

**DOING HUMAN RIGHTS: SOCIAL JUSTICE IN A POST-SOCIALIST AGE**

25 November 2008

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Bartolomé de Las Casas has a strong claim to be the founder of the modern human rights movement. I do not mean by this that he was a philosopher in the tradition of Augustine, or Thomas Aquinas, staking out a world of ‘subjective right’ that had up until then not been identified as a source for the imposition of duties on others. Nor did he develop a pre-Hobbesian theory of natural rights with which all had been imbued in some speculative state of nature from long ago. The affinity between Bartolomé de Las Casas and the human rights campaigners of today lies in their shared commitment to ethical activism, to experience as the driving force of ideas, and to a perspective on such experience which is imbued with a deeply felt commitment to the equal dignity of all.

The last word in this sentence, ‘*all*’, is the one that made de Las Casas different, just as it is universalism of this sort which marks out the human rights campaigner of today. De Las Casas’s insight – revolutionary and infuriating for the powerful in its time – was that the native Americans had a right in view of their humanity to be protected from the wanton and at times genocidal destruction visited upon them at the hands of Spanish colonialists – imperialists who saw the natives as sub-human and therefore not within the ‘all’ to which esteem was required to be extended.

Contemporary human rights campaigners seek to do exactly the same for trafficked women, for asylum seekers, for those with mental disabilities, for the men, women and children who are lost in the secret counter-terrorism prisons scattered around the world today. De Las Casas too was involved in just this kind of visibility project, an effort to un-blinker the eyes of the comfortable so that the victims of inhumane practices could be seen for the human beings they truly were. Then and now, the best human rights work is a mixture of thought and action which partly belongs in the university and partly on the streets but which cannot afford to be wholly at home in either. This necessary situational ambiguity is one of my main themes this evening.

The focus for this discussion will, perhaps inevitably, be the Universal Declaration of Human Rights. I say inevitably because the UDHR (as it is called) celebrates its sixtieth birthday in a couple of weeks, 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 an ‘age 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.

I imagine from what I know of him that de Las Casas would have worked the human rights seam for all it was worth while being aware of its limitations in the face of power and the assertion of privilege: the world has changed less in the last 400 years than many of us would like, in this ‘age of human rights,’ to believe. But it does raise the question – another one for this evening – whether human rights is a way of ‘doing social justice’ or merely a way of ‘masking social injustice’ in a rhetoric of pleasing aspiration. Why has the Universal Declaration on Human Rights, with its broad range of rights – its commitment to human dignity, to social justice, and to a better life for all – not brought about a greater equivalence between aspiration and practice, between what we as a community of nations of peoples say we want and what our laws and patterns of behaviour bring about?

There are of course various routes to an answer to this question but the one I am choosing to go down is, I hope, appropriate to this occasion, marking as we do here this evening the establishment of a centre devoted to (among other aims) research, education and dialogue on social justice and human rights. My particular focus is with how uncertain has been the reception of the idea of human rights within academe, how lukewarm (perhaps even hostile) has been the scholars’ response to this big post-war idea. My belief is that this tepidity, antagonism even, has been one of the main reasons why the practice of human rights has been less successful in achieving substantive outcomes than the rhetoric and the activist energy suggest should have been the case. The failure to develop a coherent scholarly account of human rights has eaten away at the foundations of the subject, leaving it open to capture by persons of bad faith (who use it as cover for invasion and coercive interrogation and the like) and depriving activists of the intellectual nutrition needed to sustain their

energy. The overt or covert opponents of the human rights idea that have from time to time launched their attacks on our subject have found a flimsier opponent than the rhetoric of rights has led them to expect. If the UDHR is to survive another sixty years then the academy needs to be engaged, not as cheerleader (we have enough of those in this field) but as builder, constructor of foundations for a house that is already in place but whose inadequate construction now threatens it with collapse.

The UDHR itself dodges the question of why the rights it celebrates exist or why they should matter. Its words speak to us not as those of a scholar, still less a philosopher, but rather as the careful expression of the collective conscience of a war-torn generation, placed on the shoulders of those who follow them as a guide to a better future and an obstacle (they hope) 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 the scholarly critique which has led eventually to academic detachment. 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 (or so the critics say) 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 'inherent dignity' of 'all members of the human family' which the UDHR stresses as underpinning its set of rights is not a sufficient answer to these academic critics. The idea of universal dignity certainly performs 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. But as my Oxford colleague Christopher McCrudden has astutely observed, the term human dignity is capable of having ‘several meanings’ and that ‘one cannot coherently hold all of them at the same time’. So we are in the realm of choice here, deciding which signification to impute to this floating phrase.

