



ARE HUMAN RIGHTS TRULY UNIVERSAL?

One of the most damaging assertions about the idea of human rights is that it is inherently the possession of what we used to call the West and what might now be better described as the 'Global North'. On this analysis the subject is a western construct, created at a particular moment in time to suit certain interests and now projected onto the world stage as an ethical mask behind which old imperial and colonial power continues to assert itself. The concrete realisations of human rights in law and practice are just ways of imposing a certain kind of humanity on a world that has no natural affinity with the shape that it is being required – in the name of human rights – to take. The ultimate expression of this perspective is to be found in the use of the language of human rights to underpin military conquest.¹ It is no wonder all self-respecting sovereign nations from outside this narrow club of old, industrialised states balk at being manoeuvred in this way into such unfamiliar and uncomfortable territory.

This perspective is profoundly, utterly wrong, and it needs to be rejected. But in order to do so, we need first to recognise quite how strong the arguments are on which it relies and exactly how to refute them. The sceptics of universalism seem to have history, philosophy, international relations, politics and law on their side. In this essay I intend to show how this is the case but also why on a careful analysis it is more appearance than reality. My intention in doing so is to demonstrate that, far from being a challenge to local values, human rights understood in a certain way represent a vindication of the best of those values. Viewed in this fashion, the idea of human rights is truly the universal ethical discourse for which its enthusiasts argue, albeit one that is particularly susceptible to being distorted to facilitate other, non-human-rights-based ends.²

Cultural specificity and human rights

It is clear that the development of the idea of human rights has indeed been tied up with the story of the West. It starts with the Greeks (Plato; Aristotle; Epictetus), picks up some Roman pedigree on its way (Cicero)

¹ See M Ignatieff, *The Lesser Evil. Political Ethics in an Age of Terror* (Edinburgh University Press, Edinburgh, 2004).

² See further 'Asian Values and Human Rights' ch XXX below.

via the Catholic Church (from St Paul through Plotinus to Saint Thomas Aquinas) to northern Europe, where it settles down in England (Hobbes; Locke) and France (Rousseau), before setting up further outposts in the United States.³ The hit list of early human rights documents is a hymn to the civilising progress of what we now think of as western statehood: Magna Carta in 1215, the American Declaration of Independence in 1776, the French Declaration of the Rights of Man and of the Citizen in 1789, and so on. Even the critique of human rights that was so powerful in the 19th century is an argument from within the intellectual culture: it is the work of Bentham, of Burke and of Marx⁴ rather than of scholars and thinkers or even of activists drawn from outside the North altogether.

The philosophy of human rights is even more clearly narrowly focused. The development of the notion of objective right, the idea of a natural law determining right behaviour which stood above the people of the world and ordered their conduct, found expression through the intellectual work done in the dominant states and institutions of the early medieval period; the close connection between these writers and the centres of contemporary power has been such that their influence has continued to be felt. The power of the Roman Catholic Church may have been severely affected by schism and secularism but its hold on the Global North remains sufficiently strong for the writings of St Paul, St Augustine and St Thomas Aquinas to have entered into and to have remained embedded within that culture's mainstream.⁵ The same is true of the great secularising work done by the 'Enlightenment' thinkers, among whom the most prominent for human rights purposes is Immanuel Kant (1724-1804). By developing a European identity at a critical juncture and then explaining the emergence of independent nations in a way that was satisfactory to the enquiring minds that underpinned power in such places, these thinkers found their prestige and authority indelibly linked to the fortunes of the then newly emerging European project of democratic politics at home and imperial aggrandisement abroad. The military and economic successes of these European colonial nations from the late 17th century right up until the end of the Second World War has meant that their intellectual apologists (using the latter term in a non-derogatory sense) have effortlessly found their place in the canon of great authors: when it comes to securing influence for one's ideas

³ J Mahoney, *The Challenge of Human Rights* (Basil Blackwell Publishing, Oxford, 2007); M R Ishay, *The Human Rights Reader* 2nd edn (Routledge, London, 2007).

⁴ J Waldron (ed), *'Nonsense upon Stilts': Bentham, Burke and Marx on the Rights of Man* (Metheun, London, 1987).

