enraged by the behavior of what they accurately perceived as their legal creation. But operating under the protective wing of U.S. President Jimmy Carter, the Commission was able to resist challenges to its autonomy and in some cases to gain entry for on-site investigations that exposed official murder and mayhem on a scale that was novel not only for the more developed Latin American countries, but even for some countries, like Guatemala, where official brutality was the norm.

Some reports evoked no more than a furious howl from the target government without braking its efforts to terrorize present, prospective or imagined opponents. But some hammered their target, perhaps none more powerfully than the 1979 report on the Nicaraguan Dictatorship of Anastasio Somoza. After leaving Nicaragua, thus assuring victory for the insurgents against his family's 47-year rule, Somoza named the Commission's report as one of two precipitants of his decision to resign as President and depart. In the case of Argentina, where the Commission, after the longest on-site investigation in its history, officially confirmed the government's kidnapping, torture and murder of thousands of persons deemed subversive, the investigation itself, as well as the immensely-detailed report, is believed by well-informed Argentinians to have helped catalyze the unraveling of the military government's legitimacy within Argentine society.

The Commission had reached the apex of its influence in the final year of Jimmy Carter's presidency. Immediately after his defeat in November of 1980, the tide turned. In El Salvador, the tiny country where a military regime, backed by the small upper class, was threatened by a left-wing insurgency, regime-organized death squads appeared to escalate the massacre of civilians suspected of supporting the left. Coincident with events on the bloody ground, one could detect within the Organization of American States cooling of support for the Commission and increased reluctance to foster the exposure of human rights violations. At the time, I received credible reports of U.S.

rightists, particularly those associated with Senator Jesse Helms, fanning out into the Hemisphere to assure their ideological counterparts that the gloves were off in the war against leftist subversion of the established order.

All this had been heralded by the pre-election ideological assault from the American Right on Carter's unprecedented policy of distancing the U.S. from gross human rights violators among Latin Governments. The most publicized instance of the assault was a 1979 article<sup>1</sup> by Jeane Kirkpatrick—who would soon become Ambassador to the United Nations—which called for support of right-wing dictators both because it was necessary for winning the Cold War and hence strategically moral, since any gain for the U.S. in that conflict was a gain for freedom, and because it was also tactically moral, since unlike non-democratic governments of the Marxist variety, right-wing ones could evolve in a democratic direction. With all these portents of a bad time for human rights in the Hemisphere, I applauded Neier's proposal to establish an NGO to help counter the onslaught even as I feared that, despite his efforts, Carter's departure from Washington would end concern in Washington for the quotidian human consequences of U.S. foreign policy.

The rest is a piece of history lucidly recalled by Neier in Taking Liberties. Initially my fears were fully realized. Kirkpatrick began using the pulpit of her UN position to associate the United States with regimes whose thuggery the Commission had helped to expose. Ronald Reagan's appointee as Secretary of State, Alexander Haig, hastened to announce that human rights was off the foreign policy agenda to be replaced by an emphasis on exterminating terrorism. And he effectively purged from the highest ranks of the Foreign Service the career Ambassadors seen as most supportive of Carter's human rights policies. In addition, the Administration set the CIA and the Pentagon to work organizing an insurgency against the left-wing Sandinista regime that had replaced the Somoza family dictatorship in Nicaragua. Before it ran its course, the tiny country would lose another 30,000 to 40,000 lives on top of a roughly equivalent number that had died in the long effort to unseat the Somozas.

But to my surprise—and perhaps to the Administration's as well—the human rights issue proved to have staying power with Congress and the media. The newly established Americas Watch helped immensely from the very beginning, documenting in vivid and irrefutable detail the delinquencies of terrorist regimes in Latin America—an effort partially protected from the inevitable charges of being, at best, soft on communism by virtue of the institutional ties between Americas Watch and Helsinki Watch, the latter of which documented violations of human rights in the Soviet Union. Neier quickly established himself as a hugely effective spokesperson in the media and Congressional meeting rooms, the leading prosecutor of Administration policy in the court of public opinion.

