What could it mean to take human rights seriously?

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Abstract/Introduction

Thanks to the hubris and brutality of the 'armed humanitarians', the discourse of human rights has recently and understandably become an object of suspicion in many parts of the world. However, to blame human rights for these sins is to concede too much ground to the 'armed humanitarians' and their intellectual supporters. Whilst it is true that a liberal and overly capital-friendly reading currently occupies much of the human rights terrain, there is also a long-established insurgent reading that retains the potential to expel the occupier. In order to make and develop these points, the paper revisits the 1970s debate between Ronald Dworkin and Herbert Hart concerning the relations between morality, rights and the law. Regretting the debate's outcome, the paper reopens the question of what it would mean to take human rights seriously. Where Dworkin victoriously found moral consensus, a source of coherence, and acceptance of the capitalist ordering of social relations within past and present rights discourse, the paper finds moral division, ambiguity and a desire for social transformation. Contra Dworkin but in line with the emergent 'responsibilities approach' (Kuper, 2005), the meaning of human rights has never been, and is not now, identical to that of liberalism. The paper concludes by suggesting that it is therefore time, belatedly, to recognise the sagacity of Hart's Legal Positivist insistence on the necessity of a 'descriptive sociology' that separates law and rights from morality as the key to taking human rights seriously and thereby expelling the occupier.

My title, then, is 'What could it mean to take human rights seriously?' My short answer is an archetypally academic one: 'it depends on what you mean by the question.' This is because my question can and indeed should be read in two ways: What are human rights when they are looked at seriously? What social policies would follow from any decision to take human rights seriously? My pleasure in taking advantage of ambiguity may be predictably academic but - in my view unfortunately - recognition of the possibility of ambiguity, let alone taking pleasure in it, is far from predictable in the human rights area. In the West at least there appears to be a consensus amongst both advocates and critics that in the end taking human rights seriously means only one thing: the selective privileging of the value of the individual over the collective, especially where the latter takes the form of the state. This privileging has had the tragic policy consequence that taking human

rights seriously is often of little practical consequence as a mode of social amelioration and indeed, as Upendra Baxi (2002) has argued, the ultimate effect of taking human rights seriously can sometimes be to the detriment of those whom one might have thought were their intended beneficiaries.

This is because many politicians and policy-makers today are strongly committed to the view that, for the sake of protecting human rights, collective or state intervention in, and management of, economic and social life should be kept to a minimum. Nothing could be further from the truth as, if a nepotistic reference may be forgiven, my brother Michael has demonstrated in his recent book *Gangster Capitalism* (2005). The book is a comprehensive account of the corporate abuse of human rights in the United States that results from weak or absent state regulation. The abuses he discusses include a startling array of frauds on the sick, food poisoning (a quarter of the American population experiences food poisoning every year), industrial injuries, and the massive and racially biased over-imprisonment of the poor. It is not my intention to repeat or add to his catalogue of horrors. Rather, what I wish to do is say something about how the consensus that his work calls into question arose and then go on to challenge the basis upon which it was constructed. My answer to the first question takes human rights seriously as a discourse with a history and outlines the divergent meanings present within and made possible by this history. And my answer to the second question takes human rights seriously as a programme of social action and points up its consequently similarly divergent meanings for social policy more generally.

Taking Rights Seriously?

In the United States and Britain the intellectually most significant text in the making of the consensus that I wish to challenge was that whose title mine intentionally echoes, namely Ronald Dworkin's *Taking Rights Seriously* (1977). In the 1970s, prior to the appearance of Dworkin's book the most influential theory of law was the restatement of what is known as Legal Positivism set out in Herbert Hart's *The Concept of Law* (1961). According to the Legal Positivists, individuals only have rights insofar as they have been created by explicit legal or political actions. Any suggestion that they may be naturally or morally inherent in human beings is, in words taken from Jeremy Bentham's *Anarchical Fallacies* that are often quoted but