⁵ For continuing influence see M J Perry, *Towards a Theory of Human Rights. Religion, Law, Courts* (Cambridge University Press, New York, 2007), ch 2.

there is nothing as good as being associated with long-term political and military success.⁶

And it is quite clear that the idea of human rights was central to the democratising and hence to the ethical foundations of many of these new national powers. The long drawn-out English revolution of 1642-1689 which prepared the way for British power was ultimately resolved by a conscious reliance on the supposed natural right of Englishmen to do away with a regal power that was not to their fancy: in this way could economic self-interest be camouflaged by an apparently universalist ethic.⁷ In 1789, the French Declaration of the Rights of Man and of the Citizen was even clearer on how it was the demand for human rights that propelled its people into revolt. As the opening words of that stirring document put it, 'The representatives of the French people, organised in National Assembly, considering that ignorance, forgetfulness, or contempt of the rights of man are the sole causes of public misfortunes and of the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man.' The European nations that turned their attention to global domination in the 19th century were not merely selfish entities in search of prosperity at the expense of others: they saw themselves as ethical movements, forces for good in the world, civilisers with the right (and only) God and the right (and only) philosophical foundation in (their version of) human rights.

There are many who would acknowledge the Western origins of human rights as set out above but who would then go on to say that the subject has made a fresh start in recent decades. They would point in particular to the resurgence of human rights, and of international human rights law in particular, which has been such a dramatic part of the international scene since the end of the Second World War. It is certainly the case that the (European) idea of national sovereignty has been modified to some (but only some) extent by the emphasis on individual rights that is now to be found in documents like the Universal Declaration of Human Rights (1948) and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights that were agreed at the United Nations in 1966. But the very prominence of human rights over the past sixty years has stemmed from its value to the great powers,

⁶ C Douzinas, *Human Rights and Empire. The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish, Abingdon, 2007).

⁷ A C Grayling, *Towards the Light. The Story of the Struggles for Liberty & Rights That Made the Modern West* (Bloomsbury, London, 2007).

and in particular American power.⁸ It is not a disgrace to our subject to recognise that it offered an appealing alternative to (and protection from) socialism to those with responsibility for establishing a new world order in the aftermath of the defeat of the Axis powers in 1945.⁹ The individual rights set out both in the Universal Declaration and in such regional instruments as the European Convention on Human Rights and Fundamental freedoms (1950) served to institutionalise a way of looking at the world that was – in Marxist terms – unacceptably monadist¹⁰ and restrictive of state power. Of course throughout this period, the language of human rights has also extended more widely to the economic sphere: this has been the way in which those opposed to Western versions of the term have sought to broaden it to make it fit their version of the truth. But this extension of human rights to the economic and social sphere as well as the civil and political has always been contested by Western power: we can see this in the way that for example the European Convention on Human Rights is largely restricted to the latter and in the approach that is so often taken to social rights even today: the ‘second generation’, the unenforceable luxuries that must wait until political freedom is assured; and so on along similarly derogatory lines.¹¹

If the first modern resurgence of human rights was inspired and largely controlled by the West, then the same is even more true of the second and third waves of energy that were infused into the subject, in the 1970s and then again after the end of the Cold War in 1989.¹² As far as the first of these time frames was concerned, this was when the United States administration of Jimmy Carter embraced the language of human rights as to some extent an ethical basis for its foreign policy but mainly as a means of imposing diplomatic and political pressure on the Soviet Union. This was the period of Helsinki accords and of human rights agitation on behalf of such distinguished public figures as Boris Sakharov within the USSR and of dissident movements within its sphere of influence outside, most famously the Czech-based Charter 77.¹³ The socialistic version of rights, with its emphasis on health, work, education

⁸ N Guilhot, *The Democracy Makers. Human Rights and the Politics of Global Order* (Columbia University Press, New York, 2005); L Hunt, *Inventing Human Rights: A History* (W W Norton, New York, 2007).

⁹ M. Mandel, “A Brief History of the New Constitutionalism, or ‘How We Changed Everything so that Everything Remained the Same’” (1998) 32 *Israel Law Review* 250.

