

Who is the 'human' of rights?

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A number of posts responding to this series have argued that human rights are self-evident, that they are expressions of the good society or, more extravagantly, that they are 'natural properties' attaching to people like arms or legs. Common to these arguments is the assertion that rights belong to humans on account of their humanity and not of a narrower membership such as nation or state. This is a comforting thought. But when we examine it closer it appears as one of these paradoxical half-truths that litter our understanding of human rights.

The idea of 'humanity' is modern. Athens and Rome had Athenians or Romans but not 'men', in the sense of members of the human species. The word *humanitas* first appeared in the Roman Republic and meant *eruditio et institutio in bonas artes* (erudition and training in good conduct). Humanity was not a quality shared but, as Cicero put it, a standard of behaviour used to distinguish between the *homines humani* (the educated Romans) and *homines barbari* (the rest).

Christianity undermined the classical hierarchies. St Paul's statement that there is no Greek or Jew, man

or woman, free man or slave (Epistle to the Galatians 3:28) introduced spiritual universalism. All humans have a soul and can be saved in God's plan of salvation, if they accept the faith since non-Christians have no place in the providential plan. This radical divide founded the ecumenical mission and proselytizing drive of Church and Empire. Christ's law of love became a battle cry: let us bring the pagans to the grace of God, take the message of truth and love to the world. In the holy Roman and later empires, exercising rule over large parts of the known world, the line between humans and barbarians split the globe diagonally between the faithful and the heathen.

The Christian meaning of humanity was vigorously contested in one of the most important debates in history. In 1550, Emperor Charles V of Spain called a council of state in Valladolid to discuss the conquerors' attitude towards the Indians of Mexico. The Aristotelian philosopher Gines de Sepulveda and the cleric Bartholomé de las Casa debated on opposite sides. Sepulveda argued that 'the Spaniards rule with perfect right over the barbarians who, in prudence, talent, virtue, humanity are as inferior to the Spaniards as children to adults, women to men, the savage and cruel to the mild and gentle, I might say as monkey to men.'

Las Casas disagreed. The Indians have well-established customs and settled ways of life, he argued. They are 'unwitting' Christians, like Adam before the Fall. Respecting local customs is good morality but also good politics: the Indians would convert to

Christianity but also accept the Spanish authority if the conquerors respected their traditions, laws and culture. Las Casas combined theology and political utility in an early example of multiculturalism. But his Christian universalism was, like all universalisms, exclusive. He repeatedly condemned ‘Turks and Moors, the veritable barbarian outcasts of the nations’ since they cannot be seen as ‘unwitting’ Christians. Las Casas won the moral argument but Sepulveda’s advice was adopted by assorted colonialists and imperialists.

The next step in the history of ‘humanity’ was taken by the early modern political philosophers and the 18th century revolutionaries. The French Declaration of the Rights of Man and Citizen, the political manifesto of modernity, states that ‘men are born and remain free and equal of right’ but proceeds to bestow these rights only to (some) Frenchmen. Natural (today human) rights belong to all but only citizens enjoy real, legal and political, rights. From that point, statehood, sovereignty and territory have followed a national principle. The gap between universal ‘man’ and national citizen is filled by foreigners. They do not have rights because they are not citizens and as a result they are not fully human.

There is more. By separating humanity from citizenship, the Declaration (and today human rights treaties) introduced a historical teleology, which promises their future unification. Two alternatives open: imperialism, evident in the Napoleonic wars and today in Iraq, in which the nation claims to be the expres-

sion of humanity and to spread its civilising influence through conquest. Or cosmopolitanism, in which universal values override local idiosyncracies. The French revolution abolished slavery and gave people of colour political rights for a limited period to have them rescinded after the terror. It was left to the Haitian revolution, which extended rights to slaves and colonials, to uphold universalism against its inventors.

The ‘man’ of the rights of man has no concrete characteristics, except for free will, reason and soul, the bare outlines of humanity. These universal elements secularised the Christian belief in the sacredness of life and endowed humanity with dignity and respect. Autonomy, responsibility and personality are legacies of the rule of law and early natural rights. At the same time, this ‘man’ is an abstraction without body, colour, gender or history, as Hegel, Burke and Marx agreed. Yet the empirical man who actually enjoyed rights was literally a man — a well-off, white, Christian, urban male. He condensed the abstract dignity of humanity and the porivileges of the powerful. Ever since, full ‘humanity’ is constructed against a background of preconditions (citizenship, class, gender, race, religion, sexuality) which exclude the majority of human beings. If rights are universal, refugees, ‘illegal’ migrants or the Guatanamo detainees who have no country to protect them should have humanity’s entitlements. But they have none, they are just bare unprotected life. Human rights do not belong to humans, the construct a graded ‘humanity’.