By then, urged by Andres Aguilar to ignore the tradition of not electing gringos to senior positions in the OAS, my colleagues (still including Aguilar) had elected me President of the Human Rights Commission. The low-profile tradition of leadership within intergovernmental organizations and the value of maintaining the greatest possible measure of cohesion within the Commission, some of whose members were deeply conservative and one of whom was closely linked with two of the most vicious regimes, inhibited me as a spokesperson. But not entirely. When a U.S. journalist

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<sup>1</sup> "Dictatorship and Double Standards," *Commentary* 68 (November 1979): 34-45.

asked me whether the Commission found the going harder under the Reagan administration, I skipped the opportunity for evasion and said “yes,” a response that produced a furious letter from one of the senior officials at the State Department in charge of Latin American affairs accusing me of “politicizing the Commission’s work.” I responded, saying I had done nothing more than provide a plainly accurate response to a factual question.

Still, in terms of open confrontation, this was exceptional. In the large, our reports had to speak for themselves. With Americas Watch now in the field and other NGOs also moving in to expose the river of blood gushing through Latin America, they were less salient than during the prior four years when the field was much more thinly occupied. When my second term on the Commission ended in 1983, I joined the Advisory Board of Americas Watch where I remained even after it was formally integrated as a division into the umbrella organization, Human Rights Watch.

### **Human Rights and Crusades for Democracy**

While I was still leading the Commission, the Reagan administration, faced with surprisingly stiff resistance to its policy of open indifference to human rights, began a shrewd bid to seize the moral high ground. As Neier accurately recounts the move, a group of self-described neo-conservative thinkers, within and around the Administration, proposed justifying U.S. policy in the idiom of human rights rather than simply appealing to the “national interest.” Within that idiom the focus would be on one right: the notionally keystone right of democracy. Every foreign policy move could then be heralded as one part of a crusade for freedom defined as democratic government, government by the majority. That majorities could themselves authorize violations of human rights was an inconvenient, and thus ignored, fact. Neo-conservatives did not intend to do nuance, an intention to which they have since religiously adhered. Early in Reagan’s first term, Secretary Haig submitted one of his tactical resignation threats one too many times and found himself thanked for his no longer necessary services. With Haig gone, the neo-conservatives moved with speed to put a new, more kindly face on Administration policy.

Its most articulate advocate, Elliott Abrams, had an imperfect look for the role, his physiognomy being more belligerent than benign. When President Reagan nominated him for the position of Assistant Secretary for Human Rights, Neier decided not to rally the human rights community against him. He reasoned that although Abrams might see the issue as one of largely instrumental value in the wider ideological struggles of the Cold War, “he was better than I had expected from an Administration in which thinking about foreign policy was dominated by Alexander Haig and Jeane Kirkpatrick” (186). And Neier hoped, indeed expected “that our concern for the intrinsic value of human rights and his concern for its instrumental value might often lead us to find common ground in practice.” (Ibid)

At least in matters relating to the Western Hemisphere, that common ground proved elusive for most of the Reagan years, a fact foreshadowed in Neier’s first conversation with the combative Abrams. On the one hand, Abrams said he would be an advocate for human rights concerns within the Department of State. On the other, he dismissed Neier’s suggestion that, given his position, when he failed to persuade his colleagues and a decision was taken on the basis of strategic, political or economic concerns, he should at least refrain from publicly defending the resulting policy in terms of its pretended contribution to human rights. To be effective, Abrams lectured Neier, one needs to be a team player. He intended to be effective.

Although Neier leaves it at that, there was more to Abrams' posture than a concern for personal efficacy. He was literally part of the neo-conservative family, a son-in-law of Norman Podhoretz, one of neo-conservatism's original militants. For Podhoretz, the Cold War was about values, not interests. A decisive defeat of the Soviet Union would, in his judgment, vastly expand the realm of human freedom. Hence any move to achieve that end should be seen as driven by moral, not simply strategic, imperatives.

Although Neier distinguishes Abrams from Kirkpatrick, in practice Abrams often—albeit not *invariably*—seemed to be loyal executor of the grand strategy implied by Kirkpatrick's article: a strategy of encouraging friendly autocrats to open their political systems when they were not at risk from left-wing forces, but backing them to the hilt when they were in jeopardy. But he was not Kirkpatrick when she wrote—a publicist writing for a receptive audience. He was a political figure facing a skeptical press and a far from docile Congress in which Democrats and some moderate Republicans were not disposed to write blank checks for right-wing exterminators. Two moves followed from the position in which he found himself. One was to deny allegations of gross human rights violations by client regimes and, where possible, to challenge the credibility of the fact finders. The other was to present the client as a democratic or at least democratizing regime working to improve its human rights record but in all events superior to its violent opponents who, by their very recourse to violence in the face of electoral opportunities, demonstrated their hostility to democracy.

