Human Rights Revisited:

a Pragmatic Approach

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Abstract: Human rights are one of the main tenets of contemporary political discourse. They aim at the protection of individuals from all kinds of political oppression. Yet their theoretical basis is debatable, and they can be seen as a specific product of Western culture (the natural law tradition), which should not be imposed on other cultures. We will argue here for a pragmatic justification of human rights that could be truly universal and culture-neutral. This pragmatic viewpoint should be compatible in particular with traditional Chinese culture. Such a stance would redefine human rights to some extent, making them more flexible and contextual, but also possibly more susceptible to social pressure.

In spite of their importance in today's political discourse, human rights are still open to fundamental objections. In particular, they have been sometimes denounced as an instrument of Western cultural domination. This text will reconsider the foundations and validity of human rights, notably as they might be seen from a non-Western point of view. We will then try to articulate a position that could be truly universal.

The idea of human rights

Human rights are one of the main tenets of modern political culture (Nickel 2017). They could be defined as provisions for the inalienable protection of individuals against political power. Concrete example of human rights would be the protection from arbitrary arrest and imprisonment, the prohibition of torture, freedom of speech, the right to vote… They play an important role in contemporary political debate, especially in international relations, and

constitute an important achievement of post-war political practice after 1945. They are now supported by numerous conventions and institutions, governmental as well as non-governmental. But human rights remain vulnerable to various kinds of objections. Their theoretical foundation is questionable and their validity is by no means certain.

Human rights are in principle universal and permanent: any human being is entitled to fundamental rights simply by virtue of being a person, regardless of any other consideration. Neither race, ethnicity, religion, social class, gender, sexual orientation nor political opinions should stand in the way of human rights. They are supposed to be culture-neutral and valid throughout the world, in any society or culture. This is certainly a very strong claim, which would require some justification, to say the least. Yet human rights can be seen as peculiar to Western culture, and thus not readily acceptable within other cultures.

The history of human rights might be said to go as far back as the English Magna Carta (1215), although this is debatable (this document was mostly a power-sharing agreement between king and nobility). Their modern general formulation starts with the English Bill of Rights (1689), the French Declaration of The Rights of Man and the Citizen (1789), and the American Bill of Rights (1791). Human rights are thus strongly linked with the Enlightenment and the general movement toward increased individual freedom within developed Western societies, both in Europe and in the Americas.

After World War II and its large-scale atrocities, the United Nations organization was established to try to bring some order into international relations. Human rights were then proclaimed by the United Nations to have worldwide validity by the Universal Declaration of Human Rights (1948), but we will see that their intellectual sources are clearly Western. It should also be noted that the Declaration of 1948 is very much a response to the systematic oppression, widespread massacres, deliberate genocides and general slaughter that had been the mark of the World War II period. This specific history has understandably colored the whole discussion about human rights ever since.

Seventy years (i.e. two generations) have now elapsed since the Declaration of 1948. Human rights are generally accepted today and broadly supported in principle, but often disregarded in practice in much of the world (notably in mainland China). It might be time to reexamine their foundations and applicability.

The nature of human rights

Of course human rights are justified first as legal norms, whether in national law or in international conventions. But legal codes and international treaties are subject to revision, and we might want a more fundamental and more stable justification for the very idea of human rights. We intuitively feel that human rights should somehow be part of a wider moral or ethical framework, and not just be seen as legal norms. There comes the familiar discussion about the difference between justice and morality, but most people feel that there is (or should be) a close connection between the two, whatever their difference in practice.

Within Western culture, there are two main possible justifications for human rights: a religious or metaphysical one, and an anthropological or essentialist one. The religious stance is probably the more solid of the two, at least as far as believers are concerned. In this view the world (including mankind) was created by a personal, rational God, who is also a lawgiver. Men are given explicit, inescapable laws (duties and rights) that they must obey. This is the "natural law" tradition, which is most clearly expressed by Aquinas: natural law is divine law and morality is ultimately justified by Biblical revelation as God's will (Finnis 1980; Murphy 2011).

In the Western tradition, this natural law is accessible to human reason, so we can and should freely choose to comply with God's plan for mankind. Many problems remain, of course: what is the exact content of natural law, how can we know of this content, and how can we put it in practice… There is still a gap to bridge between general moral principles (e.g. equality, rationality and individual dignity) and particular human rights. But the general outline is clear and very convincing if one accepts the basic premise of God-given law.