also seldom taken seriously enough, 'nonsense upon stilts.' This is the view that Dworkin challenged. His counter argument was that, in one way or another and so far from promoting anarchy, those rights that are termed 'natural' and the morality they consequently carry into legal reasoning impart not just ethical significance but also an essential coherence to legal systems. The unlegislated moral principle operant here is the idea that society owes all its members a certain 'equality of concern and respect.' However, for Hart the separation of law from morality was important not only because it made it easier to demarcate the basic lineaments of the legal but also precisely because it preserved the idea that there 'is something *outside* the official system, by reference to which in the last resort the individual must solve his problems of obedience' (ibid: 206, emphasis added). By keeping law and morality separate from one another, Hart sought to preserve an autonomy for the moral sphere that would allow both the distinguishing of certain legal rights as natural rights and the possibility of criticism of this idea .

In contrast, what Dworkin meant by 'taking rights seriously', given that his principle of 'equality of concern and respect' was derived from his reflections on the 'original position' set out in John Rawls' *Theory of Justice,* was that liberalism was a universal ethical necessity in the sphere of governance and one moreover that legitimated many of the less capital-threatening aspects of the socialist approach to social development (for an highly influential example of the role of the work of Rawls and Dworkin in the making of the liberal consensus, see Donnelly, 2003: 43-ff). Also, because his text revived philosophical interest in rights by presenting itself as a critique of Hart, Dworkin's intervention greatly reduced the likelihood that much interest might be shown in developing the approach to the study of legal phenomena such as rights that Hart had pointed towards when he wrote in the preface to *The Concept of Law*, that it could be read as 'an essay in descriptive sociology.' From my particular sociological viewpoint this was especially regretable since, despite his unpromising formal commitment to Peter Winch's extremely subjectivist variant of social constructionism, Hart's sociology was far from simply descriptive, animated as it was by the following 'sobering truth:'

> the step from the simple form of society, where primary rules of obligation are the only means of social control, into the legal world with its centrally organised legislature, courts, officials, and sanctions brings its solid gains at a certain cost. The gains are those of adaptability to change, certainty, and

> efficiency, and these are immense; *the cost is the risk that the centrally organised power may well be used for the oppression of numbers of those with whose support it can dispense*, in a way that the simpler regime of primary rules could not (Hart, ibid:197-8, emphasis added).

In other words, whereas Dworkin assumes that rights are the inherent property of human beings and unproblematically serve to protect them against the abuse of power, Hart acknowledges that the law and therefore rights too exist in a world where power is unequally distributed and he therefore allows the possibility that they may embody and so be complicit with this inequality to the degree that some individuals may have no rights at all. By developing his Legal Positivist concept of law, then, Hart appears to have hoped to separate the law from liberal morality in particular and so to preserve not only the possibility of other moralities but also the law and therefore the concept of rights too for articulation with such other and arguably preferable moralities.

In sum, Dworkin's critique of Hart was mightily effective in reducing the likelihood that human rights would be taken seriously and sociologically in either of the senses that I specified earlier: there was no need to enquire seriously into the historical genealogy or policy significance of rights thinking since philosophical speculation about some imagined 'original position' was regarded as sufficient to satisfy all but the most extreme political desires. Indeed so effective was Dworkin's text in this regard that even Hart himself in the end came to doubt the wisdom of his sociological aspirations, as Nicola Lacey (2005) has shown in her recent insightful and moving biography - of course it should also be said that Hart was not helped by sociology's continuing lack of interest in rights and consequent failure to take advantage of the opportunity he had offered it. Finally, the ease with which Dworkin was able to re-mobilise the concept of rights on behalf of the liberal cause confirmed the belief of the sociological and other rights sceptics that the category of rights was intrinsically subversive of any efforts to transcend liberal society or indeed to avoid the establishment of such a society.

