

DOCTRINE AND LIFE

The Universal Declaration of Human Rights celebrates its sixtieth birthday on 10 December. There is much natural jubilation over the fact that this 'mission statement for humanity' has not only endured for so long but has also managed to give birth to the line of international human rights instruments (covenants, declarations and so on) that have followed in its wake. At one level it is indeed right to observe that we live in a 'world of human rights': the United Nations has been emphatic throughout its existence that human rights is at the very core of its global mission while the nation states, particularly since the end of the Cold War in 1989, have also been vying with each other for ways in which to create better structures of human rights protection for their peoples. From another, more antagonistic perspective, however – one that looks at the raw data on the absence of human flourishing in the world today –, this proclamation of human rights presents as so much empty noise, an ethical cover for the selfishness of the rich, a way of their being able to support continuing systemic injustice (in the fields of wealth distribution, poverty alleviation, trade – the list is a long one) while persuading themselves that they are also moral beings, persons of ethics as well as of excess.

This short essay is not about the mismatch between aspiration and practice in the field of human rights – easy though such an article would be to write. Rather it looks at what the scholars have had to say on the subject. For human rights has never gained substantial traction within academe: its apparent ethical certainty does not fit the fashion of the times while its commitment to a set of basic truths looks positively amateurish in a world of thought that regards itself as far too sophisticated for such enthusiasm. But the two fields of enquiry are linked: the weaker the philosophical foundations for human rights are in academe, the wider is bound to be the gulf in the world at large between what human rights is believed to be about on the one hand and its actual practice on the other. If human rights is to survive another sixty years as a progressive idea, its protagonists need to stop taking their subject's virtue for granted and proceed to the difficult task of rethinking – and convincingly rearticulating – why they believe in it.

This is not an easy task. The anthropologists have always been deeply sceptical: as early as 1947, their American Association was complaining about the false universalism of human rights, its demand for a straitjacket, 'one size fits all' approach to rights which is inevitably insensitive to local culture and customs. This criticism has if anything gathered pace over the years as more and more parts of public and private life have been made the subject of conventions on this or that set of rights, drawn up by a community of cosmopolitan scholars whose links to many of the places affected by their formulations are often non-existent. Development specialists have been historically uncertain as well, seeing the narrow focus of human rights as distracting from their grander project of large-scale material improvement. The lawyers' complaint is the exact opposite: that the rights in the Universal Declaration are not properly enforced, that in the absence of a world court of human rights or at least an independent enforcement mechanism all the promises in the Declaration are mere empty charades, worse than useless in that they promise what it is quite impossible to deliver. The international relations specialist scoffs smugly at such lawyerly naivety and say that this is the whole point: rights are a tool in international discourse, to be used by states to further their interests – once it was the Helsinki Accords and Dr Sakharov, now it is humanitarian assistance and NATO bombings. Sociologists nod vigorously at this and recall Marx's excoriating

attack on rights as the flagships of human selfishness: truth lies not in the world outside ourselves, they say, but in the social practices we have created as interactive, communicative beings.

The Universal Declaration does not fit easily into any of these academic cultures. It does not shy away from ideas of right and wrong, and therefore of good and evil. Its words speak to us not as those of a scholar but rather as the careful outpourings of the collective conscience of a war-torn generation, placed on the shoulder of their children as a guide to a better future and an obstacle to the (re)doing of terrible wrong. An old-fashioned sense of certainty shines through the Preamble, with its grand 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world' and its ringing reaffirmation on behalf of 'the peoples of the United Nations' of 'their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women'. None of this is further explained however: the only foundations offered are negative, the 'disregard and contempt for human rights [that] have resulted in barbarous acts which have outraged the conscience of mankind' and the need to protect human rights by law so that the people of the world not be 'compelled to have recourse, as a last resort, to rebellion against tyranny and oppression'. When the Declaration notes that the 'advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people', it does not go on to tell us *why* this *should* be so, where these freedoms come from and why we *ought* to be committed to them.

It is this vagueness on foundations that has exposed the Universal Declaration to some of the scholarly critique mentioned earlier – but the obfuscation was quite deliberate. The 'dignity' and 'worth' of the human person were well-known ideas at the time of its drafting and they performed the valuable function of taking the Declaration away from notions of the human as composed only of that sub-set of persons within the category human who were properly autonomous persons in the sense of being able to think, communicate, make life plans for themselves and so on. There is quite a long tradition in human rights of distinguishing between humans in this way and – influenced by the horrors of the Nazis no doubt – the declaration's drafters clearly had no truck with it: its 'human' is truly universal, and it has remained so in human rights ever since – we see the latest evidence of this in the recently agreed Convention on the rights of persons with disabilities, not something that Kant or Hobbes (much less Hitler or Himmler) would have contemplated.