Human rights have clearly been strongly influenced by this religious tradition. For example the United States Declaration of Independence (1776) asserts in a famous passage "that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." And the French Declaration of The Rights of Man and the Citizen composed in 1789 during the French Revolution has often been shown displayed on two tablets similar to the 10 Commandments. Modern authors often profess (rather smugly) not to really believe in such religious justification, but they also tend to take it for granted and do not try very hard to find another basis.

Such a tradition, however, is not readily comprehensible within Chinese culture, in which the main divinity ("Heaven") tends to be largely impersonal and not particularly concerned with

human affairs. In classical Chinese thought, Heaven is rarely seen as a source of specific human values, and many ancient Chinese authors (e.g. Xunzi in the 3rd century BC) say explicitly that morality is a social construct, not a divine command ("the Way is not the Way of Heaven"). Later on, Neo-Confucians in the Sung dynasty (Zhu Xi notably) identified morality with the overall pattern (*li*) immanent in the social as well as in the natural world, but this patterning remains impersonal and open to interpretation in practical context.

The other possible justification would be an "essentialist" one: start with some conception of human nature that would entail human rights as a corollary. In Western philosophy, such a view can be ultimately traced back to Aristotle, who asserts that mankind is ethically bound to try to fulfill its own nature as free, rational individuals (see Russell 1946). The good (and concomitant happiness) consists in developing one's nature as human beings, and human rights may be seen as ultimately deriving from this view, because basic rights are concerned with protecting individual self-preservation and freedom of action.

This is a secular version of natural law, which doesn't require belief in a particular religion, but you have to be a philosopher to find it very convincing! It is rather abstract, and the conception of human nature as some kind of fundamental, unchangeable essence is doubtful. Yet variants of this approach are still to be found centuries later, notably in Hobbes' argument that the social contract is to be based on the fundamental human need for self-preservation. The biological instinct for self-preservation is indeed more basic and more convincing than the conceptual Aristotelian argument about fulfilling one's own nature, and the social contract has thus become a central notion of modern political theory.

Recent authors writing about human rights such as Alan Gerwith or James Griffin write of the prevailing human need for autonomy and free agency (Gerwith 1996; Griffin 2008), but this might be seen as typical Western values and a rather weak justification for human rights. It is striking how much these authors remain rooted within the Western tradition, with its emphasis on individual autonomy and development. This might not be compatible with other cultures.

Another possible variant is to consider that human rights represent some universal common ground, a kind a minimal core among the world's social practices and norms. Every society does indeed try to protect individual members to some extent, at least in principle. Whether this is really a fundamental part of human nature is a moot point, and this view offers but an even weaker justification. The problem with this viewpoint is that any given right is now open to

revision if it happens to be dismissed by some particular culture. Maybe one should be content with some kind of statistical average from among the world's main cultures, but however reasonable this may seem, it would remain a rather weak basis for human rights.

Non-Western objections

But whatever their position within Western culture, human rights are globally vulnerable to the objection that they are part and parcel of Western culture, but do not really make sense in other cultures. Members of other cultures have indeed objected more or less forcefully to the present formulation of human rights, denouncing them as one more example of Western political and cultural domination. Voices from East Asian cultures (mostly Chinese) and Muslim countries have been particularly vigorous in this respect, probably because they can fall back on ancient, well-structured scriptural traditions to justify their skepticism about human rights.

The recent debate about "Asian values", however self-serving and hypocritical it might seem to Westerners, deserves nonetheless careful consideration because it makes sense theoretically. In the 1990s, East Asian politicians, notably Lee Kuan Yew in Singapore, contended that human rights should be made compatible with traditional Asian values such as the primacy of family and community over individual rights, and the importance of social responsibility rather than personal freedom. Countries such as China, Malaysia and Iran joined the debate, arguing that a bigger place should be given to their own Asian or Muslim values (Bauer & Bell 1999; Nickel 2017).

The fact that these countries are ruled by (more or less) authoritarian governments (that naturally see human rights as a threat to their power) is an obvious motivation for their position. Still, they have a cogent argument and should be credited with a minimum of sincerity. They probably believe to some extent in their own argumentation, which does fit with their traditional values. The point is that human rights are a Western political construct that must not be imposed on other cultures. The same egalitarian ethos that is at the heart of human rights could be applied to cultures as well, leading to the conclusion that all cultures have equal standing in principle. In short, why should they have to respect Western values rather than their own traditions? The question remains open.

There is a tendency to consider the debate closed nowadays, saying that human rights have been fundamentally accepted in most of the world. True enough, there is no longer much open, explicit, principled opposition to the notion of universal rights. But neither are human rights

respected in practice! They are simply quietly disregarded in many non-Western countries, most notably in mainland China, among quite a few other Asian and Southern countries.

