COSMOPOLITANISM AND HUMAN RIGHTS: RADICALISM IN A GLOBAL AGE

ROBERT FINE

Abstract: The cosmopolitan imagination constructs a world order in which the idea of human rights is an operative principle of justice. Does it also construct an idealisation of human rights? The radicality of Enlightenment cosmopolitanism, as developed by Kant, lay in its analysis of the roots of organised violence in the modern world and its visionary programme for changing the world. Today, the temptation that faces the cosmopolitan imagination is to turn itself into an endorsement of the existing order of human rights without a corresponding critical analysis of the roots of contemporary violence. Is the critical idealism associated with Kantian cosmopolitanism at risk of transmutation into an uncritical positivism? We find two prevailing approaches: either the constitutional framework of the existing world order is presented as the realisation of the cosmopolitan vision, or cosmopolitanism is turned into a utopian vision of a world order in which power is subordinated to the rule of international law. I suggest that the difficulties associated with both wings of cosmopolitanism threaten the legitimacy of the project and call for an understanding and culture of human rights that is less exclusively “conceptual” and more firmly grounded in social theory.

Keywords: cosmopolitanism, Kant, human rights, Enlightenment, social theory, global.

Introduction

Let me begin with a rough and ready formulation of how the relationship between cosmopolitanism and human rights is normally conceived from a cosmopolitan point of view. Cosmopolitanism imagines a global order in which the idea of human rights is an operative principle of justice, with mechanisms of global governance established specifically for their protection. However, the cosmopolitan imagination is not restricted to this agenda. It incorporates wider issues concerning peace among states, social solidarity across borders, the efficacy of international law, and the activism of global civil society. It envisages the reformation of political community at the national level to render it compatible with cosmopolitan values and new forms of political community at the transnational level. It
would still be implausible to think of the cosmopolitan imagination apart from some notion of human rights, that is, rights which belong to all people by virtue of their human status.

Cosmopolitan thought has come under attack for all manner of alleged deficiencies. It is criticised as naive for thinking that the real world actually operates on human rights principles, or as chauvinistic for associating the idea of human rights exclusively with Western civilisation and defining its defence in terms of a clash of civilisations. It is viewed by some of its critics as an ideology of human rights, a point made forcibly by Costas Douzinas when he associates it closely with the moral mission of combating evil once advanced by George W. Bush (Douzinas 2007, 3–7). The normative significance of the relationship between cosmopolitanism and human rights is contested on democratic grounds for the failure of supra-national institutions and legal systems to match the co-existence of rights and democracy attained at the national level. In general, cosmopolitanism is criticised for not recognising the unpleasant realities behind the facade of human rights or, indeed, for evading reality altogether (Zolo 1997 and 2002). Within the cosmopolitan literature much effort has gone into confronting such legitimacy problems (e.g., Habermas 2006; Bohman 2007). The suspicion remains, however, that cosmopolitanism may justifiably be criticised for its idealisation of human rights.

In this essay I review the relationship between cosmopolitanism and human rights with the aim of addressing the charge of idealisation. I do it through a number of brief encounters. I begin with the development of Enlightenment cosmopolitanism in the eighteenth century and its reconstruction of the rights of man and citizen. I argue that Enlightenment cosmopolitanism radicalised the rights of man from the perspective of the rights of man, that is, from within the framework of natural law theory. In the second section I address the legacy of Enlightenment cosmopolitanism that carried over into the rise of the human sciences. I maintain that this legacy was not drowned in a sea of methodological nationalism, as is now argued within the existing cosmopolitan literature (Beck 2006), but rather that the human sciences sought to preserve the universality of the cosmopolitan conception of humanity whilst overcoming the limitations of a natural law framework (Chernilo 2007a). In the third section I consider the “human rights revolution” of our own time and argue that we should resist the temptation to treat this development positivistically as the realisation of the cosmopolitan vision. I conclude with a brief reference to the current crisis of cosmopolitanism and how we might respond to it from a cosmopolitan point of view.

I suggest that a problem of legitimacy is latent in cosmopolitanism’s claim to carry out a break with the tradition of social theory, that is, in overstating its own novelty, whilst at the same time drawing unreflectively on the tradition of natural law. This problem is reinforced by a self-conscious casting of history in terms of epochs that is grounded in an
unsustainable realism about epochs—humanistic universalism in the eighteenth century, national particularism in the nineteenth and twentieth centuries, the reconciliation of universalism and particularism in the current "age of cosmopolitanism." I wish to defend the legitimacy of cosmopolitanism by addressing a weakness internal to cosmopolitanism: that of giving itself criteria of legitimacy that it cannot live up to.