The autonomous person may have been discarded but this still leaves open the meaning of 'dignity' and 'worth'. The universal application of these terms in pre-Declaration days had been largely associated with progressive elements within religious movements, the Dominican Bartolomé de Las Casas for example with his famous 16th century defence of native Americans. The Declaration appropriated this language, dispensed with its religious roots and sought to turn it to long lasting secular effect. But can respect for universal human dignity thrive without its religious roots? At bottom the scholarly critique draws its force from the assumption that it cannot.

I believe, however, that for those for whom faith does not work in this way, such a result is nevertheless achievable. The term dignity is one that, as Christopher McCrudden has astutely observed, is capable of having 'several meanings' and that 'one cannot coherently hold all of them at the same time'. (Human Dignity (April 27, 2006). Oxford Legal Studies Research Paper No. 10/2006 Available at SSRN: <http://ssrn.com/abstract=899687>) So we are in the realm of choice here, deciding

which signification to impute to this floating phrase. My chosen version of dignity – the one I argue we should ascribe to the word in the Declaration – emerges from a combination of the natural and the learnt. There is in all of us an instinct for hospitality, for co-operation, for outreach to the stranger. True it is not the only instinct that we have, and there are others – for the safety/survival of our own family/community members, for loyalty to our group, for example – which might run counter to it. But it is there, as – surely we can say this without absurdity? – a constant feature of human conduct since the first interactions of the species. Whether the instinct thrives or fails depends on the social soil in which its bearers find themselves growing. If the social institutions they inherit are weak and fragile, if their world is a place of insecurity, violence and disorder, then the instinct will manifest itself as only a dim echo of what, in better times, it might have been. Occasionally, the structures of everyday life are so poisoned that, as was the case in Nazi Germany and in Rwanda in the early 1990s, there is almost no room for solidarity with the stranger to express itself at all: in such doom-laden situations there is the institutionalisation in law and/or social practice of instincts which are aggressively hostile to universal hospitality.

More normal is the situation – across history; across cultures – where our various instincts run up against each other: we are inclined to hospitality, but also to loyalty, to reach out to the stranger one minute but to pull up the drawbridge the next. Something in us knows this to be the case and knows also that the instinct for self/kin-preservation is a strong one whereas that of solitude for the outsider is in contrast relatively weak. So to keep our selfish instinct in some kind of check, to give hospitality a fighting chance, ideas of unselfishness have not only emerged in the minds of quixotic idealists but have taken root as well, in the form of structures of governance and of behaviour which have been influential in the conduct of life, by individuals, by family groups, by community members, by whole societies.

On this analysis, the consistent interest in human dignity shown by many of the world's large religions is not necessarily a consequence of some great truth delivered from on high (though it might be) but nor is it inevitably an exercise in bad faith, mocked by the actual conduct of the leaders of such faith groups. Instead, for those among us unable to embrace the faith-explanation, such concern for dignity can be respected, admired even, as an effort to put into words and to structure a response to the instinct for hospitality that is in us all, prior to (and perhaps independently of) faith. The imperfection of its realisation – within as well as outside such churches – merely attests to the fact that there are other rival claims on our feelings which are less benign so far as 'the other' outside ourselves and our community is concerned. On this reading, Kant's restructuring of morality to produce a non-Christian explanation for an ethic of respect for the dignity of the other becomes not the truth in itself that he and his followers thought they had found but rather a different kind of camouflage for the real motive for such a categorical imperative, which were the demands not of reason alone but of a certain kind of instinct revealed via reason. The same kind of analysis can be made of socialism (why worry about the poor in the first place?), Rawlsian liberalism (the original position and all that stuff), and (this is the key point for this article's purposes) most recently of the prevalent idea of human dignity as the concept underpinning our 'human rights'. They are all workings-out, more or less persuasive depending on when they are formulated and the fertility of the soil on which they are spread, of this basic instinct of solidarity with the other, which is the true core of human rights. And because it is generally the poor and unlucky who need us to see them (the rich having quite enough visibility as it is) the project of

human rights promotion becomes in practice one committed to a preference for the disempowered, the unlucky, the disadvantaged, life's lowest human stratum.

