

William H. Fitzpatrick's Editorials on Human Rights (1949)

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In March of 1949, a small newspaper called the New Orleans States published a week-long series of editorials by William H. Fitzpatrick on the subject of international human rights. Unlike most of the historical texts that are today considered “canonical” in the history of human rights, these editorials offered a vociferous argument against the United States’ participation in the international human rights project that was then in its early stages of development. At the time, the editorials received national acclaim from U.S. lawyers, members of Congress, and the American public; Fitzpatrick was awarded the Pulitzer Prize for editorial writing in 1951. By galvanizing the early American opposition against international human rights treaties, Fitzpatrick and his editorials became part of a broader struggle that has defined the trajectory of human rights within the United States for over six decades. Yet today, few human rights experts, historians, or activists have ever heard of Fitzpatrick or his writings. William Fitzpatrick also published two subsequent editorials series in the New Orleans States in opposition to the United States’ support of the Genocide Convention (April 1950 – “The Genocide Convention: What It Really Means to Americans”) and the Covenant on Human Rights (December 1950 – “Gov’t by Treaty”). The present analysis focuses on the creation, nature, and impact of his first editorial series opposing the Universal Declaration of Human Rights.

Genesis

William H. Fitzpatrick was born in New Orleans in 1908. He began his professional career in journalism in the early 1930s covering sports and state politics. Over the next decade, Fitzpatrick ascended the ranks of various local newspapers. In 1945, during the final days of World War II, he was named editor of the New Orleans States newspaper. 1945 was also an extremely important year in the history of international human rights. It was during this moment that the members of the new United Nations organization completed the drafting of its founding text—the United Nations Charter. The UN Charter articulated a commitment to uphold the human rights of citizens and outlined a broad set of principles relating to achieving “higher standards of living,” addressing “economic, social, health, and related problems,” and “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” In December of 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR),^[1] a non-binding statement of human rights principles, which was to be followed by the International Covenant (“the Covenant”)—a binding international treaty that would offer greater specificity and enforceable legal grounding for the recognition of international human rights. It should be noted that what was originally intended to be a single Covenant that contained civil, political, and socioeconomic rights was split in 1952 into the two Covenants we have today—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Together, the UDHR and the two Covenants are considered to be the foundational human rights texts in the contemporary international system of human rights.^[2]

In March of 1949, when the New Orleans States published Fitzpatrick's first series of editorials on human rights, the contemporary idea of international human rights was still in its early stages of development at the United Nations. Similarly, for the United States government and its citizens, much remained uncertain about the future impact, force, and reach of international human rights. The United States had not yet developed a policy approach regarding whether or not it would recognize international human rights within the domestic context. That said, the idea that international human rights treaties could—or even should—be considered as the supreme law of the land already was gaining support in certain quarters. For instance, President Truman's Committee on Civil Rights authored a 178-page report in 1947 that had already raised the distinct possibility that the UN Charter could be used as a source of law to fight persistent racial discrimination in the U.S.^[3] Though the report acknowledged that such a path was not free from controversy, the Charter (Articles 55 and 56 in particular) was nevertheless viewed as a possible legal basis for a federal civil rights program. Now that the United Nations had successfully adopted the UDHR and was working on a binding Covenant, it appeared that human rights might actually come to have an effect on domestic law within the United States. In 1947, the NAACP published a monograph entitled *An Appeal to the World*. The purpose of this text was to document the racial discrimination and injustices that African Americans were then suffering in the United States. Having been denied redress through domestic avenues, the authors of this text sought to inform the international community about the plight of African Americans and rely on the nascent idea of human rights to hold American leaders, political, and legal institutions accountable.

Fitzpatrick authored his editorials against a legal backdrop that was amenable to accepting human rights as part of domestic law. The notion that an international human rights covenant could become the legal standard to which domestic law would answer was actually supported by the United States Constitution and valid case law. Article VI, Section 2 of the U.S. Constitution, known as the "Supremacy Clause," states that: "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." A key Supreme Court case from 1920, *Missouri v. Holland*, authored by Oliver Wendell Holmes, held that a treaty was indeed the supreme law of the land, thereby overriding local domestic laws.