Both moves were on display in the bitter clash over Reagan administration policy in Central America. In a world wracked by immense poverty and illness; threatened with nuclear self-immolation; in the midst of the still titanic struggle between the U.S. and the Soviet Union; with a seething Middle East on which we depended for our oil supplies, Washington chose to make two tiny, misery-ridden countries in the Central American Isthmus—El Salvador and Nicaragua—cardinal tests of its foreign policy. In the former it sought total victory over leftist insurgents. In the latter it sought removal of the left-wing Sandinista regime. To those ends it was seemingly prepared to bear any burden, cut any constitutional corner, and massacre the truth where it proved inconvenient.

In advancing those ends, no adversary was more formidable than Neier. Employing a small and immensely talented group of investigators, Americas Watch fastidiously documented the lethal delinquencies of El Salvador's armed forces and the death squads that operated with their complicity. Breaking new ground among non-governmental human rights organizations, Americas Watch measured the regime's behavior not only against the norms of the International Covenant on Civil and Political Rights, but also against those of international humanitarian law, largely as found in the Geneva and Hague Conventions. It applied them also to the insurgents and thus added to its credibility as an impartial fact-finder and law applier.

Although the mendacity of the Administration concerning Central America was regularly and very publicly exposed by Neier and his colleagues, it persisted in its overall policy of eviscerating leftist movements in that blood-soaked isthmus. Whether exposure of the slaughter in El Salvador at least saved some lives is unclear. Neier believes it pushed the Administration to in turn pressure the Salvadoran military/oligarchy coalition to rein in the death squads that were slaughtering suspected urban supporters of the rural-based guerrillas. Whether it moderated air assaults on the peasantry, designed to terrorize them out of the parts of the countryside where the guerrillas predominated, is

equally uncertain. Exposure by the Inter-American Commission and by Americas Watch and other international NGOs of the even grosser violations of human rights in Guatemala did not seem to have any effect during the Reagan years either on the regime or Reagan administration political support for it. Nor did exposure of human rights delinquencies by the Nicaraguan insurgents, organized by Washington, with the help of officers imported from the murderous Argentine military, appear to have much impact.

### **General Issues in the Equation of Democracy with Human Rights**

*A hierarchy of rights?* Like mediaeval alchemists in search of the means for making gold, some human rights advocates, including this author, have tried to identify a core set of rights from which the others could be said to stem.<sup>2</sup> To be sure, the conventional line among human rights organizations is to reject any notion of a hierarchy of rights. At least since the Vienna Declaration of 1992, the accepted mantra has been that all rights are equally charged with value (a moral judgment) and are interdependent (an instrumental one.) But the regular chanting of this claim by the NGO/UN establishment has not deterred neo-conservatives and even certain individuals within that establishment to identify something like an *Ur* right or rights. One candidate I proposed was those rights not subject to derogation even in times of emergency, primarily those relating to personal security (rights to life, to protection from torture and to due process), and non-discrimination on racial, ethnic or religious grounds. There are respectable justifications for privileging them. One is their breadth of support. Before 9/11, almost no official claimed sovereign discretion to execute summarily, inflict physical pain or punish without due process of law. Hence the outrage even among some American conservatives when it was learned that legal officials within the Bush administration had found an authority in the President to authorize “torture,” and had defined it in ways that liberated officials from any inhibitions that label might impose by declaring it inapplicable to all measures for inflicting suffering except those able to kill or destroy entire organs of the human body. It was open to question whether even mutilation would be covered. Teeth, fingers, fingernails and the flesh of one’s face are, after all, not organs.

One might also privilege this small cluster of rights, I proposed, on the grounds that they are seminal. A regime inhibited from killing or torturing its opponents or even from incarcerating them or confiscating their possessions on trumped-up grounds or punishing their families (collective punishment being a *per se* violation of due process) is a regime that will find it difficult to smother all of the other rights. In other words, strip a regime of the capacity to terrorize its subjects and perforce you have in the first place more scope for the exercise of other rights and in the longer term far more opportunities to build a challenge to an authoritarian status quo.