At this point, a succinct outline of Chinese culture would be helpful, as it may be relevant to the debate. It is of course impossible to summarize such a long-lasting and important culture in a few lines, but some features stand out in comparison to Western culture (Needham 1969; Memmi 2017). In the Chinese worldview, the universe is organic, uncreated, holistic, strongly dynamic, and the Chinese conception of divinity is largely impersonal and unconcerned with human affairs. The idea of a transcendent, rational God dictating specific rules to mankind is totally foreign to Chinese thought, and hence an unlikely foundation to justify social conventions.

There is moreover a basic (and very explicit) distrust of formal rules. Taoism and Buddhism are strongly opposed to formal distinctions of any kind, while Confucianism wants to retain social distinctions, but social customs are relative to context and rather flexible. Rules are seen as relative, constantly evolving, to be interpreted in the light of practical circumstances, and not as absolute dictates from heaven. In other words, there is a strong flavor of pragmatism in classical Chinese thought and a refreshing lack of dogmatism. Correct behavior is considered more important than correct conceptualization.

The Chinese worldview is also holistic: the world is seen as a global entity, where everything is linked with and dependent on everything else, evolving spontaneously in harmony with a wider whole. This is one of the main tenets of Buddhism, but it is more generally typical of Asian thought. This holistic view holds for the social world as well as in the natural world (there is no clear separation between the two domains) and Easterners tend to think of themselves primarily as members of their family, community or culture rather than as autonomous individuals.

Chinese culture has strongly influenced China's neighbors: notably Korea, Japan, and Vietnam. What we say here about Chinese culture is also largely relevant for the comprehension of the culture, society and history of its neighbors, and for the Far East in general.

Muslim culture is an altogether different story. Compared with China, Islam is in fact a variant of Western culture. Islamic culture is derived from the same sources as Christianity: Biblical thought and Greek philosophy. The belief in a personal God, creator of the world and lawgiver to mankind is common to both Islam and Christendom (as well as Judaism). One might then hope that human rights in Muslim countries could be easily supported by their own religious tradition.

The difference between Christian and Muslim cultures, however, is that the Islamic worldview conflates religious, civil and political rules. Christianity has always distinguished between "God and Caesar" and there has slowly been a gradual separation between religious and civil law. Western society has thus become more and more secular. But there is no space in traditional Islamic thought for a secular set of human rights, independent of religion. Rights are either compatible with religious belief, or they cannot exist on their own.

Motivations of our approach

Our first motivation is the fragility of current motivations for human rights. As already stated, a religious framework is the only coherent vindication of the natural law tradition underpinning human rights. Such a justification is clearly not very convincing for the increasing proportion of non-believers (agnostics or atheists) in Western society. Neither is it convincing for members of other cultures (notably Chinese culture). Philosophical justifications resorting to some conception of human nature aren't very convincing either, as too complex and too abstract to appeal to most people. So we are looking here for a more robust and less dubious conception of human rights.

Contemporary authors have in fact tried to find political justifications for human rights. For example John Rawls and Charles Beitz have recently proposed that human rights should be examined and supported in practice within a more general theory of international relations (Rawls 1999; Beitz 2009). Unfortunately, they do not seem really interested in the national sphere, as they basically take human rights as a given fact and do not try very hard to justify them as moral norms. We think their proposals should be developed further, and this is basically what we will try to do in this text.

Our second motivation is the desire to come up with a more flexible, more practical view that would make the theory and practice of human rights more adaptable to the changing needs of diverse societies, and better able to evolve with time. An "absolutist" view of human rights as some kind of God-given, inflexible set of rules is simply too rigid to function properly in realistic, complex and changeable social circumstances.

Our third motivation, and perhaps the strongest one, is the ambition to uncouple human rights from Western tradition, not in order to destroy them but so as to make them more acceptable to other cultures and traditions. In particular we want to make human rights compatible with traditional Chinese culture, because of the huge political importance of Eastern Asia, and simply

because we happen to know it fairly well. We also hope the approach could be extended to other non-Western cultures.

In the process, we will probably have to redefine human rights to some extent, not only theoretically but practically as well. We will end up with a pragmatic and relativistic conception of rights that should prove more flexible and more adaptable than current versions. Such a conception will have both advantages and drawbacks, as will be discussed later.