**Cosmopolitanism and the Rights of Man: The Radicalisation of Natural Law**

We know that cosmopolitanism goes back to the ancient Stoics and that it played a pivotal role in the natural law theorising of early modernity (Toulmin 1992). As a modern political way of thinking, however, cosmopolitanism started life as a universalistic commitment of eighteenth-century Enlightenment thought. It was from the start a philosophy of right committed to realising the universalistic potential inherent in the rights of man.

The declarations of the rights of man and citizen that accompanied eighteenth-century revolutions announced that every "man" should be conceived as a bearer of rights simply by virtue of the fact that he is a man. They marked the difference between the principle of the modern political state and traditional societies in which the possession of rights, "personality" in the language of Roman law, either was absent altogether or was a privileged status distinct from the servile condition of the majority of the people. To be sure, the rights of man presupposed all manner of exclusions and silences, but they also provided the universalistic framework within which struggles for inclusion could take place: whether for women, slaves, servants, wage labourers, foreigners, the colonised, the racialised, the criminalised, the infantilised, the pathologised, the disabled, Protestants, or Jews.

Cosmopolitanism was in effect a critique of the rights of man from the perspective of the rights of man. It was an international movement whose aim was to expand the rights of man beyond the national limitations of their protagonists and defend them against those who would restrict fellow feeling to members of the same nation, class, or religion. The cosmopolitan obstinacy was to insist, as Hegel put it, that "a human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc." (Hegel 1991, § 209R).

It was Kant above all who gave the name "cosmopolitanism" to the movement for the extension of the rights of man beyond the nation. He recognised that no sooner were the rights of man articulated than they entered into conflict with the national organisation of political community that underwrote their existence (see Kant 1991 and Arendt 1979, 267–302). The revolutions that declared the rights of man also designated that it is the nation that grants these rights and in its more radical versions.
declared there could be no rights but those declared by the nation. Kant explored the contradiction between the universalism of the concept and its particular national existence and revealed the various ways in which this contradiction was played out. He referred to the lawlessness of international relations, the perpetual wars that governed relations between European states, the exclusion and stigmatisation of foreigners within states, and the subjection of colonised peoples in the non-European world.

The treatment of foreigners in the unfolding of the French Revolution illustrates the kind of problem Kant addressed under the cosmopolitan register: that of institutionalising the rights of man through the prism of the nation. At the dawn of the revolution a cosmopolitan spirit prevailed. Decrees were passed offering French citizenship to resident foreigners. Foreign societies and newspapers were encouraged. Support was given to foreign revolutionaries. Foreign “benefactors of humankind” (including Tom Paine, William Wilberforce, and Mary Wollstonecraft) were awarded honorary French citizenship. The glorious new dawn was not to last, however. Terror, suspicion, xenophobia, and war suppressed the spirit of universality, and the idea of universality itself was translated into a power that denied the free personality of individuals. The fate of Tom Paine, the man who signed himself “humanus,” was symbolic: he was impoverished, imprisoned, and finally expelled (Kristeva 1991). This example of the treatment of foreigners indicates how readily the rights of man can be subordinated to emergent forces of nationalism.

The relation of the revolution to slavery is equally indicative. In Enlightenment thought slavery was a common metaphor for illegitimacy and tyranny, but the philosophes were more equivocal over the realities of the Code Noir, which legalised slavery in the French Empire (Muthu 2003). The plurality of Enlightenment thought cannot be reduced to one univocal movement. Rousseau declared the words “slavery” and “right” mutually exclusive, but he apparently wrote not a word about the Code Noir (Buck-Morss 2000, 830). His conception of the simplicity of the “noble savage,” epitomised by the Amerindians of the New World, was philo-native, but he tended also to portray “noble savages” as incapable of lifting themselves above the level of beasts. By contrast, Diderot portrayed Amerindians as cultural agents from the beginning, dismissed the very idea of “inferior” and “superior” peoples, repudiated the European pretence to “civilise” non-Europeans, and affirmed a strong notion of common humanity (Muthu 2003). After 1789, protests against the slave trade were stirred in the Society of the Friends of Blacks and supported by amongst others Mirabeau and Talleyrand. The rights of man were also invoked by slaves themselves—notably, the revolutionaries of Saint Domingue (Haiti) who under the name of the Black Jacobins declared freedom from slavery in 1793, sent a delegation to Paris to secure the abolition of slavery in the Declaration of the Rights of
Man of 1794, declared a black republic when the French state re-instated slavery in 1803, and then eliminated the white population on the island (Bhambra 2007, 110–11). Both the treatment and the response of slaves show how readily the claim to rights can be associated with the denial of rights to others.