But even more far-reaching and disturbing to Fitzpatrick was the decision of one California court in the 1950 case *Fujii v. State of California*. In this case, a California Court of Appeals struck down the California Alien Land Law that prohibited Japanese residents from owning land in the state of California. The Court held the human rights provisions in Articles 55 and 56 of the United Nations Charter to be "the supreme law of the land"—a source of binding law that thereby overrode any contrary domestic law. Although this decision was itself overruled within two years, it provided the opponents of international human rights treaties with actual evidence of their fears having come true. Fitzpatrick continued to write about human rights in his newspaper and argued that his dire warnings about human rights were no longer abstract or conjectural; based on the 1950 *Fujii* case, he suggested, they had become a reality.

It is common to view such political struggles in the United States as ones in which

“isolationist” factions are pitted against “internationalists.” Fitzpatrick is certainly to be included among the longstanding factions within American politics that promoted a less engaged role in matters residing beyond the nation’s borders. Nevertheless, when considering Fitzpatrick’s contributions, it is more useful to frame the analysis in terms of the local consequences of human rights treaties. Indeed, his concerns and motivations—as well as those of his readers—were not primarily about international law and international politics; they were simply new manifestations of the longstanding, bitter social and political struggles that divided much of the United States at the time.

In the 1940s and 1950s, racial divisions, political exclusion, and gender inequities were basic facts of American social life. State and local segregation laws were in force throughout much of the South. Often referred to as “Jim Crow” laws, these legal provisions required segregation in public places, restaurants, hospitals, public schools, restrooms, and so forth.⁴ As many sought to fight for greater equality, others such as Fitzpatrick dug their heels in and attempted to preserve these older social hierarchies. Fitzpatrick, therefore, wrote his editorials as a response to the potentially sweeping transformations that international human rights treaties might bring to the established legal, political, and social orders within the United States. His editorials served as a warning call about what he believed was the impending “threat” of international human rights law becoming the prevailing law within the United States.

Content

William Fitzpatrick’s editorials represented an extremely well-researched, meticulous study of the effects of human rights that was simultaneously rife with exaggerations, fabrications, and shameless fear-mongering. On the one hand, his intended audience was comprised of legal professionals and elected representatives—many of whom at the time were not entirely aware of the implications of human rights treaties for the United States. In this regard, he offered a lucid, intellectually informed appraisal of existing case law, constitutional law, and international law. But his editorials were also written for a broad, public audience with the intention of spurring civic action against the United States’ domestic acceptance of international human rights treaties. In this regard, Fitzpatrick painted vivid images of a nation whose traditional social hierarchies were in danger of crumbling at the hands of outside invaders, communists, despots, homegrown socialists, and civil rights advocates.

For Fitzpatrick, human rights treaties represented a “nullification of present American laws and customs.” At the time, over half of the states in the nation had laws on the books prohibiting marriage between different races. But Article 16 of the UDHR stipulated that, “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” If an enforceable human rights covenant were to become the supreme law of the land, Fitzpatrick wrote, it would “obliterate” the anti-miscegenation laws in 29 states. Fitzpatrick also warned his readers that the racial segregation laws that were on the books in 17 states would be invalidated if a human rights covenant were to come to fruition.

Fitzpatrick explained to his readers that Article 25 of the UDHR outlined the rights to adequate medical care, social services, and security. This, he suggested would require that the United States would be obligated to pay for the social security needs of the rest of the world. The proximate result and ultimate goal of Article 25, he argued, was “world-wide socialism.” Fitzpatrick also targeted Article 14 of the UDHR, which stipulated that, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” This, he suggested, would allow unrestricted immigration to the United States.

The human rights project at the United Nations was what he called part of a “pincer-movement.” On the one hand, President Truman was looking to implement a national civil rights program that would institute greater legal and political equality between the races. But if that was unsuccessful, Fitzpatrick argued, the Truman administration would be able to accomplish the same through international human rights treaties. Thus, Fitzpatrick warned, advocates for states’ rights, segregation, and Jim Crow laws had not one, but two potential avenues to guard against—domestic civil rights legislation, and now international human rights treaties. He called on the Senate, members of the legal community, and the public at large to refuse, oppose, and fight against human rights at the United Nations.