¹⁰ On which see further Waldron, note 4 above.

¹¹ See M Baderin and C McCrudden (eds), *Economic, Social, and Cultural Rights in Action* (Oxford University Press, Oxford, 2007)

¹² The idea of waves is taken from F Klug, *Values for a Godless Age. The Story of the United Kingdom's New Bill of Rights* (Penguin Books, London, 2000) though these time frames are not those contemplated in her book.

¹³ Guilhot, n 8 above, is especially good on this period.

and other similar entitlements, took a back seat at this time: the much shriller claims for civil and political rights may have been worthy in themselves but they owed their prominence on the international scene to the power of the western voices that had decided to adopt them more for their political than for their ethical value.

The capacity of human rights to function as a moral ideal and at the same time as a deeply pragmatic political tool may be frustrating to the purists but it accounts for the continued grip the idea has managed to maintain on global affairs. This has never been more obvious than in the final historical phase under discussion, the post Cold war period in the working through of which we still find ourselves immersed. Interestingly, the US administration of Ronald Reagan that had dominated the 1980s did not explicitly dispense with President Carter's human rights approach to world affairs; rather it adapted it to its own needs, emphasising democratic freedom and personal liberty as the essential attributes of the idea and deploying these to put yet more pressure on its enemies while adopting what was (judged by the standard of these ideals alone) a remarkably relaxed (purists would say hypocritical) approach to the conduct of its authoritarian friends. In its strong emphasis on democracy and in its final shedding of any vestige of a social and economic dimension, human rights US-style was being readied for adoption by the neo-Conservative elements that were to seize control of Washington in 2000, under the presidency of George W Bush. This administration can not implausibly describe itself as a human rights regime if by that term is meant the exposure of the peoples of the world to the kind of democratic freedoms and individual liberties that are enjoyed as a matter of constitutional right by those living in the United States. The robustness of the US commitment to these goals is evidenced, its supporters say, by the willingness of Washington to intervene in other states, overthrowing governments by military action if needs be, to achieve freedom and liberty for the erstwhile victims of tyranny.¹⁴ Much of the rest of the world sees in such talk nothing more than a new form of imperial aggression, with the assertion of human rights fulfilling the function of Christianity and civilisation in bygone ages, namely the latest way in which a rapacious west covers its selfish tracks, hiding its naked self-interest in a shabby ethical cloak. Seeing all this and recoiling from past abuses as well as current hypocrisies, the Global South is tempted to be almost unanimous in its condemnation not only of the actions done in the name of human rights but of the very name itself. This is the wrong approach to take, however. The subject

¹⁴ R Kagan, *Dangerous Nation: America's Place in the World from its Earliest Days to the Dawn of the 20th Century* (Vintage Books, London, 2007) is a good example of the genre.

of human rights must not be brought down by those who deploy it for what are judged to be their improper ends.

The virtue of human rights as a floating signifier¹⁵

The story of human rights set out above is not the only version of our subject. That many narratives are possible is now broadly accepted, not only within the Global North but even within the human rights community itself. In this possibility of multiple truths lies the chance to insist on a better version of our subject, one that is more convincing, more satisfactorily connected to the intuitions that give the subject life, and therefore one that is better able to appeal to the global community as a truly universal discourse. That it is possible to think of human rights as a subject with different layers of truth may seem at first counter-intuitive: how can rights lie in the eye of the beholder (or the purveyor of power) in this way? Certainly the origins of the subject lie in a search for and commitment to a single set of truths. This was the case pre-eminently in the Christian era when rights were conceived off first as flowing from the natural order of things which determined what was the right thing to do and then later as entitlements inhering in all humans in virtue of their God-given humanity. The Enlightenment version of the subject was also prescriptive as to the right way to behave, seeing in the language of rights a thought-through framework for proper behaviour. In recent years, however, this confidence in truth, in the existence of an objective right and wrong that is discernible by faith or discoverable by intellect, has been markedly on the wane in the West.¹⁶ Partly this has to do with the powerfully destructive work of philosophers like Nietzsche and Wittgenstein who have questioned the very basis in logic and language of assertions of right and wrong. Another factor has been 'the linguistic turn' that Western philosophy has taken, emphasising much more the truth inherent in the fact of communication, in the use of words, than in any shadowy substance that might be said to lie behind the deployment of such means of signifying.¹⁷

Whatever the reason, the sceptical direction that thought has taken in the West has shaken the confidence in truth upon which the idea of human rights has previously depended. This has implications for the universality debate: if human rights are not 'true' for the North, how can

¹⁵ See C Douzinas, *The End of Human Rights* (Hart Publishing, Oxford, 2000).