Under the heading of the “cosmopolitan point of view” Kant sought to give concrete realisation to the universality of the rights of man. His argument contained four key elements: (1) the generalisation of republicanism within all societies; (2) the establishment of legal authority at the international level; (3) the extension of rights to foreigners; and (4) putting an end to the barbarities associated with colonialism. These elements together constituted a whole. If the rights of man were to belong to all, then the benefits of republican government could not remain a preserve of French or American superiority but had to be made available to all nations. If international law was to become more than mere words, a Federation of Nations had to be established, with the same kind of authority to enforce law between societies as the state had to enforce law within societies. If the rights of man were to become universal, then civil and political rights had to be supplemented with cosmopolitan rights that guaranteed “hospitality” to strangers landing on foreign shores.¹ If the barbarities associated with colonialism were to be ended, then the fiction that colonial territories were lands empty of people had to be dispelled.²

Kant’s visionary agenda was the result of a sustained intellectual effort on the part of an ageing and sedentary philosopher to translate the universality intrinsic to the rights of man into something substantial. It was a response to the darkening of the glorious new dawn the French Revolution had ushered in. Kant was well aware that cosmopolitanism might be considered “fantastical” because European states continued to relate to one another more like atomised individuals in a Hobbesian state of nature than legal subjects under international law. His obstinacy, however, was to hold that the idea of a cosmopolitan condition was nonetheless right and that it was necessary to look beyond immediate circumstances to longer-term historical tendencies to see the justification of the cosmopolitan point of view: to the inter-connections of peoples around the world, to the consequence of travel and movement across borders, to the expansion of commodity exchange between nations, to the

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¹ Kant’s article 3 in *Perpetual Peace* confers the right to hospitality when an alien cannot be turned away without putting his or her life at risk. It is not for Kant a generalised right, although he does write of a right to travel, visit, and associate.

² Kant rejected, for example, Lockean views of property that allowed Europeans to declare colonised territories res nullius (no-man’s land) and on this basis to justify seizure of the lands of indigenous hunting and pastoral peoples. As Kant put it, pastoralists and hunters have a legitimate right to live “the way they want to live” in their own way and defend their land by force if necessary against attempts to dispossess them.
risks and costs associated with war, and not least to the education of modern republican citizens.

And yet the chasm between cosmopolitan principles and the actuality of the emerging world order gave a sense of unreality to Kant’s political writings. In his own *Philosophy of Right* Hegel, who was Kant’s most astute critic, tried to tease out the internal weaknesses within Kant’s conception of a cosmopolitan order. The rights of man could readily be subverted into a duty of unconditional obedience to the nation that grants these rights, predisposing states towards legal authoritarianism and citizens towards militant nationalism. The extension of the rights of man through the republicanisation of other nations was fine in theory, but in practice Napoleon’s armies revealed that “wars of liberation” are bitterly resisted by invaded peoples and can involve the kinds of cruelty and rightlessness Goya memorably depicted in his “disasters of war.” Kant’s conception of a Federation of Nations could not provide the alchemy Kant envisaged—that of turning perpetual war into perpetual peace. States soon learn how to defend themselves militarily in the knowledge that legal arguments cannot win wars and they are quick to appreciate that wars can be useful to bolster internal unity, encourage self-sacrifice, impose discipline, expand territories, and designate enemies. The idea of “cosmopolitan rights” was indeed a harbinger of “human rights” to come, but there was no guarantee to prevent the “right of hospitality” from playing the traditional role it had in the old European division of the world, that of serving as a pretext for European states to subdue “uncivilised” peoples who decline to provide the required hospitality to European visitors.