Today there is little worry in the United States about the effect that human rights might have on its domestic law. From a contemporary perspective, it is therefore easy to dismiss Fitzpatrick as an alarmist. But rather than viewing Fitzpatrick’s writings from our own present perspective of what human rights are today, it is crucial to view this history from the perspective of those fighting these battles in the late 1940s and 1950s over what human rights might become in the future. The possibility of a radical reorganization of existing social hierarchies and the demolition of discriminatory laws within the United States was within the realm of possibility at this time. In fact, if human rights treaties were to live up to their promises, enforcing such sweeping changes would be a legal obligation. For those like Fitzpatrick who hoped to preserve the status quo within the United States, human rights represented an existential threat. The fact that human rights never truly became the threat that opponents in the post-World War II period envisioned has much to do with the impact of the battles they waged.^[5]

Impact

Soon after Fitzpatrick’s editorials were published in the New Orleans States, members of the United States House of Representatives were informed about them by Representative Edward Hébert of Louisiana. Speaking to his House colleagues, Hébert claimed that Fitzpatrick had “rendered a public service” with his editorials. “They are thought-provoking, logical, and alarming, considering the implications of the so-called Universal Declaration of Human Rights.” Chief among Hébert’s concerns about the Declaration was its potential to empower—if not require—the federal government to impose its authority on the states in matters concerning human rights. He, like Fitzpatrick, worried that international human rights treaties would tip the balance of power away from the states towards the federal government. Hébert reprinted the entire series in the Congressional Record in order to give these editorials, which normally would have seen only a limited circulation, a national audience at the highest levels of government. In 1951, William H. Fitzpatrick received the most prestigious journalistic honor for editorial writing awarded in

the United States—a Pulitzer Prize.

The bitter and vociferous opposition against the idea of human rights at first glance appears to contrast with the United States' position on human rights today. Over the past few decades, the United States government has often held itself up as a strong supporter of human rights in the international arena. But at the same time, Fitzpatrick's editorials represent a set of political ideas that remains a foundational aspect of the contemporary idea of human rights within the United States. For the United States government, human rights are an international, rather than domestic phenomenon and represent more of a choice than an obligation. The dismissive position that the Trump administration has taken with respect to the consideration of international human rights within its foreign policy objectives is a clear manifestation of these longstanding undercurrents of resistance.

Human rights were defined, in great measure through the actions of Fitzpatrick and others like him, as an "international" entity; a political, legal, and social construct for other nations and other peoples in faraway lands—but not for Americans, and not within the United States. The reason that there is not much opposition to speak of against human rights within the United States today is that, as a result of this history, the domestic application of human rights has largely ceased to be an option. The status quo is one of human rights absence. That said, when the prospect of human rights making a domestic appearance emerges—and it does from time to time in the United States—there is often a small uproar. In December of 2012 for instance, the United States Senate failed to muster the necessary votes to ratify the Convention on the Rights of Persons with Disabilities. Despite the argument that this international human rights treaty was in large measure modeled after the United States' Americans with Disabilities Act, the Senate vote fell short of the necessary two-thirds majority. Many of the same arguments that one finds in Fitzpatrick's editorials regarding states' rights and preventing foreign ideas from altering domestic laws and institutions are present in the Senate debates over the treaty. Indeed, this recent U.S. rejection of an international human rights treaty follows a pattern that stretches back many decades.

Fitzpatrick's editorials open a door to a history of human rights that has not been considered to any great extent among human rights scholars or activists. Indeed, the standard narrative of the creation of the modern international system of human rights is one of triumph and success. In many respects it is not difficult to understand why much of the historiography on the emergence of international human rights in the post-World War II period assumes such a celebratory tone; human rights are now cornerstones of the international order. The recognition of universal principles of human dignity was certainly a crucial historical milestone.^[6] Thus such historical works often focus on the tireless work of human rights supporters such as Eleanor Roosevelt and John Humphrey, who penned the first draft of the UDHR. To be sure, it is not historically inaccurate to attribute the emergence of the foundational international human rights texts that we have today to the actions of such supporters. But at the same time, it is certainly not the entire story; there were many human rights opponents at the time who also shaped the human rights concept that we have today.^[7] Within the ranks of the opposition though, Fitzpatrick was one of the first and one of the most important voices to give clarity and meaning to the emerging human rights concept. His editorials offered a very simple warning: human rights have the

potential to live up to their promises. While human rights held hope for millions in the United States, powerful political forces in state and national bar associations, the U.S. Congress, and the American public heeded Fitzpatrick's warnings to fight against that potential.

