

## Back to Basics: Human Rights and the Suffering Imperative

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### Introduction

Anniversaries provide a conventionally appropriate opportunity to take stock and, where necessary, to remind ourselves of why we hold to the commitments we do. All too often the *raison d'être* of any collective human venture can be lost amidst the sheer banality of daily doing what we do and pursuing the goals we have become accustomed to. The question we often forget to ask ourselves is the following: why should we care? Expressed more specifically, one may ask, why do *you* care about the human rights of others and why should others care about your human rights? Fear not, this short piece will not attempt to reinvent the wheel of human rights theory. Nor am I in a position to definitively settle enduring questions concerning the validity and veracity of the ultimate justifications offered in support of a commitment to human rights principles *tout court*. My motive is far more modest and intellectually circumspect; having said that, this piece is driven by a distinct ambition. In taking stock of current debates in human rights theory, I shall argue that we are in danger of losing sight of the ethical imperative of human suffering in our discussions about the form and content of human rights in the contemporary world. The cornerstone of human rights must be a concern for human suffering. This amounts to an ethical truism for human rights theorists but despite, perhaps even because of this, it has been obscured from view in much theoretical reflection upon human rights as an ethical, legal, political and, increasingly, cultural doctrine. This piece takes the reflexive opportunities afforded by the spirit of anniversary to re-focus attention upon the basis and strength of our motivations and invites a return to the ethical basics of a commitment to human rights. In so doing, I aim to make a theoretical case for an appreciation of what might be referred to as a pre-theoretical impulse and motive. If human rights are to realise the promise of establishing the conditions for a world far less beset by human suffering, then the doctrine must address us at a level that does not immediately succumb to the contingency of conceptual verbiage and political opportunism.

### The Unbearable Lightness of Human Rights Theory

Any sustained engagement with human rights theory is liable to induce feelings of frustration, and even demoralisation, in those seeking justification for commitments they already possess. A multitude of authors and arguments populate the terrain. While most proclaim their belief in the moral authority of human rights, many appear incapable of offering anything more than increasingly conditional and materially contingent arguments in support of their professed faith. Analytically speaking, the division may be

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characterised in terms which locate human rights principles as originating within the human agent (or the conditions of human agency) and those which view a commitment to human rights as requiring and presupposing not so much an appeal to the human condition as an appeal to the development of specific structures, which externally frame human agency in a necessarily contingent manner. Those who appeal to the internal attributes of the human condition include, albeit in their different ways, Alan Gewirth, Bryan Turner and Richard Rorty, while the alternative position is represented by the likes of Jack Donnelly and David Beetham. I will not rehearse their respective arguments here. Suffice it to say that the substantive disagreements between them are real and significant. While some may disagree with the following claim, I think there are good reasons to view the latter approach as having gained a greater ascendancy in recent years. The very persistence of some human beings' capacity for wittingly and unwittingly abusing the fundamental rights of others has, undoubtedly, had some influence upon a discernible slackening of faith in the ultimate goodness of humanity. An appeal to structures and institutions appears to bear fewer normative hostages to fortune than that which places the onus upon human reason or sentiment as generating a consistent concern for the well-being of others. Settling such issues cannot be my concern here. Rather, my analysis is driven more by an appreciation of the subsequent effects of engaging with and spectating upon such disputes within contemporary human rights theory.

The more something is argued over, the more intangible and contingent it is liable to appear to those not wholly taken up by the persistence of the debate. It may well be that all perception and conception is paradigmatic, to coin Thomas Kuhn's phrase. It may well be that nothing which passes through human reason is genuinely and compellingly solid and indisputable. One can accept this premise and still hold a concern for relative degrees of contingency. Outside moral philosophy's sub-speciality of human rights theory many things are simply accepted as sufficiently true or at least unworthy of serious discussion. Without really knowing how or why, we accept that the earth is round and that all material bodies (including our own) come to pass eventually. Within the realm of human rights theory, however, such professions of epistemological certainty are increasingly apparent only by their ultimate absence. In this realm, the greater one's desire and yearning for ethical certainty, the more one is liable to experience deep disappointment and frustration. The extent of this effect appears to be largely lost on those who have come to establish successful academic careers in this field. All too often, the effects of the disputatious character of much human rights theorising upon other interested parties has gone unnoticed by those who argue over the apparent necessity or contingency of ethical foundations or attributes of human agency. Many of the participants of this debate are motivated precisely by a desire to provide intellectually sound and coherent arguments in support of existing commitments. Many, but not all, explicitly aim to place a commitment to human rights upon a ground that does not reduce to mere articles and professions of normative faith. These are perfectly noble, perhaps ultimately essential, aspirations. A great irony of all of this verbiage, however, is that to many interested outsiders the effect of the debate is precisely the opposite. If human rights theory merges with mere argument, then the desire for a sufficient degree of moral consensus, if not certainty, that initially accompanies many human rights supporters' commitment to the doctrine will appear so much more distant and unrealisable. One may expect that, should this persist over the next twenty-five years, far fewer human rights defenders will take an interest in the grounds for justifying human rights principles than is currently the case. Human rights theory runs a very real risk of sliding into a form of scholasticism and moral aridity. Some might welcome the exclusion of theorists from a domain of human action within which practice appears so compelling. Within the global human rights community the worth of theory has often

been called into question. Human rights theorists represent a distinct minority which many in the more practice-oriented majority view with suspicion or consider a mere irrelevance. The unbearable lightness of human rights theory represents, in this respect, its greatest weakness.