A different stance

Human rights are usually based, explicitly or not, on the natural law tradition, or on some form of social contract theory. In both cases, individuals come first and every person is entitled to human rights as an individual endowed with inalienable rights. This primacy of the individual is one of the central tenets of modern Western political culture. Social contract theory, which is at the heart of Western political theory, assumes that society can be based on a covenant between fundamentally free individuals. The basic idea is that individuals freely choose to enter into such a contract for their common protection. Yet this is obviously a useful theoretical fiction, not a historical account of the foundation of real societies.

We want to upend the usual picture and start from the position that society comes first. This is in fact plain common sense, as it is obvious that society precedes individual members from a historical, sociological or cultural point of view. The social contract is a convenient theoretical construct, which has been very useful to discuss the rights and duties of members of society, but certainly not a realistic description of the history of societies.

Now we first have to dispose of the usual methodological conundrum of what comes first, individuals or society. This is of course one of the central questions of sociological theory, and different authors have given different answers to this question. Max Weber for instance maintains that methodological individualism (taking the individual as primary) is the correct stance, while Durkheim insists even more forcefully that society comes first. This question is still very much alive in contemporary debate.

We do not have to solve this methodological issue here, but let us state a few undeniable facts to begin with. Society is nothing but a collection of individuals together with their behavior: society does not exist in the material sense. Only individuals (and their artifacts) are real, and social groups are cultural fictions, not physical objects. On the other hand, human beings are

social animals (like most primates and many mammals); they do not exist outside of society. Individuals are born, raised, socialized and educated within a social group, which makes them what they are and without which they could not survive. So even if social practices and cultural norms exist only in the behavior and mind of individual members of a group, society appears as an autonomous fact that very much imposes itself on its members (this the gist of Durkheim's view). The importance of explicit cultural constructs in human society, expressed through language and art, and the stability of institutions make society appear even more substantial.

We can conclude that both individuals and society should be taken in consideration when evaluating any social norm. Yet the insistence in the West on the primacy of the individual, the tradition of methodological individualism is the product of a particular history (in a nutshell, the mixture of Greek culture with Biblical beliefs). The set of values that underlies Western individualism is simply not too convincing for members of other cultures, which often insist on the importance of community values and the primacy of social duties over individual rights and freedoms. We therefore want to take seriously into account such social values as a framework for human rights.

A communitarian view of human rights

A practical defense of human rights in a communitarian framework would then be in order. In reaction to classical liberalism, recent communitarian authors insist that individuals should be considered primarily within any community they belong to (Taylor 1992; Bell 1993). Such a defense could follow two different prongs (at least). In the first approach, one may say that harming an individual will harm society at large, simply because individuals are part and parcel of the society they belong to (as already said, society is nothing but a collection of individuals). In the second approach, violations of human rights will also harm the general operation and efficiency of global society, because a lack of basic human rights has negative consequences for many social processes, regardless of the fate of specific individuals.

First, any attack on individuals is also an attack on the society they belong to, even if the attack comes from within society itself and is justified (rightly or wrongly) in the name of the common good. Whether an attack on personal liberty, physical integrity, political rights or property rights, harming an individual decreases the general efficacy of society, and writes off the resources (education and health care notably) society had invested in this individual. Individuals

are also part of complex networks (family, friends, colleagues and associations) that are harmed and disorganized by the removal or hobbling of individual members. So even in the most cold-hearted, hard-headed view, individual are cogs in complex social machinery, and removing even a single cog is a dangerous operation, with potentially unforeseen consequences.

This removal should not be attempted unless one was very sure that this particular cog was really detrimental to the global operation, and that sidelining an individual (in whatever way, from the more benign to the more sinister) will not result in more harm than good. In fact, when one examines real, concrete cases, it seems evident that individuals are very often targeted because they have fallen foul of particular groups in power, and not because they are really detrimental to the whole society.

Second, disregarding human rights is also harmful to general social efficiency. This is fairly easy to show by taking specific instances of basic human rights. Property rights are the most obvious example. The lack of property rights means that no investment is secure, with disastrous economic consequences. Why invest in a farm, workshop, factory or even in one's own dwelling if one cannot be reasonably sure of reaping the benefits of one's investment? Institutional stability and the rule of law are important components of economic efficiency. Predatory governments and unstable environments also lead to defensive but economically inefficient behavior, such as secreting money abroad, engaging in short-term speculations, or seeking political support at all cost (including bribery).

Similarly, fearing for one's personal liberty and physical integrity gives rise almost inevitably to perverse social incentives. The fear of arbitrary arrest, leading possibly to torture and death, induces timidity and irresponsibility in the majority, and an obsession with power among the elite. General helplessness as well as ferocious power struggles are typical of authoritarian regimes. Neither attitude is very efficient in order to manage a modern advanced economy, and societies without the rule of law usually fare poorly in economic terms.