To recognize that opponents of human rights influenced the idea of human rights along with the supporters is in many ways a very mundane observation. Virtually any potentially consequential legal, political, or ideational innovation will have its supporters and its opponents. The idea of human rights is no different. From Bentham's passionate diatribes to the "Asian values" arguments of the 1990s and postcolonial critics today, it should be expected that the idea of human rights will always have its share of critics. But the door that Fitzpatrick's editorials opened leads to a very different series of revelations about the nature of human rights and the contemporary consequences of a history that has been all but overlooked. On the one hand, it is easy for a human rights supporter today to dismiss Bentham, to reject the "Asian values" argument as the justifications of authoritarian leaders, or to rebuff postcolonial critiques of human rights, thereby leaving the purity, universality, and self-evident natural qualities of the human rights idea fully intact. But Fitzpatrick's story offers a series of historical facts that cannot be dismissed as can a normative idea that one disagrees with. His influence, along with those whom he helped mobilize, is unequivocal. Recognizing this influence introduces a challenging proposition: the human rights that we have today were, in part, created by their opponents and constructed to permit many then-existing exclusions. Nowhere is this clearer than in the context in which the American idea of human rights was crafted to allow the idea of human rights to coexist with the social hierarchies that represented the status quo at the time. Although Americans tend not to question why human rights do not occupy a greater role in United States politics, law, and social life today, the status quo in contemporary America is in no way a natural or inevitable state of affairs. It is an outcome of a series of struggles during the crucial stages of development of the human rights concept that have been overlooked. William H. Fitzpatrick's editorials provide a striking entry point to this overlooked history.

Annotated Bibliography

Richard A. Primus: *The American Language of Rights*. Cambridge 1999.

Primus classifies rights into four major categories: entitlements, liberties, power, and immunities. Rights do not represent the ultimate normative foundations for claims, but are shorthand ways of showing that something is normatively important without having to explain the normative underpinnings. Thus, rights are just "way stations" that rest on other accepted normative ideas. These accepted normative ideas, in turn, are also placeholders that rest on other normative ideas. The three most influential transformations of the American rights discourse occurred at the country's founding, during the Reconstruction period, and in the post-WWII era. Primus views rights as a social practice—they are not fixed and vary according to historical circumstance. Therefore, modern categories of rights (both political and academic) "do not provide an adequate framework for reconstructing conceptions of rights" at different historic locations.

Christopher N. J. Roberts: *The Contentious History of the International Bill of Human Rights*.

Cambridge 2016.

During the late 1940s and early 1950s, the international community banded together to create the International Bill of Human Rights—the foundation of the modern international system of human rights. Although human rights law might seem like the only appropriate response to the Holocaust and World War II, at the time the human rights concept was anything but self-evident. There were in fact numerous reservations that are often overlooked by human rights scholars. Because the concept promised (or threatened) to create new categories of rights holders, imperial powers such as Great Britain and influential professional organizations such as the American Bar Association and the American Medical Association expressed serious reservations about international human rights treaties. Interestingly, during the same period progressive thinkers like Hannah Arendt and Gandhi—each for their own reasons—also rejected basic aspects of the new human rights concept. Much of this opposition was actually absorbed into the substance and meaning of the modern international human rights concept. Over a half century after its founding, the modern international system of human rights remains encumbered by the opposition of an era that has passed.

To Secure These Rights: The Report of the President's Committee on Civil Rights.
Washington 1947.

This 178-page report was released at the end of 1947. It raised the distinct possibility that the UN Charter could be used as a source of law for fighting racial discrimination in the U.S. Though the report acknowledged that such a path was not free from controversy, the Charter (Articles 55 and 56 in particular) was nevertheless viewed as a possible basis for a federal civil rights program).

Jeremy Waldron: Rights in Conflict, in: *Ethics* 99 (1989), S. 503-519.

Waldron looks at whether our conception of rights allows rights to come into conflict with another, and if so, how these conflicts should be resolved. The problem of conflicts amongst competing rights claims is more or less serious (or may not exist at all) depending on the particular rights framework one is employing. Since relying on overly simplistic, quantitative utilitarian calculations to resolve conflicts is problematic, Waldron suggests that we need to make use of qualitative analyses of conflicts by looking at “internal connections” between actions, rights and morals.

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Fußnoten

1. Vgl. Schabas: Universal Declaration.
2. Vgl. Henkin: Age of Rights; Roberts: Contentious History.
3. To Secure These Rights.
4. Vgl. Klarman: Jim Crow.
5. Vgl. Roberts: Human Rights.
6. Vgl. Anderson: Eyes; Borgwardt: New Deal; Dudziak: Cold War; Hunt: Inventing Human Rights; Ishay: History; Lauren: Evolution; Morsink: Universal Declaration; Thomas: Helsinki Effect.
7. Vgl. Roberts: Grasping; Roberts: Contentious History.

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