

## Human Rights

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The notion of human rights is deeply embedded in modern legal and political thought and could well be considered one of the most significant achievements of contemporary civilization. Certain classes of people in all societies have from the beginning of time been endowed with 'rights' which others could not claim. Diplomatic emissaries, for instance, were conferred with 'rights' that even an alien state could not abrogate, and elites arrogated to themselves certain rights and privileges. *The Declaration of the Rights of Man and Citizen* (1789), Thomas Paine's *Rights of Man* (1791) and the 'Bill of Rights' attached to the US Constitution are conventionally seen as having extended rights to a much broader class of people, and the post-Second-World-War Universal Declaration of Human Rights is described as the rightful culmination of these democratic propensities. Some 'rights' were such which the citizen could claim against the state, others placed restraints on the state's agenda to produce conformity and contain dissent.

In this liberal vision of human rights, what is uniquely modern is that never before have individual rights been so squarely placed under the protection of the law. Moreover, it is only in recent times that the 'international community' seems prepared to enforce sanctions against a state for alleged violations of such rights. With the demise of communism, the principal foes of human rights appeared to have been crushed, and the very notion of 'human rights' seemed sovereign. Should we then unreservedly endorse the culture of 'human rights', as it has developed in the liberal-

democratic framework of the modern West, as a signifier of the 'end of history' and the emergence of what V.S. Naipaul called 'our universal civilization'? Or, rather than acquiescing in the suggestion that the notion of human rights is the most promising avenue to a new era in human relations, is there warrant for considering the discourse of human rights as the most evolved form of Western imperialism? Is it the latest masquerade of the West, particularly the United States, the torch-bearer since the end of the Second World War of 'Western' values, which appears to the rest of the world as the epitome of civilization and as the only legitimate arbiter of human values?

The 'individual' and the 'rule of law' are the two central notions from which the modern discourse of human rights is derived. Since at least the Renaissance it has been a staple of Western thought that while the West recognizes the individual as the true unit of being and the organic building block of society, non-Western cultures have been built around collectivities, conceived as religious, linguistic, ethnic, tribal or racial groups. 'Whatever may be the political atom in India,' we find unabashedly stated in the 27 February 1909 issue of the *Economist*, 'it is certainly not the individual of Western democratic theory, but the community of some sort.' In the West the individual stands in singular and splendid isolation, the promise of the inherent perfectibility of man; in the non-West, the individual is nothing, always a part of a collectivity in relation to which his or her existence is defined, never an entity unto himself or herself. Where the 'individual' does not exist, one cannot speak of his or her rights; and where there are no rights, it is perfectly absurd to speak of their denial or abrogation.

Regarding the Western view, moreover, if the atomistic conception of the 'individual' is a prerequisite for a concern with human rights, so too is the 'rule of law' under which alone such rights can be respected. In a society which lives by the 'rule of law', such laws as the government might formulate are done so in accordance with certain normative criteria—for example, they shall be non-discriminatory, blind to considerations of race, gender, class, linguistic competence and so on. These laws are then made public,

so that no person might plead ignorance of the law; and the judicial process under which the person charged for the infringement of such laws is tried must hold out the promise of being fair and equitable. As in the case of the 'individual', the 'rule of law' is held to be a uniquely Western contribution to civilization, on the two-fold assumption that democracy is an idea and institution of purely Western origins, and that, contrariwise, the only form of government known to non-Western societies was absolutism. In conditions of 'Oriental despotism', the only law was the law of the despot, and the life and limb of each of his subjects was hostage to the tyranny of his pleasures and whims. In the despotic state, there was perhaps only one 'individual', the absolute ruler; under him were the masses, particles of dust on the distant horizon. What rights were there to speak of then?

Having suggested how the notions of the 'individual' and the 'rule of law' came to intersect in the formulation of the discourse of human rights, we can proceed to unravel some of the more disturbing and insidious aspects of this discourse. Where once the language of liberation was religion, today the language of emancipation is law. Indeed, the very notion of 'human rights', as it is commonly understood in the international forum today, is legalistic. Customs and traditional usages have in most 'Third World' countries functioned for centuries in place of 'law'. Even without the 'rule of law' in a formalistic sense, there were conventions and traditions which bound one person to respect the rights of another. However, this is not something that proponents of the 'rule of law', convinced of the uniqueness of the West, are generally prepared to concede. By what right, with what authority, and with what consequences, do certain states brand other states as 'outlaw' or 'rogue' states, living outside the pale of the 'rule of law', allegedly oblivious to the rights of their subjects, and therefore subject to sanctions from the 'international community'?