As a matter of fact, one of the main practical advantages of institutional democracy (often overlooked in the name of high principles) is that political struggles do not have to be an all-or-nothing, winner-takes-all affair. The losers in an election must relinquish power, but they normally retain their life, liberty and personal possessions (and they may still hope to win the next election). Politicians have much less incentive to try to cling to power at any cost, and more energy can be devoted to actually solving problems rather than mostly fighting for status.

Freedom of speech is also socially beneficial. The right to speak one's mind and to debate issues freely is a good way to express problems and to discuss possible solutions. Airing issues reduces social tensions, and open debate makes it easier to accept decisions that have been publicly justified. More generally, examining the pros and cons of social issues can be a slow, awkward and tiresome process, but usually produces better informed, more competent decisions, which are easier to accept. This is why democracies are often more efficacious than autocracy in the long run (however clumsy and slow-moving they may be in the short term).

Social rights such as the right to an education, health care, employment and pensions are clearly beneficial to individual well-being, but just as clearly beneficial to society as a whole. Healthy, educated and decently paid citizens are better workers, consumers and taxpayers. One may argue about specific details: for instance, to what extent should society subsidize education and health care, as they benefit both society and individuals? But the basic principle is now beyond dispute, if only for economic reasons, whatever specific local arrangements.

Lastly, the protection of minorities and the empowerment of women usually result in a better use of human resources within society, and avoid a source of constant tensions, civil strife and potential violence. There are deep-seated psychological benefits to the oppression of minorities (basically: the pleasure of domination without undue risk), but the social price to be paid can be quite high in the long term (think of recurring racial conflicts in the USA for example). Here again, a hard-headed cost/benefit analysis can be illuminating.

The case of contemporary China might seem a counter-example, at least to some extent (Bell 2015). After disastrous and bloody beginnings, China under Communist rule has lately shown strong and steady economic development, without respecting human rights. Mainland China remains an authoritarian system, where individual rights are not guaranteed. Political rights are certainly not respected: opposing the government openly will result in harassment, beatings, prison, or even death. But individuals are on the whole exempt from arbitrary arrest and the property rights of the middle class are largely secure, so that it makes sense to invest in one's future and try to accumulate wealth. Freedom of speech is also tolerated as long as it doesn't threaten the authorities.

In fact, the Chinese regime has implemented a limited version of human rights: self-preservation for ordinary citizens, basic economic rights (at least for the middle class) and reasonable freedom within one's personal life (at least for the ethnic Chinese). But criticizing the

government is off-limits and power struggles remain vicious and opaque within the elite. Whether such a system will be stable and efficient in the long-term is a very interesting question…Will the Chinese population be content with economic development without full political rights? It has been working fairly well so far, but the future in unclear. With the passage of time, the middle-class might want more political rights to go with economic prosperity, but this is far from certain.

It now seems obvious (in hindsight) that Western observers were deluding themselves when they thought that the Chinese regime would gradually converge with Western norms of governance. On the contrary, recent political developments point toward more central control and authoritarianism, not less. One may also wonder about the durability of present economic growth in China. Communist regimes have historically been quite good at developing basic infrastructures and heavy industry, but have then proven usually unable to manage a complex developed economy, which is much less amenable to centralized control.

Developing a pragmatic stance

It is probably not necessary to deal in this text with every possible human right. And it may be the case that other justifications still could be found for particular human rights. We just wanted to give a few examples of a pragmatic approach to human rights, and of the kind of reasoning involved in such an approach. We just hope that others might be inspired by this stance, possibly developing it further.

It is now time to take stock: what has been done here? We have taken a fundamentally pragmatic stance to the whole issue of human rights, discarding any vestige of religious, transcendental or metaphysical justification. We have also rejected anthropological or essentialist justifications, which although apparently more rational still seem debatable and unconvincing. Such a pragmatic approach can be seen as a type of utilitarianism, as advocated notably by Bentham and John Stuart Mill (Russell 1946, chap. 26; Mill, 1863). According to utilitarianism, social choices should be made so as to maximize the common good (global or average utility) and not with reference to abstract principles. Utilitarianism is also related to (but not identical with) philosophical pragmatism, the doctrine stating that beliefs and actions are to be evaluated primarily by examining their practical consequences, preferably within a realistic social context (Rescher 1977; Goodman 1995).