The case for emphasizing the right to participate in government in part through periodic free elections rests on much the same calculation: protect that right and you will coincidentally protect all of the others. But better than that, democracy more than any other right including speech and association contains within itself the means (to be sure not always decisive) for its self defense against regression. Protection from summary execution, torture and incarceration without due process could be granted by a benevolent dictator and then withdrawn whether by the same person

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<sup>2</sup> See e.g., Henry Shue, *Basic Rights*. Princeton: Princeton University Press, 1980.



or a successor. Create democratic institutions, and subjects of the right to participate and of all the other rights are no longer dependent on the tyrant's good will.

The claim that democracy protects the exercise of all other rights is clearly problematic in societies polarized across the single fault-line of race, ethnicity or religion. One can certainly conceive of cases where a majority identifies itself in opposition to some ethnic, religious or racial minority and votes exclusively to the end of subjugating it. That was the condition of politics in the southern part of the United States from the end of post Civil War Reconstruction to the middle of the Twentieth Century. The theoretical right to vote did not protect black Americans from being lynched. But one might argue that that very case reinforces the claim for privileging democracy, in that state politics in the American South during the relevant period were not in fact democratic. Once, through the exercise of federal power on their behalf, Americans of color were actually able to vote, a simple dyadic politics of identity became more fluid as the logic of competition pushed political entrepreneurs to seek votes among the newly enfranchised. Coincidentally lynching came to an end as gradually did other gross abuses of black citizens' rights.

Faced with the conjunction in Central America of periodic elections and gross human rights abuses, neo-conservatives in the Reagan administration naturally emphasized the evolutionary character of human rights in electoral democracies. Torture and slaughter were imputed to obsolescing pathologies of an older period or to the abuses inevitably incident to a civil war against a radical and terrorist Left. Once the Left gave up or was destroyed, evolution would quicken. To that end neo-conservatives in their evasions and mendacity concerning the facts on the ground implicitly exempted "democratizing" governments from rigorous review of their human rights practices. And so they collided furiously with liberals like Neier insisting on equal application of the law and associated moral sentiments.

In refusing to give elected regimes a *laissez-passer* from the restraints of human rights and humanitarian law, at least some liberals had reasons beyond rigid adherence to a meta-norm of justice as equal application of the law or the related concern with the immediate rights of living individuals rather than speculative gains for their heirs or the fear that a loosening of standards for some governments would lead ineluctably to a general loosening of standards for all states faced with actual or latent insurgency. An additional reason was a sense that elections in a country like El Salvador were a sham.

How could the adult population register a true preference when assassins stalked candidates of the Left, death squads intimidated the organizational activities of Left-wing activists, and the rich along with the United States lavishly supported parties that, whatever their differences, agreed in opposing a settlement through a sharing of power with the insurgents? Indeed, what could elections ever mean in a country where military officers operated with impunity and regarded themselves as guarantors of the socio-economic status quo, a kind of right-wing supreme court with bayonets instead of constitutional arguments? In addition, elections provided a liberal-sounding rationale for opposing a negotiated settlement on the basis of power-sharing—the approach to settlement of internal conflicts that was normal in other parts of the world. Officials in Washington and right-wing editorialists asked rhetorically: "How can liberals support a formula for ending the conflict that would allow a small body of Marxist militants, who do not in any event believe in democracy, to shoot their way into government office? Nor should they be able to force radical social changes as a condition for joining the political process."

But what inspired varying degrees of sympathy among center-left intellectuals in the United States for the armed Left in Central America was precisely the belief that without far reaching change in the distribution of wealth, primarily of land, and increased and progressive taxation and without cabinet ministers committed to improved health and enhanced educational opportunities for all citizens, the poor majority would remain too vulnerable, scattered and dependent to achieve political efficacy and then change through the ballot. Although American liberals rarely made the point explicitly, insurgency particularly in El Salvador was seen by many as a means of forcing changes that would lead over time to a democracy of substance. They did not favor the triumph of self-described Marxists. They did favor negotiated settlements that would, as they saw it, achieve the reforms that more fortunate countries like those of North America and Western Europe had achieved through the electoral process. There is no indication in this book that Neier himself thought along these lines. His role, as he saw it, was to demand even-handed enforcement of human rights norms wherever that would lead. He played it with fidelity and daunting vigor.

