1. THE GENEALOGY OF RIGHTS

In a recent interview for CiF, Bob Geldof pointed to an apparent paradox at the heart of human rights: Rights are western but the west considers them universal. President Obama said something similar in his inaugural. The United States are going back to 'values', he insisted and this will allow them to lead the world again. But can human rights be western and universal at the same time?

Human rights are an inescapable fact. The Universal Declaration and the Covenants on civil and political and social and economic rights have been adopted throughout the world. Human rights are the ideology after 'the end of ideologies', the only values after 'the end of history'. But controversies around cultural relativism, so-called humanitarian wars and the repeal of our Human Rights Act indicate that this simple fact is not enough. As Catholic philosopher Jacques Maritain observed, "we agree on the rights, providing we are not asked why. With the 'why,' the dispute begins." Instead of understanding the underlying justifications (and alternatives) for rights however a strong chorus asks us to simply

act, join in, save the world. We repeat, mantra-like, a limited number of soothing banalities and half--truths about rights but we do not stop to think. As a result, we are often unable to see why others may disagree with us. Action becomes a palliative for bad conscience. This essay briefly pursues the amazing trajectory from natural law to natural and later human rights drawing parallels between the earlier traditions and contemporary debates.

The first reference to 'human rights' appears in legal writings of the 1920s. But their pedigree goes back to Greek cosmology and the idea of natural law. For the Greeks, the universe and each animate and inanimate being have a unique nature which determines their end or purpose. For instance, a soldier is virtuous if he strives to become the bravest warrior, and a city is just if it enables its citizens to reach perfection in accordance to their unique purpose. The idea of a rational 'nature' was a revolutionary invention of philosophy. It allowed Socrates and Aristotle, the Sophists and the Stoics to explore what is 'right according to nature' using reason against received opinion and ancestral authority. 'Nature' was the most cultured and revolutionary of ideas.

Because everything is interconnected in a harmonious cosmos, a common conception of the good and a shared ethics united the Greek world. No wall separated morality from legality. Indeed the same word (dikaion, jus) meant both the lawful and the morally right or just state of affairs. Stoic philosophers changed natural law into a universal, eternal

and absolute reason which unified humanity spiritually. Their philosophical universalism was of great help to Roman empire-building. For the lawyer and politician Cicero, Stoic universality had passed on to the jus gentium, the law of the Roman Empire, which is 'eternal and unchangeable and binds all people and all ages.' This slide of philosophical universalism into globalised imperialism has unerringly followed the west ever since.

With the christianisation of the Roman empire, classical natural law came up against theological priorities. Unlike the classical human-like deities, the biblical God is an omnipotent legislator. The sophisticated and highly-nuanced Roman law was gradually turned into a set of commandments given in the Scriptures. Thomas Aquinas merged the classical rational universe with the transcendent God of Christianity. It was a crucial but precarious conflation. Divine reason dictates divine will, Aquinas argued, turning the conflict between reason and will into a matter of divine psychology. It is God who inscribes eternal law onto the natural order, but he does so in a rationally intelligible way. This divine natural law, interpreted by the Church, was said to be superior to state law. Secular powers should either follow God's law or forfeit their claim to the loyalty of citizens. It was a powerful weapon in the hands of the Church. But when ecclesiastical superiority was achieved, natural law turned into a doctrine justifying state power. The great attraction of natural law was its flexibility and the formidable power it gave to its interpreters. Human rights are not different.

While the source of natural law moved from the teleological cosmos to unifying reason and, finally, to God over ten centuries, the operation of morality remained broadly the same. 'Right' meant the right answer to a moral-legal question. It was reached through observation and contemplation of the 'great chain of being'. Until early modernity, individual rights did not exist; duties were the building blocks of morality. The strong social ties of cities and communities created a strong sense of moral duty and virtue. As Hannah Arendt controversially said, Athenian slaves had a better life through the duties of their masters than the early 20th century stateless minorities - or the refugees of today - who enjoy various theoretical 'rights' but have no real protections. Arendt's point is a useful rejoinder to Jack Straw and the Tories who argue that duties should be introduced into human rights law. Our law legislates obligations in crime or tort. But moral duties cannot be easily legislated. Duties arise naturally in families and communities out of strong 'natural' links. The law can strengthen them but cannot create them.

Aquinas precarious compromise of classical and Christian principles started unravelling in the 14th century. The so-called 'nominalist' theologians argued that God's will has primacy over his reason. Natural law was imposed by God on the world – and He was capable of changing it radically. God could make two times two equal five or evil turn good and good evil. The nominalist William of Ockham, of Name of the Rose fame, claimed that individuals rather than communities are the building blocks

of the cosmos, their relations external rather than immanent. As Mrs Thatcher (who might be called a contemporary nominalist) put it, there is no society, only individuals and families.

Whether the law is immanent and rationally comprehensive or imposed from outside is the crucial question in contemporary debates between those who believe that human rights are held universally in identical ways and relativists who deny it. In this context, relativists resemble classical Greek philosophers, believing that a moral code can only work if it meets the inner organisation and values of a particular society. Values emerge organically; external imposition would be both wrong and ineffective. In contrast, the universalists often follow the nominalists: laws and values can and must be imposed from outside. If there is one truth in matters of morals, its possessor has the right (if it has the power), to impose it on others. Since social relations are external and artificial, even reluctant societies will soon fall in line and accept the universal code. Our recent wars exporting human rights and democracy were carried under universalist banners but belong to the nominalist tradition. And as we know, Aquinas' reconciliation of philosophy and theology was a failure.