The connection between utilitarianism and pragmatism is that both doctrines try to assess beliefs, values and actions by examining their practical consequences. They are also different: utilitarianism was articulated in Great Britain from the beginning of the 19ᵗʰ century, whereas pragmatism originated in the United States at the end of the same century. The scope of utilitarianism is narrower, as it deals mostly with the ethics for social choices. Pragmatism is a much wider philosophy, dealing with fundamental issues of truth, reality and scientific inquiry. Yet both schools of thought contextualize and relativize values by looking primarily for their consequences, and are strongly opposed to essentialist, absolute viewpoints.

As a philosophical doctrine, pragmatism is not without problems. The important notion of absolute truth notably becomes difficult to accommodate within a pragmatic approach. A more detailed discussion would be needed than limited space makes it possible here, but we are arguing for a general approach to human rights, not for a specific philosophical theory. By the way, pragmatism is an American philosophy but also a general attitude that is quite common in English-speaking countries, in accordance with a British intellectual and political tradition which has been more practical and less dogmatic on the whole than continental European thought.

This approach would help avoid contemporary misuse of human rights, when they are put forward as unassailable dogma, and used as an ideological or political weapon of dubious social value. Nowadays, human rights are too often invoked in the West to stifle political debate, or simply to assume a position of moral superiority. They can also be used (sincerely or not) to justify military interventions in another country's affairs, sometimes with disastrous long-term results (for all parties concerned).

We think that human rights should be presented as a set of general guidelines for conducting social and political life, and not as God-given, absolute commandments. Seen within a pragmatic framework, human rights are still very reasonable and defensible rules, as observing them remains a good idea in order to bring about a better social life on earth. But a pragmatic position doesn't lead as easily to the self-righteousness that is often associated with human rights in the West, and which can be rather irritating for members of other cultures.

This pragmatism also happens to be compatible with Chinese culture. As said above, there is a strong pragmatic tendency in Chinese thought, which values correct action more than abstract reasoning. Although different schools of thought in China have debated as acrimoniously as anywhere else, they have in common a distrust of formal rules and an instinctive dislike of

dogmatism. Extolling common sense, sensitivity to context, intuition and spontaneity are recurring themes in Chinese writings, as results count more than words. A pragmatic defense of human rights should then appeal to societies brought up within the Chinese cultural sphere.

A pragmatic, communitarian approach is also implicitly holistic: human rights are evaluated primarily for their effect on society as a whole, and not from the individual point of view. A holistic conception of the world (whether natural or social) comes naturally to Eastern thinkers, who hold that nothing exists in isolation, so that human beings are always part of a larger whole. A holistic approach is another point of agreement with traditional Chinese culture.

Such a stance, however, is not as acceptable within Muslim culture. The primacy of religious dogma over any other considerations, whether social, political or economic, makes it hard to resort to a purely pragmatic argument. Starting from traditional religious values in order to defend modern secular values is probably a better strategy, at least for the time being. Some Muslim feminists for example have tried to base their claims on Islamic traditions. Paradoxically, what is common to Islam and the West (the Biblical heritage) makes it harder for Islam to accept the secular evolution of contemporary Western society.

This pragmatic stance could also be called a political approach to human rights: evaluating them within the practical domain of political theory, and not on fundamental moral grounds. Rawls and Beitz may be seen as proponents of such a view, but they remain within an international framework: they are concerned mostly about the role human rights should play in international relations. But we see no reason not to extend this approach to the whole domain of application of human rights, including the national sphere.

In fact, it is often easier in practice (and perhaps also in theory) to defend human rights within a given polity (e.g. a national state), whose members already have a common history. Still, we have seen that human rights are supposed to be universal, to be extended to all human beings without any distinction of origin or status. We should then try to accommodate this universal character within our pragmatic approach.

Such a pragmatic view is perhaps rather obvious, and might come naturally to any earnest thinker about human rights, as one possible defense. But our point is that this is not the way human rights are usually presented and defended. They are still often viewed (perhaps unconsciously) in a quasi-religious light as absolute, unquestionable commands. This makes it hard to defend them convincingly in other cultures and in varying circumstances.

A few consequences

A pragmatic outlook should be more acceptable for non-Western cultures, because there is no mention anymore of typical Western values such as the belief in a transcendent personal God, individualism, or the sanctity of the human person. Another consequence of the approach is that human rights are not absolute any longer: they could and should be constantly reevaluated within the specific society and culture in which they are to operate.

