

THE THEOLOGY OF THE RIGHT TO DEVELOPMENT: A REPLY TO ALSTON

JACK DONNELLY

Philip Alston begins his comments by admitting that the so-called human right to development “has emerged with almost indecent haste” and has been met by “perhaps excessively uncritical acceptance.” He even admits that arguments for the right “have, for the most part, been awfully weak” and he offers a personal plea of “guilty to not having done a particularly good job.”¹ As Alston presents very little in the way of substantive arguments or counter-arguments in the course of his comments, we might expect that the plea of guilty would still stand and that he would be at least moderately critical of the notion. In fact, though, he concludes—or rather continues to assume—that there is a right to development, a cuddly little mongrel kitten that he encourages us to embrace.

Unfortunately, Alston once more has neglected to bring the cat out of the room, or even lead us back in and point out where this timid little kitten is hiding. Therefore, being only a philosopher, I remain unconvinced. If my article did nothing more than provide a “valuable counter-point with a salutary effect” I would be satisfied. I believe, however, that my “damning critique” stands up rather well to his comments. Let me try to reply to Alston’s major points.

Alston claims that I rely on knocking down a row of straw men. Each argument that I consider, however, is not only thoroughly documented in the original paper, but a standard argument of proponents of the right to development. While they fall like straw men, these arguments, sadly, are staples of the literature (which even Alston admits is pretty awful).²

1. Alston, *The Shortcomings of a “Garfield the Cat” Approach to the Right to Development*, 15 CALIF. W. INT’L L.J. 510 (1985). While I am forced to agree with Alston on such assessments, it should be noted that his work on the right to development is clearly the best that has been done; it is only a slight exaggeration to say that most other commentators have done little more than rehash his original arguments.

2. To underscore the reality of these “straw men,” let me simply note that Alston, a mere two paragraphs later, falls into one of the errors, namely confusing moral righteousness with human rights. *Id.* at 512. It is true that moral outrage need not take the form of claims of *rights*; in fact, given the absence of the notion of basic human rights in most societies at most times, simply as an historical or sociological point we can say that such moral outrage usually

As to the charge that I consider only “some of the very inadequate analyses which have been undertaken,”³ I can only reply that I believe that my overly long paper addresses at least all that deserve comment. (Alston’s failure to advance any arguments that I have overlooked seems to me to confirm the thoroughness of my discussion.) Until we receive the “more systematic and convincing analysis”⁴ that Alston continues to hope for—and that proponents of the right have been suggesting for more than five years now is just around the corner—the *most* that can be asked of us, on rational grounds, is skeptical openness to future arguments. Believers such as Alston may want to take the right to development on faith, but they owe it to us to admit that it rests on faith alone. Therefore, I suggest in the title of this reply that we are dealing here more with theology than anything else.

Just about the only substantive argument for the right to development that Alston advances in his comments is Article 28 of the Universal Declaration.⁵ But even granting his interpretation of its legal status, Alston fails to even attempt to show how a human right to development flows from it. Such a derivation is hardly self-evident, and in my paper I advance a variety of objections, which I still believe are decisive. Even if we were to allow that Article 28 is a possible source, this vaguest of passages is at best a pretty tenuous basis for such a momentous new right.

I don’t think that Alston fares much better in his attempt to put the right to development into context. Since the attack of the Reagan Administration on economic rights has been rightly repudiated by virtually all other countries, including almost all Western countries, I do not see that it has much relevance—especially since the right to development entered the international agenda, and received several UN endorsements, in the Carter period. In any case, the right to development is not an economic human right; if we are really concerned with rights to food, health care and the like, we ought to stress these rights, not obscure them in a new right to development. Furthermore, this implicit reduction of the right to development is both dangerous in itself, as I argue in my paper, and inconsistent with Alston’s own arguments elsewhere.

does not take the form of claims of rights, let alone *human* rights claims. Likewise, simply because something is “a matter of utmost priority” does not tell us anything about whether or not it is a matter of human rights.

3. *Id.* at 514.

4. *Id.*

5. *Id.* at 514-15.

Alston's second contextual point is even weaker. He himself admits that virtually no nation accepts his view that internationally recognized human rights imply major international obligations. Therefore, I cannot see how this could possibly be an important element of the legal or political context. I think that what we have here is a confusion between what Alston would like the context to be and the real context, which I believe my paper more accurately describes.