All of this has proved to be particularly damaging to the causes of those who hope that history has not ended whether because a liberal mode of governance is not good enough or because the insufficiently individuated character of social relations

makes it unachievable, as in the case of what might be termed the 'familialistic' societies of Asia. This has been especially so since the collapse of communism, from which moment the consequent delegitimisation of almost any kind of communitarian discourse of rule as well as an intensified global inter-connectedness has meant that human rights discourse is now the only available, globally legitimate secular political language that might be used to further such causes. One sign of quite how intellectually and politically disturbing the situation has become is that even sociologists, who are otherwise almost congenitally rights-sceptical, have belatedly bestirred themselves and felt obliged to begin taking rights seriously by asking variants of my two questions. Here I am thinking, in particular, of the work of Bryan Turner (1993), Johan Galtung (1994), Fred Twine (1994), and Boaventura de Sousa Santos (1995). Fortunately, and in my view at least, these sociological efforts represent clear confirmation of the old saw 'better late than never' in that the answers they have provided have made it possible once again to see that rights discourse is susceptible to social-democratic and other non-liberal and communitarian as well as liberal and libertarian readings.

The Two Sides of Human Rights

Turning now to my first question, what does one discover when one takes human rights seriously as a discourse with a history? Reading the conventional histories as a sociologist, the first thing one is struck by is their teleological character (see also, Kersch, 2004). This is because, and on this point I have to acknowledge that philosophers like Dworkin and indeed Donnelly are rather more sophisticated, the conventional histories present the social process involved as centring on an idea, supposedly long present in the human mind - freedom or liberty - that gained self-conscious expression as the clouds of ignorance were burnt off by the steadily intensifying light of modernization. By contrast, according to the classical sociological theorists, the story of rights as individual entitlements begins not in pre-history nor even with Magna Carta but with the social dislocation caused and represented by the emergence of a new form of economic organization, namely capitalism. More specifically, and as all the classical social theorists also agree, the story begins with the requirement on the part of the avatars of the new economic system to find a way to establish and protect individual ownership in the course of

the ever-lengthening circuits of capital - from the site of production, to the market, to the bank, and back again to the site of production. As Marx says in *Capital I* (1871: 84), 'commodities cannot take themselves to market... we must therefore have recourse to their guardians': and as the great communist jurist Evgeny Pashukanis (1978: 112) commented '[t]he guardians must therefore recognize each other as owners of private property' - in other words, they must have rights.

Thus, as Hart was later to echo in the passage quoted earlier, although what was gained with the arrival of capitalism and rights were certain freedoms such as to own property in the means of production, to work, and to make contracts, what was lost as a result was any control by the propertyless over the use of their labour power and therefore any sense of control over, or security as to, their economic fate. In sum, when looked at sociologically, what the conventional story presents as a cumulative and progressive process in which one development more or less automatically led to another may be more accurately regarded as a product of ideological hindsight since there was in fact no necessary connection or progress between either the texts involved or the events they memorialize.
Thus:

> Magna Carta played no civil libertarian role in English law until Sir Edward Coke opportunistically invoked it in the course of the famous defence of the new private property at the beginning of vol. 2 of his *Institutes of the Laws of England* (1628-44).
>
> The 1688 *Bill of Rights* did little or nothing for the civil and political rights of the vast majority of the British people because it did not in anyway challenge the existing highly restrictive, property-based limitations on political participation, and it granted freedom of expression only to members of parliament and, even then, only in parliament.
>
> The great French and American Declarations of rights not only privileged property owners but also, and as with *habeus corpus* in England, very few of the propertyless subsequently actually enjoyed any of the rights listed, either because one needed considerable financial

> resources to claim them or because one could not use them to protect one's capacity to speak or organize against capital or indeed against many other powerful interests - hence the legal difficulties faced by trade unions during the nineteenth century throughout Western Europe and North America.

In the American case, the practical irrelevance of the Bill of Rights was particularly obvious since it only applied to the federal government and not to the state governments that were much more important to the lives of the vast majority of Americans until the 1930s. In fact, Americans only gained some of these Bill of Rights protections vis a vis state governments in the 1960s, thanks to Chief Justice Warren.