Hegel acknowledged the visionary character of Kant’s cosmopolitan thought—and berated Kant’s critics for their failure to understand the concept of cosmopolitanism—but Kant’s own observation that every right is a right of coercion was a reminder to Hegel that every expansion of rights is also a re-invention of new forms of coercion. Hegel was more sympathetic to Kant’s cosmopolitanism than most commentators recognise, but he had a keen awareness of the chasm between the concept and its realisation. The limits of Kant’s natural law indicate that the “dialectic of universality,” as Raymond Aron once put it, was still in its infancy (Aron 1969, 191–221), but his critical insight remains: the solution to exclusion is not just inclusion but restructuring that which gives rise to exclusion in the first place (Bhambra and Shilliam 2009, introduction).

**Cosmopolitanism and Social Theory: The Preservation and Transcendence of Natural Law**

It is a common trope in current cosmopolitan writing that eighteenth-century cosmopolitanism failed to generate a legacy for nineteenth-century thinkers, that it was philosophically marginalised by the time of
Hegel, and that it was largely absent from the subsequent development of the human sciences. Ulrich Beck, for example, has described the sociological tradition as steeped in what he calls “methodological nationalism” (Beck 2006), and Jürgen Habermas has argued that we have to jump over two hundred years of history in order to pick up the threads of the cosmopolitan tradition (Habermas 1996). This account of the history of cosmopolitan thought seems to me misleading. The rise of the human sciences represented not a break from cosmopolitanism but rather its Aufhebung, that is, its preservation and transcendence (Chernilo 2007a). Classical social theory sought to denature cosmopolitan thought, to extract it from the frame of natural law theorising, but at the same time it adopted as its own premise the universalistic concept of humanity characteristic of Enlightenment cosmopolitanism (Löwith 1993, 42–43). Perhaps nowhere was this more evident than in the opposition to antisemitic ways of thinking about the problems of modern capitalist society displayed by the founding fathers of classical sociology; think, for instance, of Marx’s defence of the rights of Jews to full civil and political equality or Durkheim’s defence of the Dreyfusards (Fine 2008). Beck was not wrong to criticise “methodological nationalism,” if we mean by this a critique of the reification of society, but it does seem to me that his critique is aimed at the wrong target (Beck 2006; Chernilo 2007b; Fine 2007). Classical sociology was at its core a critique of methodological nationalism.

The ghost of Kant has continued to haunt not only the human sciences but also the hopes and expectation of peace that prevailed in liberal and socialist traditions. In the aftermath of the First World War Friedrich Meinecke in Germany, Emile Durkheim in France, and George Herbert Mead and John Dewey in the United States, though at one time or another tempted into more or less bellicose nationalisms, were united in recognising the co-existence of nationalism and cosmopolitanism in the modern world and in seeking to reconcile patriotism with cosmopolitan values. Even the conservative Meinecke wrote that “the true, the best German national feeling includes the cosmopolitan ideal of a humanity beyond nationality” and that it is “un-German to be merely German” (Meinecke 1970, 21). The more socialistic Durkheim wrote of the need to divert the energies of societies “from the disputes that bring a clash between cosmopolitanism . . . and patriotism.” Societies, he wrote, “can have their pride not in being the greatest or the wealthiest, but in being the most just, the best organised and in possessing the best moral constitution” (Durkheim 1992, 74–75). Dewey and Mead warned against the “fool’s paradise” of the pre-war age, the idea that “cosmic forces were working inevitably to improve the whole state of human affairs,” but looked to reconcile national- and international-mindedness through the establishment of the League of Nations and the right of national self-determination (Joas 2003, 72–73).
This is not to deny the equivocal nature of these attempts to rescue cosmopolitan ideals from the gore of war. The transformation of the rights of man into the right of nations to self-determination carried the risk of substituting the rights of nations for the rights of man and creating a class of aliens for whom membership of the nation was denied (Arendt 1979, 295). The reconciliation of nationalism and cosmopolitanism ran the risk of feeding the hubris of a “universal nation”—that is, a nation which claims that its particular values and interests correspond with the values and interests of humanity as a whole and that its enemies are enemies of humanity (Habermas 1998, 188–201).