¹⁶ These points are explored further in C A Gearty, *Can Human Rights Survive?* (Cambridge University Press, Cambridge, 2006), ch 2.

¹⁷ A good route into this literature is R Rorty, *Contingency, Irony and Solidarity* (Cambridge University Press, Cambridge, 1989).

they be true for the world at large? The way the subject has responded to this challenge to its integrity has opened a route to a new set of foundations which are less rooted in the work of European thinkers of the past and consequently better able to connect across continents and cultures than this past, highly localised narrative has been able to do. The delocalisation of the idea has involved the peeling away of a number of culturally-specific layers now widely regarded as largely extraneous. The subject has shed its narrowly philosophical layer which has assumed that it can be understood only by those familiar with a particular European narrative centred on but not limited to the writings of Immanuel Kant. It has also escaped the lawyers' assumption that it is a wholly legal subject with a content made up entirely of the rights that form the basis of international human rights law, whatever they might be at any particular moment in time. Third, the idea of human rights has embraced the radical uncertainty that has been such a prominent feature of (post) modern thought, and which is potentially so subversive of its essence, by reconfiguring its core attributes not as rights as such but rather in terms of the values that underpin those rights.¹⁸

Perhaps surprisingly, it has not proved difficult to identify what the human values are that lie behind the idea of human rights, giving it the intellectual fuel that was previously supplied by faith and reason.¹⁹ They include respect for human dignity, for the liberty and autonomy of the individual and for the principle of representative government according to law. There is a new emphasis on the virtue of tolerance and a commitment to respect for diversity: in this way has the idea of human rights cleverly co-opted the collapse of certainty that in its different and earlier shapes threatened its very existence. At bottom, the subject flows out of two basic propositions, that human kind should not be treated in a cruel way (the negative fundamental) and that each and every person should be given the chance to flourish as a human being, to do the best they can with the capabilities they have (the positive fundamental). As to the foundations of such fundamentals, the beauty of the human rights discourse – and its durability – lies in the way in which different audiences can find their own roots for these various insights: the respect for diversity that is now one of the core values at the heart of human

¹⁸ Emancipation from the rigours of law is necessary but dangerous: necessary because law is narrow; dangerous because values can be seized upon by the powerful and distorted. The battle over which values underpin human rights can determine whether one is for or against coercive interrogation, invasion, internment and so on *from a human rights point of view* - see Ignatieff, n 1 above, criticised by C A Gearty, 'With a Little Help From Our Friends' (2005) 34 *Index on Censorship* 36.

¹⁹ For a more detailed development of the argument set out in this paragraph, see Gearty, n 16 above, ch 2.

rights applies also to the supply of reasons for their importance. Some have been comfortable with continuing with the notion of human rights as rooted in a series of religious insights about man and woman's relationship with his or her creator. Others have felt no need to junk centuries of Enlightenment philosophy just to stay in touch with post-modern fashions. Those persuaded by such critiques have nevertheless felt able to belief in the values underpinning human rights as basic facts of evolutionary life. Radical human rights critics root the truth of their advocacy of the subject in the way that it supplies an empowering language for the vulnerable and the powerless, and this is enough for them. It is not a slight to say that human rights 'means all things to all men (and women)'; rather it is the key that explains their survival and continued extraordinary success.