Freedom: inherited or invented?

In the past, sociologically inspired accounts of the development and significance of rights discourse stopped at this point, their authors thinking they had thoroughly discredited the very ideas of rights in general and human rights in particular. However, one's response to the discovery that rights discourse has from the beginning been entangled with the defence of private property and capital depends upon how one understands the relationship between power and freedom more generally. If one understands the relationship to be negative in that power necessarily limits freedom, as most liberals and indeed post-classical sociologists have done since Locke, then rights, whether plain or human, must be either inalienable or a sham depending on which of the positions - liberal or sociological - one takes. If, by contrast, one understands the relationship as positive in that freedom is the polyvalent (capable of carrying several meanings) product of power as, following Weber and Durkheim, Michel Foucault (Burchell et al 1991) does in his work on 'governmentality', then one may continue to appreciate the gains as well as to acknowledge the losses that come with the arrival of rights discourse; that is, one may both acknowledge and seek to take advantage of the polyvalence or ambiguity of human rights discourse.

For Locke and all those who have followed him, liberty or freedom was an aspect of the god-given, natural condition of humanity before the existence of states,

an aspect that had to be rediscovered, institutionalized and protected. By contrast, for Foucault and indeed Durkheim before him, liberty was a very late development in human history that was the more or less accidental creation of states as they gained knowledge of their populations and tried to work out how to govern them. That is, as the emergence of capitalism made it increasingly clear that labour was as important a source of national wealth as land, animals or natural resources, states sought knowledge of their populations through the gathering of stat(e)istics concerning such events as births, deaths and marriages, and such attributes as property ownership, occupation, education and health. In this way, populations gradually gained individual identities as persons of a certain age and gender, members of particular families, inhabitants of particular towns and villages, and property-owners, craftsmen, or whatever. At the same time, on the basis of what in Continental Europe was termed the science of police, the state began providing help in developing individual skills, maintaining the population's health and sanity, and securing the safety of their persons and property, all of which produced additional sets of individuating records and so identified possible rights holders. In sum, through a three-level process of observation, social support, and state record-keeping, populations became individuated and required to take care of and manage themselves in a peaceable, productive and apparently free and self-governing way. Extending Foucault's argument somewhat, all this was secured by the state's gradual confirmation and autonomization of a more and more complex system of rights and modes of reasoning in terms of these rights which allowed individuals to protect their stakes in the emerging order; that is, by the establishment of the rule of law.

In the context of the present argument it is important to understand, in addition, that the social contract theorists, against whom Durkheim and Foucault in particular were reacting, developed their ideas in opposition not only to those of feudal privilege but also in opposition to the 'communism' of radical, seventeenth century English groups such as the Ranters and Diggers (Hill 1971) who had fashioned a very different concept of liberty. It is this fact, plus the reaction of later radicals to Locke's ideas, that converted the double-sidedness of rights discourse into a polyvalence. For what may be termed the 'major tradition' within rights discourse, the rights related to property and contract represented, in the literal sense of pictured, the means (that is, owning things and making agreements) by which the

essential elements of humanity's supposed primordial liberty could be preserved despite the recognition of the need for social order. By contrast, for the 'minor tradition' that was initiated by the articulation of the thought of Locke with that of the Diggers and Ranters, and was first exemplified by the Levellers, humanity's original position was governed by the principle of reciprocity rather than that of liberty. The result was that the establishment of the same rights of property and contract as were celebrated by the major tradition was represented by the minor tradition as a severe challenge to freedom in the form of the danger that reciprocity might be replaced by selfishness as the core social value. During the ninteenth century, in legal fact, if not in wider rhetorical terms, and as the minor tradition had feared, the major tradition indeed became narrowly focussed on the defence and extension of property rights as the core of what became aptly known as the '*rule* of law' (Dicey, 1885). And it was in this form (that is, as a closed governmentalist technology) rather than as something as open-ended as a bill of rights that rights discourse was exported to the colonies, imposed on such subordinate states as China, Japan and Korea through the various 'unequal treaties' of the nineteenth century, and as a consequence helped to perpetuate both the low level of individuation and the resulting absence of any kind of active liberty in such societies - because of the severely qualified nature of the way in which each right is drafted, one scholar, quite reasonably in my view, has described the 'bill of rights' contained within Japan's Meiji Constitution of 1890 as nothing but 'another repository of authoritarianism' (Beckman, 1957: 94).