There is, as has been argued, one 'rule of law' for the powerful, and an altogether different one for those states and non-state actors that do not speak the 'rational', 'diplomatic' and 'sane' language that the West has decreed as the universal form of linguistic exchange. It is not only the case that when Americans

retaliate against their foes, they are engaged in 'just war' or purely 'defensive' measures in the interest of national security, but that when Libyans or Iraqis do so, they are transformed into 'terrorists' or ruthless and self-aggrandizing despots in the pursuit of international dominance. The problem is more acute: who is to police the police? Or, in the more complex variant of that query, how do certain particularisms acquire the legitimacy of universalisms, and why is it that Western universalisms have monopolized our notion of universalisms? In an astounding judgment rendered in the early 1990s, which was barely noticed in the American press, the United States Supreme Court upheld the constitutionality of a decision of a circuit court in Texas which allowed American law enforcement officers to kidnap nationals of a foreign state for alleged offences under American law, and bring them to the United States for trial. Such a decision arbitrarily proclaims the global jurisdiction of American law. Some centuries ago, such occurrences on the high seas were referred to as piracy.

There are still more significant problems with the legalistic conception of a world order where 'human rights' will be safeguarded. The present conception of 'human rights' largely rests on a distinction between state and civil society, a distinction here fraught with hazardous consequences. The rights which are claimed are rights held against the state or, to put it another way, with the blessing of the state: the right to freedom of speech and expression, the right to gather in public, the right to express one's grievances within the limits of the constitution, and so forth. The state becomes the guarantor of these rights, when in fact it is everywhere the state which is the most flagrant violator of human rights. Not only does the discourse of 'human rights' privilege the state, but the very conception of 'rights' must of necessity remain circumscribed. The right to a fair hearing upon arrest, or to take part in the government of one's country, is acknowledged as an unqualified political and civil right. However, the right to housing, food, clean air, an ecologically sound environment, free primary and secondary education, public transportation, a high standard of health, the preservation of one's ethnic identity and culture, and security in the event of unemployment or impairment due to

disease and old age, is not accorded parity. Such an ecumenical conception of human rights is admitted to by no state, and is infrequently encountered in the vast literature. Nor is it amiss to suggest that the ‘individual’ rather than the ‘human person’ predominates in human rights precisely because the individual is an abstraction, while the person is present in every gesture, action, word, relationship and transaction.

Certainly there are organizations, such as the Minority Rights Group (London), Cultural Survival (Boston) and Doctors without Borders, among others, which have adopted a broader conception of ‘human rights’ and whose discourse is as concerned with the numerous rights of ‘collectivities’, whether conceived in terms of race, gender, class, ethnic or linguistic background, as it is with the rights of ‘individuals’. But this is not the discourse of ‘human rights’ in the main, and it is emphatically not the discourse of Western powers, which have seldom adhered to the standards that they expect others to abide by, and would use even food and medicine, as the long-lasting embargo against Iraq so vividly demonstrates, to retain their political and cultural hegemony even as they continue to deploy the rhetoric of ‘human rights’. Never mind that state formation in the West was forged over the last few centuries by brutally coercive techniques—colonialism, genocide, eugenics, the machinery of ‘law and order’—to create homogeneous groups. One could point randomly to the complete elimination of the Tasmanian Aboriginals, the extermination of many Native American tribes, the Highland Clearances in Scotland, even the very (seemingly ‘natural’) processes by which a largely Breton-speaking France became, in less than a hundred years, French-speaking. The West homogenized itself before it colonized various others; it is now homogenizing these others. Thus the Western discourse of human rights is entirely abstracted from the language of duty, with which the notion of rights is inextricably linked, partly because the West absolved itself of its duties to those whom it colonized.

We should be emphatically clear that what are called the ‘Third World’ countries should not be allowed the luxury, the right if you will, of pointing to the excesses of state formation in the West to

argue (in a parody of the ludicrous evolutionary model where the non-Western world is destined to become progressively free and democratic) that they too must ruthlessly forge ahead with ‘development’ and ‘progress’ before their subjects can be allowed ‘human rights’. One has, in some respects, heard too much of ‘Asian values’; the idea of ‘human rights’ is noble and its denial an effrontery to humankind. Yet our fascination with this idea must not deflect us from the recognition that ‘human rights’ is the Maxim gun of the twenty-first century. Perhaps, before ‘human rights’ is flaunted by the United States as what most of the rest of the world must learn to respect, the movement for ‘human rights’ should first come home to roost. As Noam Chomsky (1991) has written, people in the Third World ‘have never understood the deep totalitarian strain in Western culture, nor have they ever understood the savagery and cynicism of Western culture’. The further rejoinder to these critiques cannot lie in the recourse taken by some to endow their pets with rights while humans are shunned as incurables. Human rights will only flourish when there is a plurality of knowledges and each is furnished with its ecological niche—when, that is, different cultures put forth their own universalisms, and thereby set their own terms for a fruitful engagement with Western human rights discourse.

#### Further Reading

Chomsky, Noam. 1991. *Media Control: The Spectacular Achievements of Propaganda*. Westfield, New Jersey: Open Magazine Pamphlet Series.

Just World Trust. 1996. *Human Wrongs: Reflections on Western Global Dominance and Its Impact upon Human Rights*. Pune. The Other India Press.

Lauren, Paul Gordon. 1998. *The Evolution of International Human Rights*. Philadelphia: University of Pennsylvania Press.