The new universalism of human rights

The change in the nature of human rights discussion identified above has clear implications for its breadth. Reconfigured as it has been in the way described above, its universalism is far more obvious than was previously the case. With the layers of Western assumptions peeled away, the subject has gathered rather than lost its strength, for the values that give life to the content of our human rights are clearly universal in scope. This can be seen by a short excursion into the work of leading thinkers in human rights from outside the Global North tradition. Four of these have been carefully analysed in an important article by Professor William Twining: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi.²⁰ In this essay I shall look at the first two of these men.

Francis Deng comes from the Ngok Dinka people of Kordofan in the Sudan. As Twining says, it is a 'central concern of his work .. to reconcile tensions between tradition and modernity, between Dinka culture and universal standards, and between national unity and diversity in a conflicted Sudan'.²¹ The Dinka people have as their overriding goal the notion of *koc e nohm* ('a concept of procreational immortality which aims at perpetuating the identity of every individual male'²²) and as Deng asserts '[r]espect for the dignity of any person is central to this principle.'²³ The notion of *cieng* 'sets the standard of good social relations'²⁴ – it 'places emphasis on such human values as dignity, integrity, honor,

²⁰ 'Human Rights: Southern Voices' (2006) 11 *Review of Constitutional Studies* 203-279.

²¹ *Ibid* p 210.

²² *Ibid* p 212.

²³ Cited at *ibid* n 24.

²⁴ *Ibid* p 213.

and respect for self and others, loyalty and piety, compassion and generosity, and unity and harmony ... Good *cieng* is opposed to coercion and violence, for solidarity, harmony, and mutual cooperation [which] are more fittingly achieved voluntarily and by persuasion'.²⁵ The sister concept of *dheng* involves the attainment of a respected status, one that might be based on 'nobility, beauty, handsomeness, elegance, charm, grace, gentleness, hospitality, generosity, good manners, discretion, and kindness'.²⁶ Interestingly Dinka values are legitimised by both God and the ancestors of the people.

Once we drop traditional North assumptions about rights and see them as a type of language that can in certain circumstances usefully reflect the core values of a particular culture or people, but that those core values can also be reflected in other terms, then we can see immediately that, as Twining puts it, '[*cieng and dheng* are conceptions that concretize, localize, and enrich abstract notions of human dignity'²⁷ and that *as such* they are another way of speaking human rights, a local dialect of a shared tongue rather than an entirely foreign language. The Dinka people, in common with many of other African communities, also have a strong feel for democracy, an idea of representative decision-making that flows from the equality of esteem that is at the heart of dignity and which can be realised in diverse ways and certainly not only in accordance with prescriptive Northern ideas. Thus Deng asserts that '[i]n traditional Africa, rulers governed with the consent of the people who participated broadly in their own self-administration; were free to express their will; and held their leaders to high standards of transparency and accountability. In this sense, indigenous societies were more democratic than most modern-states in Africa.'²⁸ Now it is entirely true that this might well be thought by many to be a rather rosy picture both of African indigenous communities generally and the Dinka in particular. The representative system did not always work in quite like this and certainly there are ways in which Dinka society falls short of its universalist assumptions with regard to dignity (the role of women being a clear example). But structural gaps between the ethical claims made on behalf of a culture and the practical reality on the ground are the stock-in-trade of all societies that aspire to be organised in a virtuous way. In particular, societies with a more explicit commitment to 'human rights' are not for that reason alone immune from exactly the same criticisms that might be made of the Dinka for failing to live up

²⁵ Cited at *ibid* n 26.

²⁶ Cited at *ibid* n 27.

²⁷ *Ibid* p 219.

²⁸ Cited at *ibid* n 53.

to *cieng* and *dheng*. These universalist values are aspirational and the language chosen to capture them, however it is framed, does not deliver ethical outcomes simply by being articulated. It is precisely because of the space generated between theory and practice that human rights (or equivalent) ideas are so often deployed by the weak and the vulnerable: you say you are committed to human dignity ('human rights'/*cieng*) but look at how I am treated; you say yours is a 'democratic' society but who listens to me? Dignity activists work the room for manoeuvre afforded them by awareness of double standards, and the disinclination of most cultures to avoid living a lie if they are given no means of dodging the fact of their deception.