Democratizing rights discourse

All this said, what also happened in the nineteenth century and in response to the minor-tradition's older understanding of the meaning of the word 'right' as 'correct', was that many of the propertyless of Western Europe and North America rejected the advice of the lawyers and philosophers - namely wait patiently, obey the law, and trust the good intentions of the propertied to deliver rights for all when the time is right. In Britain, for example, and starting with few if any effective rights in the late eighteenth century, the propertyless of necessity constantly challenged what they regarded as the 'rule of (property) law' and its accompanying rights talk as they engaged more or less continuously in illegal acts of one kind or another in the

course of developing the egalitarian political programme that eventually came to be known as socialism. Pursuit of this programme in no matter how inchoate a form generated the desire necessary to pursue political rights. Once won, these political rights were eventually used to establish the various economic and social rights associated with trade unions and the welfare state. These developments, in turn, finally produced the cultural confidence and state financial support necessary to turn the otherwise mythical civil rights of the propertyless into real techniques of self and social-defense. To have followed the strategy proposed by the lawyers and philosophers would have resulted in a never-ending wait. However, it should also be said that, in the United States in particular, the expert knowledges of lawyers and philosophers eventually turned out to be very helpful in making the aspirations of the propertyless both achievable and, to a degree, legitimate (Woodiwiss, 2005, ch.7).

The restoration of reciprocity to a central position alongside liberty in rights discourse did, then, eventually occur, as also and therefore did the democratization of the rule of law. This was not because of developments that originated within rights discourse and represented the working out of some immanent logic but thanks instead to the further changes in the social and political formations of which the discourse was a part, as summarized by the emergence of trade unions, socialist parties, and social movements such as the suffragettes, all of whom may be located within the minor tradition (Mann 1993; Rueschemeyer, et al. 1992; Stephens 1972). In this way, then, and reinforced by the general horror at the crimes of the Nazis, rights had regained at least some of their eighteenth-century popular allure by the time the United States decided to join the war against fascism in 1941. Rights discourse was therefore available to provide the, for a mainstream American politician, surprisingly inclusive language that President Roosevelt used to outline the war aims of the United States in his *Four Freedoms* speech of that year. This inclusive language was especially apparent when Roosevelt spoke, in the manner of the minor tradition, of freedom from want, which, to quote him, 'translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants- everywhere in the world.' This was also the speech in which, borrowing what was apparently an established Latin-American usage (Glendon 2003), Roosevelt first used the term 'human rights' as an alternative to the

'rights of man' and in this way initiated international human rights discourse.

Thus, to summarise and contra Locke and the liberal tradition more generally, there was no original position in which it makes sense to imagine that either certain rights or indeed what we regard as freedom existed prior to power and therefore deserve any sort of privileged status. Rather, both were constituted by, and constitutive of, a new mode of social life - capitalism. However, the ideas of freedom and rights not only contributed through the major tradition to the production of the social divisions and corporate identities that we call the class system but also through the minor tradition provided much of the language that enabled these divisions and identities to be discussed and contested. This is also how rights came to be seen by the propertyless, much to Marx's annoyance (as he explained in his *Critique of the Gotha Programme*), not just as means of exercising power but also as prizes or objects of desire, so to speak: valuable prizes in that they were thought capable of enlarging the sphere of freedom and bringing the power of the state on to the winner's side; but limited prizes in that neither the value of liberty nor even that of reciprocity is necessarily antithetical to the continuing legitimacy of the inequality that is a necessary prerequisite for, as well as consequence of, the existence of capitalism.

