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The Limits of Executive Action for Human Rights

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The Limits of Executive Action for Human Rights

Abstract

Between 2001 and 2006 Alejandro Toledo served as President of Peru. He entered office committed to, in his words, "restoring the democratic institutions that had suffered from a steady deterioration during the previous decade," (that is, during the rule of former President Alberto Fujimori). Moreover, he took up the task of providing Peruvian society with "a full accounting of the atrocities that had occurred in previous decades." This personal commitment to re-establishing a functioning democracy based on the rule of law, a commitment based in part on his participation in the anti-Fujimori demonstrations, lead him to seek an honest accounting of past human rights abuses as a basis for a transition from decades of violent guerrilla warfare and government repression to a functioning democracy.

Keywords

Human rights, Peru, Truth and Reconciliation Commission (TRC), Shining Path, Túpac Amaru Revolutionary Movement

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The Limits of Executive Action for Human Rights

by Henry Krisch

Between 2001 and 2006 Alejandro Toledo served as President of Peru. He entered office committed to, in his words, “restoring the democratic institutions that had suffered from a steady deterioration during the previous decade,” (that is, during the rule of former President Alberto Fujimori). Moreover, he took up the task of providing Peruvian society with “a full accounting of the atrocities that had occurred in previous decades.” This personal commitment to re-establishing a functioning democracy based on the rule of law, a commitment based in part on his participation in the anti-Fujimori demonstrations, lead him to seek an honest accounting of past human rights abuses as a basis for a transition from decades of violent guerrilla warfare and government repression to a functioning democracy.

In this, Toledo followed a path familiar to other transitions to democracy such as the Truth and Reconciliation Commission (TRC) of South Africa. Upon taking office, Toledo appointed a commission of scholars, clergy, leaders of civic organizations and former government (including military) officials. The formal submission of the TRC’s report in 2003 was invested with heavy public symbolism. Previously, Toledo had already performed another of those customary rituals of transitional justice, the public apology. Further acts of public symbolism followed, including a commemoration of murdered journalists.

In thus making human rights a basic element in the consolidation of Peruvian democracy, Toledo could build on existing institutions: a human rights commission and especially an active judiciary. However, his institutional heritage is questionable. Whether or not he runs for the presidency in 2011, his *Peru Posible* party fared poorly in recent congressional elections. Both Toledo and his successor (current President Alan Garcia) have been accused of (but escaped formal prosecution for) corruption or electoral fraud. Although the Peruvian courts continue to hear cases of human rights abuses from the decades between 1980 and 2000, the work of human rights advocates, including the TRC, has been subject to political attack. While some members of the Catholic clergy have been active in human rights work, others, especially those associated with the *Opus Dei* order, have strongly opposed further investigations.

Although Toledo has linked his human rights commitment to his *Indio* background, such developments as the upsurge in protests by indigene inhabitants of the Amazonian districts of Peru, some of which have been accompanied by violence, find no place in the article reviewed here. Yet these controversies raise important issues of human rights, such as group rights, cultural diversity, economic rights, and Peru’s possible status as (in Valerie Sperling’s term) an “altered state” with those accountable for human rights abuses beyond the reach of domestic jurisdictions. In the light of his assertion that his visit, with TRC members, to Lucanamarca, a remote Andean town (the scene of an atrocity perpetrated by the Shining Path guerillas) “represented a journey to a world rarely visited or even acknowledged by our elites,” this omission is indeed puzzling.

Nor does he explore the vexing issue of upholding human rights in an era of violent conflict, as that which raged between the Peruvian government, the “Maoist” *Senderistas* of the Shining Path, as well as the Tupac Amaro organization. Reparations and apologies are laudable, indeed

necessary, but such policies from the standard human rights menu do not address the issue of political and ethnic reintegration. “Forgive, and never again!” he cried out in Lucanamarca— but who is to forgive whom? How will Peruvian society develop to prevent these conflicts from emerging again?

His comments on the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are cursory at best. These bodies do have an extensive record in helping to correct human rights abuses; it is certainly to Toledo’s credit that he accepted the Court’s judgment against Peru, although the crimes involved took place prior to his administration. Indeed, it should be said that Toledo’s efforts on behalf of human rights seem to have been more extensive, more politically risky, and with more of a legacy, than this article presents.

Since 2006, Toledo has found a useful perch in academic and NGO institutions in this country, such as working with the Carter Center on election monitoring. It would have been interesting to hear his views on how his outlook on these matters has been shaped by his American experiences— and how his Peruvian and *Indio* life may have lead him to see the weaknesses of the American approach to human rights.

Professor Henry Krisch (*Political Science emeritus, University of Connecticut*) taught political science at the University of Connecticut and Columbia University for almost forty years. He has specialized in Soviet and German, especially East German, politics, and more recently in international human rights issues. At the University of Connecticut, Krisch was Director of the Center for Soviet and East European Studies, co-chaired the academic program committee for the Dodd Year (1995-96) on “Fifty Years After Nuremberg: Human Rights and the Rule of Law.” Since 1999, he has been a member of the Gladstein Human Rights Committee. His publications include *German Politics under Soviet Occupation* (1974), *The German Democratic Republic: Search for Identity* (1985), *Politics and Culture in the GDR* (1989), *Politics in Germany* [co-authored] (2009), and “George Soros,” in *The Encyclopedia of Human Rights* (2009).