### **Economic and Social Rights**

In their several ways, the Central American wars came to an end in part because the end of the Cold War stripped them of ideological and strategic interest for most of the American foreign policy elite. So stripped, they were left as merely divisive distractions for policy makers trying to chart a course through the unexpected post-Cold War world. Internally, exhaustion and the sense on both sides that they were gripped by a mutually hurting stalemate created conditions for sympathetic third parties, at last encouraged rather than inhibited by the United States, to mediate. Backed by Latin and European political leaders who had for years been pressing for negotiated settlements, UN Secretary General Perez de Cuellar deployed a few talented negotiators who skillfully moved the antagonists to settlements that have proved durable.

How, if at all, should the trajectory of Nicaragua, El Salvador and Guatemala since the end of the wars affect our views about the relationship between democracy and human rights? Each has experienced a series of contested elections. Presidents are now expected to complete their terms. Politics are no longer shadowed by the prospect of direct military intervention. Without an armed opposition to the status quo, neither governments themselves nor the upper class that has in significant measure colonized them finances right-wing death squads to wage dirty wars against civil society. In short, politically-inspired murder, disappearance and torture are no longer normal and to that degree human rights are vastly enhanced. Whether this is the result in some mechanical sense of the electoral process or simply of the exhaustion of hope for effecting significant socio-economic change by any means is unclear.

While there is political peace, all three societies are still plagued by high levels of insecurity, but now it is commercially rather than politically motivated crime that haunts ordinary people. The poor remain poor and poorly educated, supported in very substantial measure by remittances from kin in the United States. What the consolidation of electoral politics clearly has not accomplished is to trigger the beginning of the kind of social and economic processes that thrust many East Asian countries onto a path of dynamic growth. As in most of Latin America, democratic politics has been no more successful than the authoritarian form in achieving even the first steps of socio-economic transformation. So despite the realization of at least formal political rights and increased space for civil society and the end of large-scale, state or guerrilla-organized assaults on personal security, for

those who value economic and social rights as much as civil and political ones, Central America is a very disappointing place.

Neier is not among them. Throughout his tenure at the head of Human Rights Watch, he resisted calls to include economic and social rights in its mandate. His move in 1992 to the Presidency of the Soros Foundations and the related Open Society Institute did not alter his view that invoking the language of human rights in order to enhance economic well being around the globe undermined the struggle for civil and political rights without compensating improvement in the condition of the global poor. In this autobiographical work, he rehearses briefly some of the arguments for this position which are familiar to anyone like myself who has followed and participated in the debates.<sup>3</sup>

The grounds for trying to exclude socio-economic issues from the lexicon of rights are in part conceptual. In order to respect and protect civil and political rights, the state does not have to make re-distributive choices regarding scarce goods like finance capital, land and housing. Everyone can enjoy freedom of religion and association and due process in criminal proceedings, etc. The supply of these rights is unlimited. The supply of housing and medical care and higher education is not. Reasonable people can and do disagree about how to increase the supply, about how to allocate the existing supply and about how much to sacrifice now in order to make more of these good things available to future generations.

Democratic politics is largely centered on such re-distributive questions. Attempts to resolve them by invoking the absolutist language of rights are, in effect, attempts to remove them from political contestation. The result is narrowed scope for majority rule and, by implication, the transfer to judicial and quasi-judicial institutions of complex technical issues and nuanced value judgments more appropriate for resolution by technical experts implementing guidelines laid down by elected officials.

The principal concern voiced by Neier in this debate is the effect on enforcement of political and civil rights where economic and social issues are granted identical *legal* status. In that event, authoritarian governments like Fidel Castro's are empowered to offset condemnation of their assaults on personal freedom by invoking alleged improvements in such areas of social life as general longevity, nutrition and infant mortality, implying, of course, that these temporal gains could only have been achieved by authoritarian means. Although the regimes Neier seems to have in mind claim inspiration by principles of socialism, one encounters a very similar kind of rationalization in organs of the American Right praising Third World authoritarian governments (particularly the regime of Augusto Pinochet) that shift from a statist toward a *laissez-faire* political economy.

Neither the rationalizations of apologists for rhetorically left-wing brutalitarians nor those offered on behalf of the right-wing variety enjoy broad support among scholars who have investigated their claims. Economic liberalization in formerly statist systems is not the peculiar province of right-wing thugs. For instance, the democratic government of Carlos Menem in Argentina carried out sweeping liberalization as, to a lesser but still significant degree, did the elected government of Brazil under Fernando Enrique Cardoso. Nor is high performance with respect to health and education and poverty-reduction generally the peculiar domain of the rhetorically left-

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<sup>3</sup> See pp. xxix-xxxii.

wing thugs. Before it was ripped apart by civil war, Democratic Sri Lanka was a poster child for achievements in health and education despite low per capita income. So is the state of Kerala in India. China in recent years has reduced extreme poverty with its associated pathologies faster than democratic India; but, as Amartya Sen has pointed out, the latter has not had a serious famine since independence, while during Mao's tenure in China, tens of millions died from hunger.