The human rights movement can be seen as the

ongoing but failing struggle to close the gap between the abstract man of the Declarations and the empirical human being. Anti-discrimination conventions for people of colour, women, children, gay and lesbians add flesh, blood and sex to the pale outline of the 'human'. Have they succeeded? Yes and no. The concept of a common 'humanity' introduced the vocation of universal dignity. History has taught us however that there is nothing sacred about any definition of humanity and nothing eternal about its scope. Humanity's mastery, like God's omnipotence, includes the ability to redefine who or what counts as human and even to destroy itself. The dialectics of Enlightenment led both to emancipation and to Nazism. Similarly, rights are both a way of protecting the individual and a tool that governments use to discipline societies and, belatedly, the world.

Every historical age has used its (philosophical or empirical) definition of humanity to separate between rulers, ruled and excluded. Those who don't speak our language, share our religion, those who belong to the wrong class, gender, colour or sexuality have always been left outside locally defined 'humanity'. They are people of no property, 'improper' humans, epochal representatives of inhumanity. These categories of exclusion are still active. They have been joined by the 'bottom billion', the 'human waste', the rejects of global neoliberal capitalism (see my *Cif The 'End of Human Rights'*). Despite claims to the contrary, humanity cannot act as a normative ground and is mute in the matter of legal and moral rules.

Rights are an important liberal institution. Liberal philosophy however endlessly recycling 18th century ideas of social contract (Rawls), natural rights (Dworkin) or the categorical imperative (Habermas) misunderstands them. Rights do not belong to fully formed humans as safeguards of pre-existing asocial nature or as result of some primordial agreement or as expressions of moral objectivity. On the contrary, rights are tools through which people build their identities in an ongoing struggle for recognition with other people and the 'Big Other' of social institutions. Anti-discrimination rights give my racial or sexual characteristics minimal recognition and help me match public and private identity. But as Hegel explained, a formal right to property not accompanied with material means deprives the person of (self) respect and splits her identity between abstract dignity and concrete degradation. Similarly, when the duty to protect immigrants and refugees is violated, the identity of those abandoned to the exploitation of backstreet crooks and philanthropists is fatally undermined.

This distance between formal rights and the pre-conditions necessary for their exercise is a key problem. The European Convention of Human Rights and the Human Rights Act do not include even a basic right to equality. The civil and political rights covenant creates enforceable rights while the economic and social rights covenant asks state to 'take steps' towards their implementation. These gaps and omissions reflect the divergent trajectories of the liberal and socialist traditions which lead to different versions of rights.

This historical and philosophical understanding helps re-orient human rights in a number of ways. International human rights are a fact in the world and this adds a veneer of universalism. But whatever international treaties, commissions and courts say, rights are violated or respected by state and local armies, courts, bureaucrats, financiers and police forces. Civil and political liberties, economic and welfare rights have been won in political struggles against national authorities not in international conferences. Talk of universal rights has rhetorical value but little purchase when economic migrants are questioned by immigration officers or electronic, CCTV and data surveillance, the new vis anglais, maps and records every aspect of life.

Francesca Klug recently argued that bills of rights are not 'a substitute for politics'. (<http://www.guardian.co.uk/commentisfree/libertycentral/2009/mar/25/human-rights-act-civil-liberties>) This is right but unfortunately not true any longer. Over the last thirty years, rights have become a main way of doing politics both for left and right. I do not refer here to civil liberties and the limited protections the underprivileged, the oppressed and the poor enjoy. Defending them is the core case of human rights, the contemporary expression of the urge to resist domination and oppression. The problem is different: by becoming the vernacular expression of every kind of individual aspiration and desire and a dominant language of public policy they have lost their significance and edge. The Mail, the Sun and the Conservatives lead the attack by targeting 'illegal immigrants' and

'bogus refugees', the core cases of rights, but promoting the rights of crime victims, property owners and bankers. For these defenders of free market individualism, rights are playthings of the middle class.

Jack Straw joins the chorus from the other end. Responding to Tory attacks, the government promises a bill of 'rights and responsibilities' and compares it to the Magna Carta and the 1688 Bill of Rights. According to Justice Minister Michael Wills, (http://www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article5949172.ece) the bill will cover not just traditional liberties but also 'jobs, housing, healthcare and education...the daily frustrations of public life...the hunting and the smoking ban'. This is a pretty comprehensive list of political priorities.

When Labour was still a party of the left, it understood that politics expresses, condenses and aims to mediate social and economic conflict. Antagonism is the life of politics and social justice its aim. But as Labour and the Tories moved to the ideological centre and pursued similar policies, conflict was declared finished. The emphasis on the rights of crime victims and consumers pursues the same agenda. It gives the impression that fat cat bosses and the unemployed share common interests and values. However rights as entitlements of individuals cannot tackle inequality nor are they synonymous with justice. When rights become the main language of politics, they join the 'choice' agenda and become an expression of neo-liberalism. As conflict returns in new intense forms, the Left needs to re-think rights.