Finally, we come to the issue of collective human rights. Alston fails to present any substantive reasons for rejecting the traditional understanding of all human rights—economic and social as much as civil and political—as individual rights, rights held by individual persons.⁶ It is not enough to note that many observers are beginning to question this understanding; the real issue, certainly, is whether this traditional understanding is correct or productive. Alston advances not even the suggestion of an argument that it is wrong. Therefore, I don't know how to respond other than to suggest that the burden of proof for such a radical reconceptualization rests with those such as Alston who claim that there are or ought to be collective human rights.

The closest Alston comes to an argument is his claim that I "overstate the difference between individual and collective rights."⁷ I would suggest, however, that Alston in effect would destroy the distinction entirely. In particular, Alston rejects my second criterion for the existence of a collective human right, namely, that the right be substantively different from and not reducible to individual human rights. He claims that this logically precludes the existence of collective human rights. Clearly, though, it only requires that they be something other than individual rights. If a "collective human right" is substantively the same as and reducible to one or more individual human rights, then it is an individual human right, not a collective human right. Certainly if collective human rights are important and distinctive, it is not unfair to require that they be shown to be something other than individual rights.

I have a number of other more minor disagreements with Alston as well. For example, I think that the way I handle moral arguments and issues of political context in the paper clearly indicates that I do not view the right to development as a "black and white" legal issue.

6. Alston tries to back off of solidarity as a basis for the right to development, but clearly such a right, and the whole "third generation" of rights, requires a conceptual and philosophical grounding different from that which has been traditionally offered.

7. Alston, *supra* note 1, at 516-17.

The argument that we can't look too closely or rigorously at the right to development because it is merely an emerging right seems to me at best an unjustifiable evasion; if it is truly emerging, then someone ought to be able to give a clear account of that emergence, in accord with standard criteria for determining the existence of a right. I also think that Alston is clearly wrong in suggesting that self-determination, as a principle of international law, applies to entities other than colonized peoples and existing nation-states.⁸ Let me close, however, by addressing just one final issue, the question of relative costs and benefits.

While Alston may be correct that the dangers of the right to development "are nowhere as dire as Donnelly would have us believe,"⁹ I do not see any evidence for this claim in his comments.¹⁰ I have, however, at least provided a series of explicit arguments to suggest a string of dangers. Alston, like most proponents of the right to development, insists on its benefits, but fails to lay them out clearly and explicitly. He suggests that the right to development is akin to "a new miracle drug,"¹¹ but without even hinting at the particular miraculous benefits we might expect. I agree that cost-benefit analysis is appropriate in evaluating the right to development, but I am still waiting for substantive arguments pointing out the benefits and showing where I have overstated the costs.

Alston is correct that the possibility of abuse alone is insufficient to justify abandoning the right. My argument, however, rests on much more than the possibility of abuse. I show, or at least try to show, that there is no legal or moral basis for the right, and no major benefit to recongizing it. The possibility of abuse—actually, the reality of abuse demonstrated in my paper—is, however, not only a relevant factor, but a particularly important one for a baseless right without significant benefits. Given such abuses, I would suggest that

8. I am particularly bothered by the implication that rights are in some important way primarily a myth that seems to be contained in the phrase "rights language, or the myth of rights, if you want to call it that." *Id.* at 517. Certainly I cannot imagine that Alston personally really believes this, but that even he can seem to fall into such a dangerous way of thinking and talking does give one pause for thought, and underscores the dangers of conceptual confusion or corruption inherent in the notion of the right to development.

9. *Id.*

10. Note, though, that even I call the right to development "a genuine tragedy" only to the extent that international doctrine is taken seriously; my conclusion, in fact, is that the right will probably be a minor hindrance that provides one more excuse for States to avoid acting on existing human rights obligations. Even that, however, seems to me a sufficient reason for mounting the strongest possible argument against this new threat to human rights—a threat that is particularly insidious because it is cloaked in the mantle of human rights.

11. Alston, *supra* note 1, at 518.

the most prudent course is to abandon the right until that promised (mythic?) day when a sound, convincing analysis and justification is produced. Or if this "atheistic" stance seems too harsh, certainly the only reasonable alternative is agnosticism rather than the blind faith of the proponents of the right to development.