### **Babies and Bath-Water**

There are good reasons to hesitate before proclaiming the irrelevance, if not the death, of human rights theory. An appeal to practice *per se* is an overly blunt and indiscriminating instrument for the purposes of doing human rights. We live in an age in which the old division between facts and norms is increasingly challenged. Not all practice is necessarily devoid of normative significance. Indeed, many would argue, as a contemporary variant of the older mantra that the 'personal is political', that very little is truly and purely 'practical'. For example, one might previously have been tempted to contrast the practical *doing* of human rights with another practical exercise, such as riding a bike. Previously, we might have concluded that riding a bike was different from practicing human rights to the extent that bike-riding is devoid of normative significance or motive whereas the practice of human rights is saturated with normativity. The world, however, has changed. Riding a bike has now become, for many concerned by rising CO<sup>2</sup> emissions and the oft-proclaimed threat this poses to the environment, a demonstrable manifestation of ideological commitment. Making sense of bike-riding as a social phenomenon requires an engagement with and analysis of the normative dimension of pedal-power. The extent to which riding a bike (or many other similarly and apparently banal everyday actions) has become motivated by normative commitments marks a radical transformation of the phenomenon itself. Justification, rather than merely explanation, becomes a necessary element of making sense of this aspect of human behaviour. A previously 'innocent' phenomenon comes to take on a purpose extrinsic to itself. Many now choose to ride a bike as a means to an end, rather than as an end in itself. We may not definitively be able to justify the end which motivates the practice, such is the apparently interminable character of normative theorising, but we cannot understand why the practice occurs without engaging with normative analysis. Similarly, we cannot understand why the practice doesn't occur more often (in respect of those who choose not to opt for two wheels) without engaging in normative analysis. Excluding the normative in the name of practical imperatives would obscure from view an essential property of the phenomenon itself: the baby would be lost with the bath-water's expulsion.

We might say that many more areas of the domain of practical human agency are taking on the ineliminably normative character which human rights practice has always necessarily possessed. Setting to one side the view of the allegedly disinterested observer and focusing solely upon the participant, when one *does* human rights one is necessarily already enmeshed within the fabric of normativity: one's action is necessarily motivated by the pursuit of goals and ideals which aim not to simply describe the world but to judge it and to alter it where necessary. Human rights devoid of a normative dimension is a myth which serves little purpose, practical or otherwise. This does not mean that all human rights practitioners must also be moral philosophers. At the ground level few of us are systematically required to continually justify what we do. However, understanding and subsequently directing the development of the doctrine does require the application of a normative sensitivity. Many who are prepared to acknowledge the indispensable role of an engagement with the normative sphere for human rights will nevertheless rightly point to one potentially very damaging consequence of this particular field of expertise which we have already touched upon: the frustration and disappointment which many feel who, turning to moral philosophy for normative truths, encounter only the opposite. Acknowledging the indispensability of normativity for human rights nevertheless appears

to entail the deeply ironic consequence of raising doubt over the ultimate veracity of human rights principles as normative phenomena, rather than as items in a legal document. We cannot justify what we do without engaging with the normative sphere, but the normative sphere itself appears to exclude the very truth criteria that we require if our doctrine is not to appear merely pragmatic and conditional upon utterly partial interests. What appears to be lacking is some sufficiently compelling imperative out of which a commitment to human rights can emerge and in accordance with which the scope of human rights may be framed.

### **The Suffering Imperative**

Suffering is not alien to the human condition or to the development of humanity as a concept. Indeed, many philosophers and thinkers have gone so far as to view suffering as one of the, if not *the*, definitive characteristics of humanity. Nor can it be said that suffering has played an insignificant role in the development of human rights. Setting to one side debates over the basis and form of so-called natural rights, which span several centuries of mostly European thought, we must acknowledge that the modern human rights movement was fundamentally motivated, amongst other things, as a response to the Holocaust, that hideous icon of human suffering for post-war generations. The Universal Declaration of Human Rights (UDHR) must be understood, in part, as an historical doctrine and as motivated by that which defied discussion and interpretation but simply was fundamentally and utterly wrong. This moral truth is inscribed within the very foundation stone of the modern human rights movement. The greater part of the moral impetus and authority of the human rights doctrine was provided by Auschwitz and the other death camps, within which humanity was shown to be one of the most contemptible myths of the modern age. The subsequent human rights movement aimed, in part, to restore a commitment to humanity and human dignity. The UDHR represents an attempt to draw a definitive normative line in the sand between what constitutes the fundamental conditions for right and wrong in the primarily public sphere. Given its historical backdrop we might say that the modern human rights movement was established against the grain of history's development. The success of the movement must be measured by the extent to which it has altered and, to some extent, reconfigured history's grain. Having said that, it is clear that the human rights movement has developed extensively in the sixty years since the UDHR was formally presented to the world. While the human rights movement was driven by human suffering, the doctrine and its application has extended well beyond such morally compelling phenomena to embrace aspects of public and private life which do not and cannot possess the compelling and unequivocal character of genocide. By extending its reach, the human rights movement has, inevitably perhaps, raised concerns amongst some about the justification and validity of its efforts. This is an important development for the human rights movement, and one that requires a response which draws upon, rather than seeks to obscure, the source of human rights' moral authority.