Once upon a time this was not the case: we took the colour of our words from our religious understanding of truth. The universal application of the term ‘human dignity’ in pre-UDHR days was largely associated with progressive elements within religious movements, of whom Bartolomé de Las Casas was such an outstanding example. The UDHR 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. 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 motives 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 lecture’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, de las Casas’s Native Americans, today’s trafficked women and interned ‘terrorist’ suspects.

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 with this approach – an attempt need I say to fill the foundational gap in human rights scholarship – which the academy insists should be addressed. The first relates to the use to which the searcher after human rights truths makes of the idea of intuition. The more effective a philosopher is at hewing out basic 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 seems to be directly challenged by the account given here of human rights. This seems to me to be partly 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. But if this is indeed deducing an ‘ought’ from an ‘is’ then the process is not illicit precisely because it is a process – a way of working out which bits of what is are good and which are not. For 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 life like so many ethical food packages. What matters is to be discerning in our reception of nature, not blindly trusting that what is is good just because it is.

If I am right about the basis for human rights being this deep sense of hospitality for the other, of outreach, and if I am right too about the different ways in which through the ages this instinct has found expression, then it must follow that the term ‘human rights’ has no right to a permanent place in our language of right behaviour. In the past, the Ten Commandments did just as well for some, the Sermon on the Mount for others, and the Koran has been helpful for many more from about the 7<sup>th</sup> century: all three (and other languages, non-religious as well as religious) still do their ethical bit. The human rights idea in its post World War Two form began life as a response to the failure of one presumptive approach to deliver justice for all – democracy – and was sustained by an increased appreciation of the failure of a second model, that of centralised socialism.

As regards the first of these, democracy, it is hard for us to appreciate quite how revolutionary the idea was to many in the 19<sup>th</sup> century, how closely it was coupled to socialism, and how wide was the assumption that a properly democratic society could not fail to do justice to all its people, to deliver dignity for all. We know more now than did these democratic fighters of old about the dangerous propensities of majority rule. As regards the

second, socialism, the separation of this ethical vision of society from democracy and its later subjugation to the directed strategic vision of a self-styled leadership of the proletariat came – at what we can now easily see and name – at an unjustifiably enormous human cost.

Human rights has succeeded so well as the contemporary expression of the instinct I have been describing because it has drawn out the best features of the democratic and socialist models while seeking to avoid their excesses. Thus the civil and political rights that are so central to human rights, and which figure so prominently in the UDHR, are designed to facilitate the establishment and then the flourishing of a democratic culture. But on this human rights model, the polis is not permitted to use its democratic authority to stray into the forbidden territory of egregious attacks on the weak and the vulnerable. Furthermore, as the UDHR makes very clear, human rights is about much more than the civil and political – it is also an articulation of a vision of a socially just society. Do not be fooled by claims that human rights is above politics: its vision of a just society, one in which all are given equal chances and are provided with the basic tool-kit for a successful life is social democracy in action. So to answer one of the questions I posed earlier, understood properly ‘doing human rights’ is doing social justice’.

If we do live in a post-socialist age, does it follow that we will never return to socialism, that we will not enter a post post-socialist age just as (the until now unacknowledged thrust of my talk this evening) we have in the course of the past few years (I would say since the horrible fact of the Rwandan genocide began to seep into our ideas) we have entered a post post-modernist era? This must be possible, and it must also therefore be possible that we will find other and better ways of promoting social justice than ‘doing human rights’. I am myself still worried about two features of human rights: its tendency to be captured and drained of life by the lawyers (a cruel consequence of its success in

embedding itself deeply in our legal structures) and by its posture as non-political, which makes it difficult for the idea to develop political momentum, to push for power to deliver the changes in our culture that its ethic demands. So a future without human rights would not scare me if there were a better, more effective term disclosing a similarly powerful framework for protecting the instincts over which the idea of human rights currently stands guard. But that is for the future, if ever. For now we are stuck (in the best sense) with human rights.

The establishment of a foundational basis for our subject, one 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 in the way that I have just suggested, 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 for quite a while yet. De Las Casas was a great emancipator of the minds of men and women. At this moment of a potential return to greatness for the United States of America, I end by remembering a second great human rights activist, Abraham Lincoln. In his extraordinary first inaugural address, he did not speak of human rights but he did say this right at the end of his speech:

**We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battle-field, and patriot grave, to every living heart and hearth-stone, all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.**

25 November 2008