By early modernity, the nominalist position became dominant and turned nature into an inanimate object emptied of spirit or harmony. Natural law was split: on the one side were the immutable laws of nature describing physical regularities; on the other, the human laws of church or state. The final ends that

had united the cosmos under a conception of the good were replaced by the efficient causes of disenchanted nature. The consequences of these changes for law and politics were drawn by Hobbes, Locke, Paine and Rousseau. Rousseau was the favourite author of the French revolutionaries whose first act was to pass a Declaration of the Rights of Man and Citizen. Paine's The Rights of Man greatly influenced the American revolutionaries. Natural rights theory animates the Declaration of Independence and the Bill of Rights. After the revolutions, what was "right" according to nature and justice, was converted into natural rights: a bunch of personal powers and liberties, typically those of life, liberty and property, which belong to people because they pertain to their nature. The philosophers' method was to observe people and, by deducing the basic needs and desires of human nature, draw up a constitution allegedly agreed in a fictitious social contract. Rights became the tools through which the moderns in the absence of the good pursue their antagonistic conceptions of a happy life.

Crucially, the invention of the social contract opened up the possibility for resistance and revolt if state laws were violating rights. Their revolutionary potential was all too obvious to the victorious revolutionaries however. Soon after the revolutions natural rights atrophied. The 19th century was the epoch of social engineering in the metropolitan lands and colonialism in the periphery. Law became a tool in the hands of governments, empire-builders and reformers. Appeals to moral principles or individual rights were seen as reactionary hurdles to

progress. As the utilitarian Jeremy Bentham put it, talk of natural rights is 'nonsense, nonsense upon stilts'. The introduction of large-scale explanations in sociology, economics and psychology, together with the rise of mass political parties, accelerated the decline of natural rights. The claim that political society was created by means of a social contract was seen as a myth while the assertion that certain rights are natural and inalienable was exploded by Durkheim, Weber and Marx. The Society for the Prevention of Cruelty to Animals was established in 1823, while the National Society for the Prevention of Cruelty to Children only in 1889. Nineteenth century advocates of women's rights repeatedly referred to the protection of animals as the model to be imitated. By the first half of the 20th century, the theory of natural rights had been discarded as an outdated example of religious conservatism.

Natural rights were only rehabilitated during the Nuremberg trial of Nazi war criminals –in the new form of human rights. The allied judges were faced with a legally compelling defence. The German defendants had followed Nazi laws and acted within the limits of state law -- the only valid law, according to current orthodoxy. To deal with this conundrum, the court argued creatively that the systematic exterminations of Jews and others had violated the customary law and principles of civilised nations. In doing so, the tribunal re-discovered main tenets of natural law: its insistence that a hierarchy of laws exists and that, irrespective of the state of domestic law, universal legal principles prevail.

Slavery, extermination of indigenous populations and colonial atrocities had been repeatedly committed by the west. Now, however, that Europeans had tried to exterminate other Europeans the concept of 'crimes against humanity' entered the legal lexicon. Humanity was split into victims and perpetrators. After 1945, we belatedly accepted that humanity is the exterminating angel against itself. Nuremberg and the 1948 UDHR started a huge international process of standard-setting in response. Hundreds of declarations, conventions and agreements have since been adopted by the United Nations, regional bodies and states. Human rights diversified from 'first generation' civil and political or 'negative' rights, associated with liberalism, into second generation rights – that is, economic, social and cultural or 'positive' rights, associated with the socialist tradition – and, finally, into 'third generation' or group and national sovereignty rights, associated with the decolonisation struggles. Commissions, tribunals and courts rapidly followed. What lies behind this apparently unstoppable proliferation? Has humanity become safer as a result?

The horrors of WWII and the Holocaust made it clear that democracy and national legal and constitutional traditions cannot prevent large scale atrocities. As Hannah Arendt put it, 'it is quite conceivable that one fine day, a highly organised and mechanised humanity will conclude quite democratically – namely by majority decision – that for humanity as a whole it would be better to liquidate certain parts thereof.' International human rights were conceived

as a type of higher law prevailing over national policies. In this sense, human rights are intrinsically anti-democractic, when acting in defence of the vulnerable and the oppressed against the prejudices of the majority. They attempt to impose restrictions upon governments and legislatures to prevent them from being beastly to the "others" of each epoch and society. To paraphrase Nietzsche, if God, the source of natural law, is dead, he has been replaced by international law.

The Christian God started becoming vulnerable to secular trends in the late Middle Ages at the point when its absolute power was pronounced but other Gods, including Hobbes' Leviathan or 'mortal god', appeared on the world scene. The arrogance and ignorance of some human rights enthusiasts may be repeating the same process. So are human rights western and/or universal? Undoubtedly their family tree is western. Confucianism, Hinduism, Islam and African religions have their own approaches to ethics, dignity and equality many of them similar to the western. But non-western philosophies and religions retain a stronger communitarian base and were not part of the early development of the human rights movement. John Humphrey who prepared the first draft of the Universal Declaration was asked to study Chinese philosophy before getting down to work. 'I did not go to China', he reported later, 'nor did I study the writings of Confucius'. Are human rights universal? This brief history sets the parameters for an intelligent discussion of the most important question for the political philosophy of our times.