Such an approach allows not only critical engagement with rival instincts but also with how the instincts play out in the structures of solidarity themselves. We can see clearly that just as religious movements can abuse the idea of human rights by turning it into a set of perks available only to believers (and perhaps even only male believers), so too can human rights organisations stray from the path of 'true' human dignity by using their ethical cachet to trap volunteers into poor working conditions or by allowing their sense of moral superiority to blind them to the bullying employment culture that has been allowed to take root behind the scenes. An easier spot is the use made of the term human rights to underpin the values of a particular civilisation – this contradiction in terms has the effect of allowing the coercion of suspects and the lawless invasion of states in the name of a universalism that has shredded of its engagement with the dignity of the individual and in so doing has become incoherently partisan. The human rights activist who understands the roots of his or her subject can see immediately that bombing a country or starving its children to bring it human rights, or beating suspects up so as (supposedly) to save a particular culture from hypothesised attack, are egregious examples of the violation of human rights done in the name of human rights: a confident awareness of true meaning allows us to penetrate through social practices and name wrong behaviour for what it is, even where it is supported by presidents and by human rights professors.

There remain two large-scale questions which scholarship insist should be addressed. The first relates to the use to which the searcher after human rights foundations makes of the idea of intuition. The more effective a philosopher is at hewing out truthful foundations for human rights – Martha Nussbaum is an outstanding example – the more likely it is that they will be found relying on intuition as the starting point in their analysis. My discovery of an underlying basis for human rights is likewise drawn from my feel for what human beings are all about. Academics tend to be disdainful about intuition, seeing it as a kind of short-cut to conclusions that merely reflect back the received orthodoxies of the day, ideas so entrenched in culture that everybody supposes them to be natural. But as Aristotle knew and even the contract theorists acknowledge every thought has to start somewhere within the mind marked 'new idea' – the point is not that this is where we start but is rather how we use our first thought, how we interrogate it, investigate it, deepen it and seek to make it work. This will reveal whether we are merely parroting back to ourselves the conventions of our culture or whether we are indeed onto a new way of putting things. So for example Martha Nussbaum's intuition that dignity matters leads her to a profoundly impressive ethical theory rooted in human capabilities and in our obligation to do what we can to secure the flourishing of all. The religious may find it easier than the secularists to explain intuition as the hand of God, what Christians might call the Holy Spirit in academic dress. But the non religiously-inclined can find in their intuition about the hospitality and outreaching towards the other that is in us all evidence of an evolutionary strategy that has made us the varied, lively creatures that we are today. The challenge is not in starting with intuition; it is working through where intuition takes you.

The second problem relates to an old assumption within philosophy, that it is impossible to deduce an 'ought' from an 'is'. The separation of the factual world from the 'world' of thought is one of the Western Canon's strongest beliefs, and it is directly challenged by the account given here of human rights. This seems to me to be unavoidable: there are various propensities in us all, some

tending towards solidarity with the outsider, some opposed. The inclination to outreach may make sense as a good evolutionary strategy to widen the gene pool or as a sensible response to the requirements of our chosen God. Whatever its origin – or even if it has none and exists only as fact – every culture has throughout history created a structure of right around outreach and a culture of wrong about selfishness. It is right to be kind, compassionate, caring – a good Samaritan or a selfless hero on behalf of others. It is wrong to be only concerned with oneself, to refuse to help the stranger, to cross the road to avoid giving help to the vulnerable. If this is indeed deducing an ‘ought’ from an ‘is’ maybe that is because the ‘is’ is the only place in which to find an ‘ought’ – there is no rival world of the mind inhabited by pure ideas that can be formulated there and dropped onto the earth like so many ethical food packages.

The establishment of a foundational basis for human rights which is not limited to the religious, but to which progressive elements within religious movements can subscribe, is an essential project if human rights is to enjoy a further sixty years of institutional and activist growth. It is also vital if the critics in the academy are to be successfully tempted on board. The gamble the human rights intellectual takes is that the era of post-modernism is drawing to a close, that the progressive elements in the West have rediscovered the need to counter the disagreeable truths of others with more than a shrug of the shoulders and the scholarly equivalent of ‘whatever’. If this is the case, and if the legacy of the wrongs done and being done by faith groups still make even progressive religion impossible for many, then human rights – with its confident commitment to a dignity which is rooted in human instinct and unfolded through embedded social practices – beckons as as good a guide to secular salvation as we are likely to find.

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