The **Protest** Approach to Promoting **Human Rights**

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Introduction

Human rights is the language with which societies communicate what they consider ethical, fair, moral, right, or wrong at a given time. Thus, an acceptable claim today may become abhorrent in future considering that times change and ideologies shift. Nevertheless, every society has reasons for advancing or pushing certain claims as rights, chief of which is to ensure their recognition, respect, and protection. Amartya Sen, a philosopher and development expert, proposed a two-pronged qualification or 'threshold conditions' for the basis of human rights or the freedoms to be defended or advanced, to wit: special importance, and (ii) social influenceability.[1]

Societies have transformed, colonialism ended, democracy widely adopted, and laws (international, national, and sub-national) have been enacted based on the concept of human rights. Human rights have become the indicators or 'acceptable benchmarks' with which to assess, criticize, and demand how duty bearers – state and non-state – should treat members of their societies, especially those most vulnerable to rights violations. It now seems, as evidence show, that once a claim is clothed with the fabric of human rights, there is high likelihood of it being adopted as a principle, norm, or standard on how people should be treated. However, as desirous as this approach is, there is danger in it. In proposing a 'list of criteria'[2] for a claim to become a right, Philip Alston warned that the United Nations "will be under considerable pressure to proclaim new human rights without first [giving] adequate consideration to their desirability, viability, scope, or form."[3]

This article provides a deep-dive into the *protest* approach to promoting human rights. While the first part gives a brief overview of the four theories of human rights (natural, deliberative, discourse, and protest), the second part hones down on the *protest* approach, particularly their combined or separate confrontational and collaboration tactics of promoting rights. The third part lays out some justifications or relevance of the *protest* approach.

Human
Rights
Theories

One may wonder how human rights emerge. While Andrew Heard opined that human rights are 'a product of a philosophical debate'[4], other scholars said they are gifts of nature, gains of struggles, or outcomes of deliberations. The understanding of the nature of human rights have been influenced and shaped by different reasonings of writers, philosophers, scholars, and experts. These reasons, framed as theories or conceptual frameworks, are deemed to override or, as Ronald Dworkin puts it,[5] 'trump' any other claim, consideration, justifications, or defence that a society – as individuals or collectives – may adduce as to why they want or expect certain treatments. This, suffice to mention, contradicts the basis for certain specific and/or general limitations placed on some rights. In fact, Joseph Raz rightly posited that because 'rights are based on people's interests, it cannot be claimed that they are 'trumps' in the sense of overriding other considerations based on individual interests."[6]

Asides appealing to moral consciences, or justifying/defending the need for claims, human rights theories give 'foundation and legitimation'[7] to human rights, thus making the rights predate their codification. In addition, human rights theories aid the elaboration, understanding, and usage of rights, while serving as basis for connecting the theory and practice of human rights, especially for those who act on human rights, whether as protectors or recipients. By so doing, human rights are shifted from the realm of philosophies, debates, or other abstractions to the day-to-day realities of the people for whom dignity, fairness, and justice are most needed.

Marie-Bénédicte Dembour[8] categorized, into four, what she calls Human Rights 'Schools of Thought' – Natural, Deliberative, Discourse, and Protest. These schools are the different bases for which human rights have been conceived, conceptualized, debated, analyzed, understood, used, and enhanced. Considering that the importance of studying each theory of human rights will differ according to the different segments of a given society, and depending on who is doing the studying, it is imperative to mention, upfront, that while there will be brief analysis of these schools of thoughts, the preponderance of this piece will focus on the relevance of human rights theories from a protest scholar's perspective, while drawing examples from the work of protest theorists who promote the rights of the vulnerable and marginalized in developing democracies.

The natural school is the oldest of the four schools that Dembour propounded, as it is rooted in age-long traditions, religious tenets, and long-held philosophies. *Natural* school theorists posit that human rights are absolute, a given, and one that naturally accrues to a person just by being human. This belief justifies naturalists' propagation of the universality of human rights as they theorize that the sense of what is right or wrong is imbued in each person by God. The *deliberative* school, as the name implies, deliberates what human rights is and should be. Hence, the legitimacy of their concept of human rights is tied to the vibrancy and cogency of the deliberations, as well as the depth and reach of the consensus they seek and build. What becomes human rights, in the eye of deliberative theorists, is what a society agrees to adopt after deliberations. The consensus they reach have birthed national legislations like Constitutions, and many international human rights instruments.[9]

Discourse scholars theorize that human rights are gleaned from discussions. To this school, these talks form the bases for which human rights are identified, shaped, understood, and strengthened. *Protest* scholars argue that human rights are 'fought for.'[10] To this school – with whom I share strong affinity, connection, and solidarity – human rights are birthed, expressed, and understood mainly

through relentless struggles all in a seemingly unending quest to identify, challenge, and demand justice for the oppressed, marginalized, and disadvantaged. Unlike deliberative scholars, protest theorists are unsatisfied with the mere codification of human rights in written pieces of legislations, no matter how hierarchically placed such laws are, especially because some of these laws contain provisions that, in and of themselves, perpetuate and legitimize rights abuse. To protest scholars, until human rights are known, understood, and enjoyed by all, especially those highly prone to rights violations, the struggle continues.