The situation that the world's multitudinous subaltern groups face today is structurally very similar to that faced by the propertyless of Europe and America in the nineteenth century in that they formally possess many rights that they cannot make practical use of. Responding in this case to their own understandings of the meaning of the shift from talk of plain rights to human rights, subaltern groups of many types throughout the world have continued the minor tradition and read the use of the inherently inclusive term 'human' as an encouragement to demand the same status and even the same standard of living as their supposed global betters. As Boaventura de Sousa Santos (1995) has stressed, they too have often positively validated illegal actions in support of their causes. Thus inequality and the lack that it represents remain amongst, if not the, principal sources of desire in social action.

More specifically, the intrinsic polyvalence of human rights discourse that is a reaction to their double-edged character, plus the prizes the discourse promises

mean that there remains something to fight over and for. Indeed, the discourse's referential ambiguity - does it refer to the major tradition's liberty or to the minor tradition's combination of liberty and reciprocity? - has made it a veritable engine of challenges not only to economic and political power but also to the human rights status quo itself. That is, disagreements over the meaning of the central human rights texts have regularly led to subaltern groups finding something to fight for as they have attempted, to use Johan Galtung's (1994) formulation, to arraign various structural relationships before the court of public opinion. Thus, in the 1960s, non-white peoples, including many from newly independent countries, asked themselves if the discourse applied equally to them and, on finding that it did not do so explicitly enough, set about ensuring that it would do so in the future by successfully campaigning for the International Convention on the Elimination of All Forms of Racial Discrimination (ICEARD). Moreover, asking the same question initiated the most often rather less successful campaigns for recognition on behalf of women, children, sexual minorities, the informationally excluded, developing countries, and non-western cultures more generally.

In my view, and despite the failures, the case for the continuation of a rights-based and indeed legally focussed strategy for social amelioration inspired by the minor tradition still remains compelling because the most important source of the social dislocations/failures that are the primary causes of abusive behavior today is the globalization of the same disruptive capitalism that spawned rights discourse in the first place. However, to say that capitalism is globalizing means that even the supposedly already universalistic discourse of human rights is now being expected to work in very different social circumstances from those in which it originated. Putting aside the critical and indeed criticisable aspects of their position, the proponents of Asian Values have pointed to social order, hierarchy, benevolence, duty, and loyalty - a value complex I have termed patriarchalism or familialism - as additional or alternative sources of virtue, and therefore of rights and wrongs. In my view (Woodiwiss 1998; 2003), if not always that of the original proponents, such values ought to be incorporated into international human rights discourse if it is to be regarded as more truly cosmopolitan and therefore to work for the global majority.

Some of these virtues, notably those validating social order and hierarchy, already inform international human rights discourse. Thus it is well established that rights should not endanger social order and, as I indicated earlier, the very idea of rights assumes, and to that degree validates, the existence of hierarchies that may result in abuse, most obviously those hierarchies intrinsic to capitalism (see also, Woodiwiss, 2005: ch. 1) - after all, why else would protection be necessary? However, thanks to the anti-familialism of the early social contract theorists and its continuation in the form of the pernicious concept of tradition ('pernicious' because it automatically represents non-western societies as in some sense backward or inferior when compared to 'modern' western societies), such values as benevolence still have no place in international human rights discourse although they integral to the discourse of reciprocity. As a result no protection is available when states or superiors more generally in familialist societies fail to act benevolently, reward loyalty, or in other ways do their duty, since in the absence of the possibilty of legal enforcement they may justify their failures on the basis that any such actions on their part are discretionary. The significance of this failure is that human rights discourse does not reach the majority of the world's population since it depends for protection, not on the law but upon the consistent enactment of such benevolence etc. and therefore on the underlying vivacity of the values that inform them (cp. Asad, 1997: 285). This suggests two things. First, that economic and social as well as civil, political and legal ways (that is, through innovations in the economic and social spheres as well as the establishment of democracy and the rule of law) should be developed to promote and *enforce* benevolence and dutiful behaviour on the part of the powerful in Asia and elsewhere. And second, that to exclude these values from international human rights discourse is both to diminish the local effectiveness of so-called 'traditional' modes of governance and to deny to the global majority what little protection global human rights institutions can provide.