After 1945 the spirit of Kant was again visible amongst those who sought to revive cosmopolitan ideas in the aftermath of totalitarian terror and address the equivocations of the earlier generation (Fine 2006). In *The Origins of Totalitarianism* Hannah Arendt argued precisely along such lines when she wrote that the experience of antisemitism, imperialism, and totalitarianism had demonstrated that “human dignity needs a new guarantee which can be found only in a new political principle, a new law on earth, whose validity this time must comprehend the whole of humanity, while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities” (Arendt 1979, ix). Arendt argued for a philosophy of right based no longer on “the essentially barbaric idea that ‘right’ is what is good for the whole” (whether the whole is the German people, or the proletariat, or humanity itself) but on the principle that “the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself” (1979, 298). She maintained that the appeal to nature and to natural law could no longer be convincing and that human beings now have no place to turn but to humanity itself.

From Hegel to the classical sociologists to Arendt we see not only the continuance of a cosmopolitan legacy but also a collective endeavour to understand the divisions of the modern world on the basis of universal conceptions of humanity. Cosmopolitan and nationalist ways of thinking are not consecutive properties of particular epochs but coeval presences in the modern world. There is a cost incurred in returning to the Enlightenment as the source of the cosmopolitan imagination if it means viewing the human sciences as the loss of cosmopolitan imagination. The rendering of the present age in terms of the long-awaited realisation of the cosmopolitan ideal is precisely the kind of over-extension of enlightenment ambition that has to be avoided if the legitimacy of cosmopolitan existence is to be upheld.

**Cosmopolitanism and Human Rights: The Dialectics of Progress**

At the time of Hannah Arendt’s writing, international law still operated largely in terms of treaties and agreements between sovereign states; the
idea of sovereign statehood was largely restricted to Europe, America, and Russia; the rest of the world was either under their imperial control or outside world society; and in Europe itself the division of the world into power blocs made a mockery of national sovereignty. Today it might appear, by contrast, that many of the elements of the cosmopolitan condition are all firmly in place and that we can now speak of our age as an age of cosmopolitanism, though not yet as a cosmopolitan age.

In the sixty-four years since the end of the Second World War much has changed. Old colonial forms of rule have been dismantled and delegitimised. Eurocentrism has been severely fractured. Regional and global institutions have been constructed from the European Union to the World Trade Organisation, from Amnesty International to the International Chamber of Commerce. Social inequalities, though larger than ever at the global level, are no longer perceived exclusively as “our own” problem, not only because we need each other more in a world risk society (Beck 2006) but also because we have a sense of binding obligations in relation to others beyond our own borders (Brunkhorst 2005). Legal textbooks now refer to international law as a higher and compelling law (*ius cogens*). The idea of exclusive state sovereignty has been replaced by sovereign equality under international law. Individual human beings are now subjects of international law. Human rights have been transformed from a set of moral declarations to elements of an enforceable legal system. And even the most hegemonically inclined of states, such as the United States, cannot simply ignore their long-term rational interest in “binding emerging major powers to the rules of a politically constituted international community” (Habermas 2006, 150). In political argument appeal is now regularly made to the idea of human rights either to justify state actions or denounce them (Krisch 2004). Today it is commonplace within the public sphere to hear certain state actions described as “wars of aggression,” “disproportionate responses,” “collective punishment,” “crimes against humanity” or even “genocide”—as if we are now all experts in international humanitarian law and appeal to it as to the absolute and universal standards of natural law.  

3 To grasp the expansion of human rights law we need only think of the formation of the Nuremberg Tribunal (1945), the International Court of Justice (1946), the Universal Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the European Convention on Human Rights (1950), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (from 1966), the Vienna convention on the Law of Treaties (1969), the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (1987), the ad hoc tribunals for war crimes committed in the former Yugoslavia (1993) and Rwanda (1994), and the International Criminal Court (2002). To be sure, all the norms contained in these treaties, conventions, and declarations are frequently broken, but what is new is that they exist.
It no longer sounds hyperbolic to speak of a “human rights revolution” since 1945 and of its consolidation since the fall of the Berlin Wall in 1989. And yet the idea of a human rights revolution has suffered and has been seen to suffer major reversals after the September 11th attack on the World Trade Centre and the Anglo-American declaration of a “war on terror” in 2001 (Bowring 2008; Harvey 2005; Miéville 2005). The result, it seems to me, is a world increasingly bifurcated between the idealism of human rights and the realism of justified and unjustified violence. On the one hand, we hear the voice of cosmopolitanism declaring that positive laws are becoming in our own age congruent with the natural laws of the cosmopolis. On the other, we hear the voice of realism devaluing the whole business as a global hypocrisy and in its most active mode calling for the destruction of this false facade.