Abdullahi Ahmed An-Na'im is a follower of the Mahmoud Mohamed Taha, a Sudanese political leader who was executed in 1985 on grounds of apostasy and heresy, his crime having been to oppose the programme of Islamicization that had been initiated by the then President Ja'far Nimeiry in 1983. Given this background, it is unsurprising that An-Na'im has devoted so much of his writing to pushing forward Taha's goal of showing how Islamic law could and should be adapted to modern conditions and interpreted in a way that would be compatible with international human rights law. Given the importance accorded certain politicised versions of Islam in the world today, there can be few projects more central to the human rights project if it is indeed to establish itself as rooted in values that are truly universal. An-Naim takes the view that 'despite their apparent peculiarities and diversity, human beings and societies share certain fundamental interests, concerns, qualities, traits and values that can be identified and articulated as the framework for a "common" culture of universal human rights'.²⁹ He continues:

The criteria I would adopt for identifying universal human rights is that they are rights to which human beings are entitled by virtue of being human. In other words, universal standards of human rights are, by definition, appreciated by a wide variety of cultural traditions because they pertain to the inherent dignity and well-being of every human being, regardless of race, gender, language, or religion. It follows that the practical test by which these rights should be identified is whether the right in question is claimed by the particular cultural tradition for its own members. Applying the principle of reciprocity among all human beings rather than just among the members of a particular group, I would argue that universal human rights are

²⁹ Cited at *ibid* n 75.

those which a cultural tradition would claim for its own members and must therefore concede to members of other traditions if it is to expect reciprocal treatment from those others.

In content and substance, I submit that universal human rights are based on two primary forces that motivate all human behaviour, the will to live and the will to be free. Through the will to live, human beings have always striven to secure their food, shelter, health, and all other means for the preservation of a good life. At another level, the will to be free exceeds the will to live in that it is the driving force behind the pursuit of spiritual, moral, and artistic well-being and excellence.³⁰

It is inevitable that such an approach should lead An-Na'im into a challenge to many contemporary perspectives on Islam, and he does indeed argue that Shari'a 'needs to be radically reformed because it is inconsistent with human rights standards, especially in respect of discrimination against women and non-Muslims'.³¹ The important word to note here is 'reformed' – An-Na'im is not a rejectionist so far as Islam is concerned; quite the reverse in fact. He believes that a human rights culture will not be able to bite in Islamic countries until their inhabitants are persuaded that the presuppositions of the proponents of such an ethical environment are also among the fundamental premises that drive Islam. This is a tough but to An-Na'im not impossible task. And what is the alternative, for as he succinctly puts it 'To seek secular answers is simply to abandon the field to the fundamentalists.'³² But the process of dialogue for which he calls should not be one way: the North needs also to concede the historically-situated (rather than purely true) way in which human rights has grown over time and also to acknowledge how the term has been deployed for base motives. Humility from the home of the *language* (rather than the *substance*) of contemporary human rights will make it easier for Muslims to reflect on how certain of their accrued cultural practices (with regard to discrimination for example or the extreme forms of punishment for serious offences classed as *hudud*) need to be re-evaluated from a human rights perspective.

³⁰ Ibid p 227 (footnotes omitted).

³¹ Ibid p 228.

³² Ibid p 230.



Conclusion

Francis Deng and Abdullahi Ahmed An-Na'im are just two of the innovative thinkers to have emerged from outside the Global North discourse to have addressed the subject of human rights from a perspective not rooted in the familiar great canon of established Western thought. Through doing this work they are able to claim an authenticity for human rights that is not learned in some postgraduate seminar in a country far from home but rather is rooted in the values of their own people, and in the faith of these peoples. Through this concentration on the particular (of a geographic sort in Deng's case, religious in An-Na'im's), they are able paradoxically to make arguments for universality which are magnificent in their scope. By delving past the presuppositions that have accrued around the language of human rights in the Global North, along the way discarding the baggage of past generations of thinkers, activists and political manipulators, they have been able to delve into the values that give the subject life, that provide the energy and therefore the explanation for its continued grip on the world. In doing so, they uncover through their specificity the deep commitment to universal values which rescues human rights from sectarianism and assures it a legitimate place not just in the North but across the world as well.