At this point I would like to anticipate and respond to two possible objections to this part of my argument. The first objection is that familialist values are inherently antithetical to those articulated as human rights. Here I simply wish to point out that this objection appears to have been effectively countered by the arguments associated with the 'responsibilities approach' (Kuper, 2005; O'Neill, 1996). The latter stresses the duties of the state and the powerful more generally, on

the grounds that every right, including those that take the form of liberties, implies a duty on the part of those who are in a position to do something to support its realisation. The second objection is that these values are inherently antithetical to the commitment to gender equality that is part of the human rights canon. However, as Carol Gould (2004) has recently pointed out, the feminist notion of an ethics and politics of care (Robinson, 1999) also has its roots in the patriarchalist values of benevolence and reciprocity. More specifically, Gould has derived from this notion a non-gendered ethic of 'receptivity' which 'refers to responsiveness to others in terms of their individual differences and needs' (Gould, 2004: 101) that is to me richly suggestive as regards how familialist and feminist values might be reconciled with one another.

In conclusion, my argument has been that, by following Dworkin in fusing the law and morality, the reigning consensus has both obscured the role of non-liberal intellectual traditions and social movements in the making of human rights discourse and, perhaps unintentionally, attempted to exclude such traditions and movements from contributing to its future development. What I hope I have shown in my work as a whole and at least suggested in this paper is that when one takes rights seriously as a discourse with a history, it is possible to see that ever since the seventeenth century, and thanks to social groups integral to capitalist societies such as the small farmers who produced the Levellers of the English Civil War period, the political reformers and trades unionists of the nineteenth and twentieth centuries, and today's myriad social movements, there has always been and remains a polyvalence to rights discourse. That is, there has always been and remains far more to human rights today than civil and political freedoms, unquestionably valuable though such freedoms are, and this more includes economic, social and cultural entitlements that impose duties and responsibilities on the powerful and into whose terms, moreover, civil and political freedoms can be translated (Woodiwiss, 2003). Indeed it may even be said that, on occasion, achieving respect for individual human rights may require and therefore mean the selective privileging of the collective over the individual.

As I said in my introduction, where Dworkin found moral consensus, a source of coherence, and acceptance of the capitalist ordering of social relations within past and present rights discourse, I have found moral division, ambiguity and

a desire for social transformation. Thus it should not be necessary to provide justifications for the existence of economic, social and cultural rights and still less for their indivisibility from civil and political rights, intellectually impressive and convincing though many of these may be (see for example, Shue, 1996, and Gould, 2004), since the legitimacy of their inclusion in the human rights canon is simply a matter of descriptive sociological fact. In other words, whatever the current American administration may say to the contrary (Whelan, 2005) but because what one might term the ownership of rights discourse has long since passed from the United States to the global community and from individuals to collectivities, what the consequences of taking human rights seriously in the realm of social policy would mean could still be very radical indeed. Quite how radical may be illustrated by the conclusion drawn, in terms that echo those of President Roosevelt, by George Kent in his recent study of the right to adequate food: 'you do not solve the hunger problem by feeding people - that only perpetuates it. The problems of hunger and malnutrition can only be solved by ensuring that people can live in dignity by having decent opportunities to provide for themselves' (Kent, 2005, p. 4; see also, Thomas Pogge, 2002). It is therefore difficult to avoid the conclusion that solving the world's hunger problem would imply redistributing the world's wealth and facilitating the free movement of labour. Although the necessity of such measures does not necessarily imply the ending of capitalism, it does indicate that thinking in terms of human rights could yet have far more radical consequences than are imagined or indeed allowed by the liberal consensus, but only because the moral autonomy Hart so valued has been preserved. How, then, could it ever have been thought that Hart did not take rights seriously?

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