In many parts of the world human suffering remains demonstrable and ever-present. However, in that part of the world where the normative basis of human rights is most frequently discussed and pondered, suffering is no longer a clear feature of daily life. Underachievement, frustration, high levels of stress and all of the other pathological symptoms of modern living persist, but the kind of suffering to which human rights has typically responded is much less frequent. In this context, the development of human rights has closely reflected developments in liberal political and legal theory. Human rights in the western hemisphere has long shared an elective affinity with liberalism. The two are not synonymous but are closely interrelated. For its part, liberalism has paid little sustained attention to human suffering *per se*. The substance of human life has not

enjoyed centre-stage attention within liberalism for some considerable time. Indeed, in recent decades many liberal philosophers have largely turned away from previous attempts to promote and protect substantive conceptions of how life can be lived well, and turned instead towards circumscribing and promoting demonstrably more formalistic ideals. Initially attracted by a conception of justice as impartiality, liberal philosophers such as John Rawls and Charles Larmore have sought to rest liberalism's moral authority upon an appeal to neutrality as a variant of equality. Liberal jurisprudence reflects this development to the extent that its focus has shifted fundamentally towards equality and non-discrimination as those ideals which legitimate law should uphold and protect. Few would oppose the value of equality and non-discrimination. However, what this development has obscured from view is the condition of human suffering, the eradication or at least fundamental reduction of which should remain our principal concern. Human beings suffer as a consequence of inequality and discrimination, but suffering itself is neither exhausted by nor reducible to these criteria. Nor can it be legitimately said that simply establishing such ideals will sufficiently reduce human suffering throughout the world. As a consequence of the spread of a mere formalistic account of ethics and law that is a discernible feature of modern societies, liberals and human rights theorists alike are in danger of forgetting the force and significance of human suffering. Human rights theorists need to urgently reengage with the phenomenon of human suffering as an ethical imperative in the light of which human rights may begin to reacquire the depth of authority it once possessed.

### **Yes, But.....**

In many respects, there might appear to be little need to remind ourselves of the sheer importance of human suffering for human rights: attempts to do so might thereby appear somewhat platitudinous or surplus to requirements. They certainly aren't new. Theorists sympathetic to human rights such as Bryan Turner and Amartya Sen have recently presented normative arguments founded upon corporeality and vulnerability. Both of these have been subject to criticism from various quarters, testifying to the persistence of views within human rights theory which continue, I believe, to miss the ultimate point of the doctrine. An appeal to human suffering as *the* ethical ground of human rights is certainly susceptible to criticism. Some will argue that suffering is simply too subjective and immeasurable for the purposes of generating a global ethical doctrine. Others might argue that an appeal to suffering cannot generate an ethic of reciprocity since not everyone is ultimately vulnerable to the same degree of suffering: if I am highly unlikely ever to suffer malnutrition why should I ultimately care about those who do? On this view, an appeal to suffering serves only to expose the lack of a common and mutually reciprocal global space within which human rights can play a fundamental role. Still others might worry about the implications of an appeal to suffering for those human rights which might appear somewhat more 'procedural', less visceral perhaps, than others. A focus upon suffering might appear to tip the balance towards economic, social and cultural rights and thereby challenge the Vienna Declaration's insistence upon the parity and mutually interdependent relationship that is deemed to exist between civil, political and economic, social and cultural rights. Finally, although this will not exhaust the potential litany of criticism, some might fear that a focus upon suffering will raise the spectre of an unduly paternalistic human rights regime interfering in the affairs of individuals and communities whose practices might appear harmful to some but not necessarily to the agents in question.

Each one of the above criticisms has merit and requires a serious engagement and response if a theory of human rights based primarily upon the imperative to alleviate

systematic human suffering is to be worthy of respect and consideration. For the time being, I think it is vitally important to reflect upon the motives of one's actions and commitments from time to time: anniversaries afford just such an opportunity. Countless millions of human beings continue to live and die in miserable conditions. Countless millions of human beings continue to suffer from circumstances and conditions over which they have little, if any, control. This suffering is largely of our collective making and results from our actions and inactions. Some have lost sight of the enduring phenomenon of human suffering. The extent to which we come to take suffering either for granted or as a merely unavoidable fact of life has a direct bearing upon the persistence of those conditions which the modern human rights movement sought to eradicate. The last twenty-five years have been marked by successes and failures. The human rights movement needs to take responsibility, to some extent, for both. If the next twenty-five years are to prove more successful for us all, then we must never lose sight of human suffering.