The Protest Approach

In the struggle to change unacceptable and unfavourable status quos, protest theorists mainly adopt disruptive, radical, and **confrontational** tactics such as protests, peaceful rallies, civil disobedience, and other frontal activism strategies. And, with the advent of new media, slacktivism is also a strategic approach for protest theorists, whereby human rights activists also use online and social media platforms to advance their cause. Suffice to mention that because the haves in the society are rarely, or unnoticeably, affected by human rights violations, beneficiaries of the actions and activities of protest scholars are often the poor, vulnerable, and disadvantaged. Dembour was apt in submitting that "human rights represent… an ideal that can never fully be achieved"[15], and because this 'ideal' is 'a perpetual calling'[16], protest scholars believe in the 'a luta continua, victoria acserta' mantra that 'the struggle continues (until), victory is assured.'

The social impact achieved by protesters are not only through confrontations. They also adopt sit-at-the-table **collaborative** means; thus, a combination of tactics. For instance, judicial activism has led to changes in codified and uncodified laws and practices. Amartya Sen had said that 'the implementation of human rights can go well beyond legislation, and a theory of human rights cannot be sensibly

confined within the juridical model in which it is frequently incarcerated.'[17] Thus, Judges have used their knowledge of the law and their positions in the court rooms to give rulings that overturn, for instance, repugnant customary laws and practices, which, in many cases, advance to apex courts to become judge-made laws.

Why Protest**?**

As human rights theories intersect, so do the approaches that emanate therefrom. Focusing on the protest school of thought, the following are some reasons for their approach to promoting human rights:

1.   Empowerment through knowledge

While Kimberlé Williams Crenshaw's concept of Intersectionality may not be entirely favourable in identifying the specific rights of marginalized groups considering that they are diverse and overlapping, the most prominent and recognized ones are worth fighting for, which is what protest scholars provoke. However, a key step in the struggle for the recognition and enforcement of rights is knowledge. By protesting, awareness is created and raised on rights abuses and social issues, thus providing an avenue for people to know and become empowered.

Knowledge of rights violations and social issues is, therefore, a strategic approach to empowering rights-holders. Knowledge is power. When people know their rights, they are empowered to confidently and legitimately demand that duty-bearers perform their obligations to respect, protect, and fulfil such rights and freedoms. Knowledge of rights, also, provides a lens through which people assess themselves; while helping them frame rights-based solutions to social issues that directly or remotely affects them. By so doing, rights holders are able to determine their expectations of those with the requisite obligations and resources to protect their rights. As people are empowered, they also become active and meaningful contributors in the process of strengthening rights. In addition, with knowledge, the Latin legal maxim: *ubi jus, ibi remedium* ('where there is a right, there is a remedy') becomes plausible; because when people know their rights they are confident to seek the corresponding remedy or redress whenever such rights are violated.

2.   Challenging hegemony

Democracy is the system of government in many countries; yet, military ideologies still run through the veins of many leaders whose governance approach is nothing short of *militrocracy*. Militrocrats aside, there are rulers, cloaked as democratic leaders, who, as rightly posited by Costas Douzinas[11], run hegemonic social and political systems by 'turning their ideological priorities into universal principles and values.'[12] Protest approach to promoting human rights, thus, becomes relevant in such systems in order to push for democratic leadership, through and through.

3.   Closing the gaps between theory and practice

Each school of thought is plagued with gaps between their theories and practice. For example, originators of the *natural* school – Aristotle, Hugo Grotius, Thomas Aquinas – fail to consider whether mere existence or appendage of rights amount to its recognition by duty bearers or their corresponding enjoyment by rights holders. For the *deliberative* school, it is disregarding the reality of exclusion considering that many laws are deliberated and passed by only a segment of the society who have access and can contribute to lawmaking processes.

For the *discourse* theorists, it is the question of how mere discussions practically translate to rights enjoyment, not forgetting how unfounded in practice their suspicion and concern that human rights, especially universal ones, are imposition of imperialism such that assistance is deemed an interference in the state's democratic sovereignty and territorial integrity. Should innocent, helpless people continue to suffer when a State is unwilling and/or unable to protect its citizens, particularly the vulnerable ones? Or, where should we place 'international cooperation and assistance' in promoting human rights when it is evident that a State lacks or is limited in capacity or resources to act rightly?