Can this division be overcome? I am neither optimistic nor pessimistic, but I would make the sociological observation that human rights are a social form of right that has arisen in our own times and is an achievement of our age—albeit an achievement that can be rolled back and never simply taken for granted. The existence of human rights is for better or worse now part of the social world we inhabit. Human rights exist not just in the mind but as a determinate social form external to our own subjective feelings and opinions of it. It has a legal status within international law and has percolated into other areas of international and domestic law (including criminal, humanitarian, civil, welfare, immigration, and family law). It is the product of struggles from below and legislation from above. It can be instrumentalised in the service of state power and reclaimed as a promise of “civil repair” for the wrongs committed by the state (Alexander 2006).

All this is to say is that the idea of human rights is no longer a “mere idea” in the heads of philosophers but has an external existence in the world. In this sense it is more like what Hegel called “objective spirit”: both spirit and objective, both a concept and something existent in the world (Fine 2001, ch. 2). Like body and soul, they form a unity. Both the concept and its existence in the world are equally one-sided when viewed in isolation from one another. In seeking to understand human rights we are like a tightrope walker: we fall one way into formalism, mere conceptual thinking; the other into realism.

Conceptual thinking comes in two versions: conservative and critical. In a conservative mode it offers a more or less accurate empirical description of how human rights law currently functions, but its aim is simply to rediscover the concept in every sphere of human rights it finds—to fasten on what lies nearest at hand and prove that it is an actual moment of the concept. In its critical mode conceptual thinking wishes to transform existing laws and institutions and elevate them to the level of the concept. It looks to the construction of an ideal cosmopolitan condition in which human rights are for the first time legislated through
a global parliament, adjudicated through a network of world courts, and enforced through a U.N. army and police. Its vision is of a wholly legalised international order in which human rights finally trump the exercise of power. These two faces of conceptual thinking give to cosmopolitanism an ambiguous appearance: either of endorsing the age in which we live as a cosmopolitan age or of striving for a radical and perhaps utopian transition—in the words of Habermas, from a world in which law is in the service of power to one in which power is in the service of right (Habermas 1996). In either event, the politics of human rights is conceived as an anticipation of a world in which human rights are fully embedded within an international legal framework and violations are prosecuted as criminal acts within a legal order (Smith 2007).

Realist thinking presents itself as the antithesis of cosmopolitanism. It discounts the concept of human rights as froth on the surface of what is real. It addresses laws, institutions, and practices from an exclusively non-conceptual point of view. It focuses on the political and economic interests concealed behind human rights. It attends to the rhetorical uses and ideological appropriations of the concept but not to the concept itself. It constructs a hermeneutics of suspicion in which human rights are devalued as a category of understanding and as a standard of judgment. It treats the idea of human rights essentially as a fraud designed to stigmatise enemies and elevate friends. In its eyes cosmopolitanism either idealises the existing international order (as is claimed, for instance, of Rawls’s *Law of Peoples*) or idealises the potentiality of the present epoch to reconstruct itself according to cosmopolitan principles (Zolo 2002).

Realism and conceptualism appear in this scenario as mutually dependent discourses defined by their hostility to one another and the caricatures they construct of one another. They do not, however, exhaust our universe. There is more to life than is contained in this conceptualist-realist divide.

The idea of human rights is the product of a certain stage in the development of capitalist society (Brunkhorst 2008). T. H. Marshall wrote of a movement from civil rights to political rights to social rights that has characterised modern constitutional states (Marshall 1950). Employing these insights we may view the idea of human rights as a stage in the development of the idea of right itself—one that Marshall prefigured, even if it remained at the margins of his thinking. Its emergence should not be understood as making obsolete less developed legal forms. It does not supplant the civil, political, and social rights associated with the nation-state, it supplements them. When Marshall analysed the development of citizenship as a development of civil, then political, then social rights, he assigned them broadly to the evolution of constitutional states in the eighteenth, nineteenth, and twentieth centuries. His distinctive contribution, however, was to argue that modern citizens are only full citizens if they possess all three kinds of right.
Similarly, we might say that human rights do not substitute for civil, political, and social rights but are capable of co-existing with them. Citizens become world citizens when they possess all four kinds of right.