If human rights are not God-given or essential principles, but general guidelines for the best management of social life, they can be readily adapted to temporary circumstances or to the changing needs of society. For example, freedom of movement and freedom of speech might have to be restricted in case of war, natural catastrophe or terrorism, because self-preservation now demands the suspension of individual rights. Similarly property rights may be curtailed to deal with a financial crisis. Society might also decide to compensate for the discrimination of minorities by infringing upon the rights of majority members (e.g. with "affirmative action" policies in favor of minorities). Such policies are disputable and often highly contentious, but they should be available in principle.

And human rights do evolve with the evolution of society. Property rights have become less stringent with the advent of the welfare state, and new rights (to education, health care and social security) have constantly gained importance for more than a century now. Cultural rights (rights to a traditional culture or identity) and environmental rights (the right to a safe and healthy environment) have been slowly attracting consideration for about a generation. Gender issues have lately become the hottest topic, at least for the time being. And tomorrow might well bring to the fore new rights as yet undreamed of… The introduction of animal rights for instance would radically change our present conception of human rights.

Of course, suspending or restricting human rights (or introducing new rights) is in fact quite common in the West and explicitly regulated within legal codes. But there is a smell of hypocrisy about such measures, which are often enacted on the sly and justified in an ad hoc manner. It would be better to acknowledge and discuss openly the fact that rights are indeed the object of complex practical negotiations, and are constantly reevaluated. Also not all rights are equally important; suspending some rights would require a far more stringent justification than others.

For example, it is much harder to justify arbitrary imprisonment or torture than resorting to house arrest or freezing bank assets.

One may fear, however, that this relativism goes too far and risks endangering the very idea of human rights, so it should be possible to establish a core of basic rights that must not be infringed upon (except in the gravest of circumstances). Hobbes' (or Locke's) position that individual self-preservation is the fundamental end of society and the primary justification for the social contract can be interpreted to mean that the right to life and physical integrity is central, whereas other rights are only of secondary importance. Although there is much more to society than mere self-preservation, this basic biological justification is hard to deny. So the protection against police brutality, arbitrary arrest, torture and death is probably the most stringent kind of human right.

Whatever the type of justification adopted, there is probably a hierarchy of human rights to be considered anyway. For example rights dealing with self-preservation and personal freedom are more basic than cultural or environmental rights. This is in fact both common sense and common knowledge, but an explicit discussion about the ranking of rights would be useful. There has also been much debate about the importance of social (welfare) rights compared with civil and political rights, which probably deserves further clarification, preferably on pragmatic, non-ideological grounds as advocated here.

It can also be remarked than a pragmatic, utilitarian approach of human rights works best in the national sphere, because neglecting human rights would be most obviously harmful within the same community, but not outside. Other countries would then have no obvious case for intervention to defend human rights in a third country. On the other hand, one may argue that a general principle is at stake here, namely that a blatant breach of human rights in a given country harms not only this particular country, but also the international community at large. Enforcing norms elsewhere is a way to reinforce them everywhere. This might be an argument to retrieve the universality that is often assigned to human rights, but there has always been a tension between a national view of human rights and a more universal conception.

Similarly, in the case of permanent minorities that have little hope of ever coming to power, there might seem to be little harm in practice for the majority to persecute minority members. And this is indeed what history appears to teach us at first sight. As long as there is a clear boundary between majority and minority members, persecution can go on for centuries without obvious consequences for the oppressor. Yet one cannot be sure that the oppressed minority will

not resort to violence sooner or later, and the moral price paid by the majority has in the long term a corrosive influence on society. Watching other human beings being abused repeatedly is not a pretty sight, and the denial and obfuscation which naturally accompany the abuse is often stultifying for the general culture.

For example, the history of slavery and systematic discrimination against blacks in the USA has left a legacy of resentment, denial, hatred, distrust, strife, violence and general unease throughout American society, and not only among the black minority. It has poisoned the whole American culture to this day. This has been (and still is) a running sore, which it would have been much better to avoid, if only for practical reasons. Here again, human rights might be seen as the moral translation of common sense, enlightened self-interest pure and simple.

About social norms and modernity

Human rights are but one example of a more general question: the status of social norms. Should they be viewed as social constructs, relative to a given society and time, subject to regular negotiation and revision, or as deeper moral norms, standing on their own for fundamental reasons, and therefore universal and stable? Both views have their respective drawbacks, as relativism might weaken norms but essentialism might lead to unnecessary rigidity.

The problem with a relativistic, pragmatic approach is that it requires some fairly conscious thought to be convinced of the usefulness of social norms. The regular reevaluation of norms in general and of human rights in particular may weaken their standing and breed cynicism toward rules that could change sooner or later… Flexibility is a two-edged sword, because flexible norms are both less brittle and more fragile than constant, unchanging rules. Change does not threaten to suddenly break up flexible norms, but it slowly erodes them.