The *protest* school is not left out. While at global and local levels, examples abound of how social movements have informed major changes within and among nations, these changes often come at great price and at the expense of reputational, mental, and physical costs which are further and extensive rights violations. Take Ken Saro-Wiwa for example, an environmental activist from Ogoniland – an ethnic minority

group in Nigeria's oil-rich Niger-Delta, who was killed for leading non-violent protests against companies like Shell that was exploring their lands for oil at the detriment of their lives and livelihoods. The dire costs of protesting for human rights aside, there seem to be an endless routinization process of protests for the recognition and promotion of rights owing to the insufficiency of the content of a right once fought for, thus leading to protests upon protests, resulting in daunting and laborious circles of protests for human rights that should, really, be a given.

4. The quest for change

Societal change becomes necessary before rights are developed, when rights are adopted, and while rights are being enforced. The very need for change in how individuals and groups are treated often form the basis for having rights. Even when these rights are recognized, there is high likelihood of them being abused, thus necessitating the continuous fight for the strengthening and promotion of such rights. The struggle for social, cultural, or political change is often led or provoked by protest scholars who advocate for social change based on a myriad of issues – girls' education, political inclusion of marginalized groups (women, young people, persons living with disabilities), access to basic infrastructure (transportation, schools, hospitals, among other socio-economic or 'second generation' rights); et cetera.

Some social impact have been achieved through protests in Nigeria. An example is the #NotTooYoungToRun campaign whereby young people engaged in protest and other tactics to demand constitutional amendment so that Nigerian youth can vie for elective offices without being limited by age. Another example is the relentless struggle for gender equality in Nigeria. While Section 33 of Nigeria's 1999 Constitution[13] guarantees the right to life, this was not the reality of 22-year-old Uwavera Omozura who, in May 2020, was raped and killed in Nigeria's Benin City, sparking the #JusticeForUwa protests and demand for prompt and strict prosecution of rapists[14]. The #BringBackOurGirls movement is another protest-based advocacy in Nigeria, aimed at and resulted in the government's negotiation for the release of over 100 of the 276 schoolgirls abducted by the deadly terrorist group, *Boko Haram*.

As earlier mentioned, protests-based approach to promoting human rights is not only done on the streets or by carrying placards. Some are carried out in courtrooms through judicial activism whereby Judges use their positions to make judgments that promote human rights and translate into desirable social outcomes. For instance, in the 2014 case of *Lois Chituru Ukeje v Gladys Ukeje*[18], Justices of Nigeria's Supreme Court unanimously found unconstitutional, and thus invalidated, an Igbo customary law of succession that deems ineligible and denies female descendants the right to inherit their father's properties[19]. Similarly, in the case of *Mojekwu v Ejikeme*[20], the Justices in Nigeria's Court of Appeal relied on the provisions of the African Charter on Human and People's Rights (ACHPR)[21] in nullifying – having pronounced as discriminatory and inconsistent with the doctrine of equity – a customary law in Oli-Ekpe that prevented daughters of a deceased man from inheriting his property. The Supreme Court also decided against the customary law and practice of male primogeniture among the Awka people of Nigeria's Anambra State in the case of *Onyibor Anekwe v Maria Nweke*[22].

5. Compliance and accountability

Another significance of the protest approach to promoting human rights is how this school keeps the world abreast of the duties and obligations that attach to rights. Theoretical accounts of human rights provide a conceptual and practical framework upon which to base, on the one hand, the knowledge of human rights by rights holders as well as their role in protecting and enhancing these rights; on the other hand, it expound the corresponding obligations of actors, especially state-actors, in respecting, protecting, and fulfilling these rights.

As aptly opined by Joseph Raz, 'rights are grounds of duties in others,'[23] which, in some cases, are 'conditional'.[24] Amartya Sen's view on this is that 'human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms'.[25] This notion of the correlativity between rights and duties forms the foundation for the obligations of States to be accountable at the national level whereby governments, based on the social contract theory, are accountable to those they govern; and, at the international level, governments or State actors, through processes such as the Universal Periodic Review (UPR), are accountable to other States under the auspices of the Human Rights Council.

Conclusion

The overall relevance of the protest approach to promoting rights and freedoms hinges on the imperativeness of repairing the past, strengthening the present, and shaping the future of rights and the people it seeks to benefit the most. It is important that human rights are consciously and intentionally promoted among those who were the primary focus when these rights were being contemplated, formulated, and codified. They are the oppressed, vulnerable, marginalized, and disadvantaged people who are often disproportionately affected when rights are non-existent, not recognized, or violated.

To achieve this, Dembour's four Schools of Thought present distinct, though overlapping, theoretical accounts of human rights, each of which presents unique ways of understanding and strengthening human rights, while also revealing the existing gaps through which these ideologies can be studied and better shaped, and utilized for the greater good. For the protest approach, which is based on the protest school's theory of human rights, studying their theoretical account is relevant for many reasons, including the importance of spreading the awareness of human rights as a way to empower rights holders; challenging hegemonic tendencies, ideologies, and practices of political leaders; closing the gaps between human rights in theory and practice; forming the foundation for social, political, and cultural change; and promoting compliance and accountability by both right holders and duty bearers.

Endnotes

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