One of the reasons Neier and others have doubted the utility of treating economic and social issues as rights and have feared a general muddying effect on the discourse about rights is the belief that these issues are not susceptible to the sharp operational statement of governments' obligations corresponding to the supposed rights to health, shelter, etc. that would allow consistent and indisputable demonstrations of non-compliance. With respect to torture, summary execution, denial of free association, etc., standards of compliance are uniform. A violation is a violation. Some states may be congratulated for making progress for instance in reducing quotidian police brutality. But no one confuses progress with compliance. With respect to economic and social rights, it is argued, the relevant International Covenant itself speaks of "progressive realization." So it seems to have been conceded at the outset that at any given time, states will be held to different standards of compliance depending upon resources and circumstances. Human rights are often described as "categorical" or "absolute" claims. Economic and social issues, it is argued, lie in the realms of the relative and contingent.

While the arguments of Neier and company have a certain force, they seem to me a little overstated. When I served as President of the Inter-American Commission on Human Rights, I successfully proposed to my colleagues that we attempt to give operational content to the very brief and general reference to economic and social rights in the Inter-American Declaration on Human Rights and the subsequent Inter-American Convention. So we announced in an Annual Report that we would construe the obligations of each State Party as follows: "To strive to attain the economic and social aspirations of its people by [assigning] priority to the basic needs of health, nutrition and education. The priority of the 'rights of survival' and 'basic needs' is a natural consequence of the right to personal security."<sup>4</sup> In addition we gave some indication of the markers we would use in assessing compliance with the joint obligations to make progress and to accord priority: "According to development experts, life expectancy, mortality and illiteracy are the best indicators for [evaluating] the progress being made towards higher levels of economic and social well being for the general population."<sup>5</sup>

Ironically, in light of Neier's concerns, we first recognized economic and social rights as part of our mandate precisely in order to strengthen our stand on political and civil ones. While preparing a report in 1978 on the general situation of human rights in El Salvador, we felt compelled to address the government's claim that any unfortunate deviations from human rights norms should be seen in the context of the government's struggles to maintain the security of the population in the face of attack from left-wing "terrorists." Political polarization in the country, we declared, found its deeper source in "the desperation and misery of the *campesinos* . . . [conditions stemming in significant measure from] the tremendous concentration of land ownership and economic power in general, as

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<sup>4</sup> Annual Report of the IACHR, 1979-1980, p.151, in Inter-American Commission on Human Rights: Ten Years of Activities. Washington: OAS, 1982. p.322.

<sup>5</sup> Ibid.

well as political power, in the hands of a few.”<sup>6</sup> In other words, the government could not escape responsibility for the catalogue of delinquencies we documented by invoking the strains and exigencies of civil conflict, since the conflict arose from government failure to address the most elementary needs and demands of the majority of the country’s population.

For me the issue is in the end an instrumental one: Can rights talk about economic misery help, however slightly, to marshal resources for its alleviation without undermining the struggle to protect political and civil rights and to strengthen democratic institutions? I still think it can—at least marginally. Neier and others believe that an exclusive focus on political and civil rights helps in enlisting conservative backers for human rights and, as I noted above, in nullifying a defense invoked by some delinquent regimes. In making their calculations, I think they take insufficient account of the political benefits that stem from a broad conception of rights; that broader conception facilitates coalescence with civic activists in the Global South focused on economic deprivations.

In the end, this is a matter on which reasonable people will continue to disagree, largely because they all are armed with little more than intuition and anecdote. Over the decades in which I have known Aryeh Neier, this is one of the few issues on which we have differed. And it is a testament to my respect for his political wisdom no less than his moral passion, all of which are nicely displayed in this book, that when our intuitions are different, he at least forces me to question my own.

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<sup>6</sup> Report on the Situation of Human Rights in El Salvador. OEA/Ser.L/V/II.46, doc.23 rev.1, 17 November 1978 p.166 in Inter-American Commission on Human Rights: Ten Years of Activities. Washington: OAS, 1982. p323.