A more appropriate model perhaps is to be found in Hegel’s *Philosophy of Right* (Fine 2001). Hegel wrote of a complex movement from rights of personality to rights of property, moral conscience, civil association, political participation, and national self-determination and finally rights of world citizenship (Hegel 1991). Many commentators see the state as the apex of this movement, but for Hegel the state is only one sphere among many in the system of right. It is not the “last” sphere, for inter-state relations and world history come after the state, and in any event the state retains the contradiction between formal equality and informal inequality inherent in the simplest forms of right. So too the fact that the human rights revolution has occurred in a radically asymmetrical political-economic order suggests that it should not be viewed as the final culmination of the system of right as a whole but as a contradictory social form. Its legitimacy lies in supplementing the functional capacities of nation-states and tempering their temptation to imagine themselves, as Hobbes once put it in *Leviathan*, as an “earthly God” (1651). However, it suffers its own legitimacy problems.

In the nineteenth century, international law largely served imperialism as the “gentle civilizer” of nations (Koskenniemi 2001; Anghie 2004). In the twentieth century, its support for national self-determination underwrote the displacement of stateless peoples unable to enjoy this right. Even the laws guaranteeing the rights of minorities confirmed that the minorities were not full participants in the nation-state. Today the legitimacy problems of international law are visible in the diminished capacity of supra-national institutions to address social inequalities (Pogge 2002), regulate the aggression of big powers (Sands 2006), interpret human rights without gross political prejudice (Habibi 2007), or, as I mentioned at the start of this essay, match the co-originality of rights and democracy possible at the national level (Chung 2003).

Within the cosmopolitan literature much effort has gone into confronting such legitimacy problems. And yet the vast chasm between “the global co-existence of the abstract idea of human rights and concrete norms of social and political exclusion” have led one keen observer, sympathetic to cosmopolitanism, to comment on the “latent legitimation crisis of world society” (Brunkhorst 2008).

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4 For example, Jürgen Habermas justifies the restricted democratic legitimacy of international institutions by reference to the limited functions they perform compared with nation-states (Habermas 2006). He also argues that the normative substance of human rights, though admittedly not resting on democratic procedures of legislation, rests on legal principles tried and tested within democratic constitutions and is granted a supplementary level of democratic legitimacy through the activism of global civil society.
Cosmopolitanism and the Crisis of Human Rights: The Turn to Judgment

If a crisis of human rights is in the air, it poses a difficult challenge for cosmopolitan thought. Today criticism or even hatred of the idea of human rights has become commonplace across disparate political lines. The sheer negativity of much of this criticism opens the way to all manner of popular hostility. The gap between the idea of universal human rights and the specific political rights enjoyed by members of a particular community is leading a generation of radical scholars to revisit cosmopolitanism, as it were, through a lens, darkly. Human rights, we are told, only have value when they are an expression of resistance from below and cease to have value as soon as they become objectified in positive laws (Douzinas 2007). Human rights, we are also told, are the property only of homo sacer, that is, a human being reduced to “bare life” (Agamben 1998). At the moment individuals are reduced to the status of a human being in general, their own rights are usurped by the right of others to intervene on their behalf. Since those who suffer inhuman repression are unable to enact the human rights that are their last recourse, somebody else has to inherit their rights in order to enact them in their place (Rancière 2006; also Zizek 2005). Human rights in these accounts appear as an abstract universal that masks a concrete politics of Western military intervention. That they be better than nothing for those reduced to bare life is made invisible. This negative “dialectic” is symptomatic of the current legitimacy crisis of human rights. Hostility to human rights is the shibboleth by which we recognise, as Hegel put it, “the false friends of the people” (Hegel 1991, 17).

From a cosmopolitan point of view we do not defend human rights as a natural law substitute for a post-traditional age, nor do we reify the legality of human rights in the juridical sense of the term. But because we do not turn the idea of human rights into an absolute, we also do not suffer the disillusionment that may arise when it becomes apparent that it is not absolute. Our endeavour is to create what I would call a “human rights culture”—one that allows us to understand human rights as one element in a larger system of right, an emergent form of subjectivity in a global age, and to make political judgments in a way that neither over-values nor de-values its subject matter (Fine 2008). Learning to understand the world and make reflective judgments from this point of view is a crucial part, as Hannah Arendt put it, of our “cosmopolitan existence” (Arendt 1992, 75–76).

Department of Sociology
University of Warwick
Coventry CV47AL
United Kingdom
robert.fine@warwick.ac.uk
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References