On the other hand, asserting human rights as absolute, self-evident and unassailable norms makes them stronger in the short-term, but potentially more fragile in the long-term. Stronger because they are thus immune from doubt and criticism. More fragile because the inevitable discrepancy between norms and social needs (and actual practice) might in time reach a breaking point, leading to total collapse rather than gradual adjustment.

A possible compromise, however, might distinguish two kinds of human rights: a more basic kind that should not be breached except in the gravest of circumstances, and a secondary kind, which would be open to revision according to context. Rights dealing with self-preservation are

probably of the first type, while political or economic rights might be deemed secondary and negotiable. A more detailed analysis is needed, but the general idea seems reasonably clear.

More generally still, social norms (and human rights in particular) stand at the heart of modernity's dilemma: the inevitable tension between critical thinking and the need for social cohesion. Ever since the Enlightenment, modern authors have insisted on the right of individuals to think by themselves, regardless of religious or moral traditions. Starting with Descartes, European philosophers such as Hobbes, Spinoza, Locke, Kant among others have doubted or criticized traditional beliefs in the name of free inquiry. This attitude was felt to be the harbinger of progress, because traditions could now be reexamined and improved upon, replacing ancient superstitions with informed reasoning.

Unfortunately, public morality and social cohesion are based on blind faith, conformism and distrust of debate rather than on the exercise of critical thinking. The overall outcome of the Enlightenment has then been social strife, moral breakdown and general despondency as much as freedom from antiquated social and moral constraints. Critical reason exercised without bounds runs the risk of harming traditional beliefs on which social cohesion depends. The striking development of rationality in all areas of modern society (whether technical, economic, social or political) has resulted in much improved efficiency, but has also proven very destructive for traditional beliefs and communities, with consequences unforeseen by Enlightenment thinkers.

This may be not the best place to discuss such a point, but the development of reason and rationality within European culture has eventually led in the 20th century to widespread oppression and mass murder (Horkheimer & Adorno 1972). Totalitarian regimes and total war techniques have very rationally planned and implemented the large-scale massacre of millions of people. Human rights being both a response to this terrifying history and a product of the same critical rationality, they stand at the core of the malaise inherent in modernity.

It could be argued that the mass murders of the past century were the product of instrumental rationality (scientific, technical, administrative rationality) paradoxically associated with mad political passions, and not of critical rationality itself. Unfortunately these different aspects of rationality are inextricably linked within European history, and it is not at all obvious how to disentangle them in the future (but perhaps not impossible). Rationalization is a global phenomenon pervading the whole fabric of modern societies, for better and for worse.

Going back to modernity's dilemma, human rights might be safer if considered absolute rules that must never be breached (at least in principle), but this would then exclude them from critical debate that might improve them or help with their observance in practice. Human rights are certainly not immune from the fundamental difficulty of all social life: conciliating critical thinking and social cohesion. Both are necessary, but they don't go well together.

Human rights are very much part of modernity, with its advocacy of critical thinking, its refusal of ancient traditions and hierarchies, and its insistence on individual rights. But the same critical reasoning which fostered the development of modern human rights could threaten to invalidate them in theory as well as in practice. The onward march of rationalization characteristic of modernity might decide sooner or later than human rights have become needless baggage to be jettisoned. In a perfectly rational society, real human beings become superfluous and an impediment to progress. This is what happened during the revolutions and total wars of the 20th century, and this might well happen again in our technological future.

Conclusion

Human rights are an important part of modern political culture, especially since World War II. In fact, they often seem to have assumed a central role in contemporary political discourse. But they remain theoretically debatable, and are open to the objection that they are primarily a Western cultural product, which should not be imposed on other cultures. If all cultures have equal standing in principle, they should be allowed to keep to their own values.

We have analyzed here the cultural origins of human rights, which appear indeed strongly rooted in Western culture and history, and problematic in other cultures. We have then developed a pragmatic approach to human rights, defending them as practically beneficial political constructs, and not as dogmatic moral commandments. Such an approach is particularly compatible with traditional Chinese culture and society, where strong criticism of Western-style human rights has been expressed repeatedly.

This pragmatic stance is a culturally neutral defense of human rights, but is not without consequences, both beneficial and worrisome. In this approach, human rights become relative to context and evolutionary, hence more flexible and realistic, but also potentially more fragile. They might lose the sense of moral certainty with which they are often imbued in the West, whereas they may prove more convincing and acceptable in non-Western cultures.

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