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Cosmopolitanism and Human Rights

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Abstract

The piece outlines the importance of the idea of cosmopolitanism and its relationship with human rights. Beginning with the proposition of human rights as a contradictory and relative social form the article seeks to articulate a kind of genealogy of cosmopolitanism and human rights that identifies four moments in which their contradictory character is played out: republicanism, imperialism, totalitarianism and our current moment; arguing that a cosmopolitan perspective can begin to confront the radical incompleteness of human rights politically – that is, without reducing the idea of right to the logic of power, conspiracy or mere contingency.

Keywords:

Cosmopolitanism, Kant, Arendt, Human Rights, Republicanism, Imperialism, Totalitarianism.

1. Introduction

Let me begin with a working definition of the relationship between cosmopolitanism and human rights: it is that cosmopolitanism imagines a world order in which the idea of human rights is a basic principle of justice and in which mechanisms of global governance are established for the protection of human rights. Cosmopolitanism may be understood as a normative ideal which expresses the existence of human rights in the form of an intellectual realm and which measures all existing societies against this norm. Cosmopolitanism may have the defects characteristic of any abstract ideal but its basic intuition, that the right to have rights should belong to every human being by virtue of their humanity, is more than a platitude. It is of supreme importance in a world in which the right to have rights has been systematically denied to swathes of people and in which the denial of the right to have rights is invariably accompanied by a violence designed to demonstrate conclusively the inhumanity of those who are denied this meta-right. The more people rage against the idea of cosmopolitanism, as in the old Stalinist phrase ‘rootless cosmopolitan Jew’, or the more they declare it a fraudulent cover for great power politics as we often find today, the more vital I find it to hold onto the concept.

I am wary of any new ‘ism’ intellectuals advance as a solution to the wrongs of the world. I see my own writings as an attempt, as it were, to take the ‘ism’ out of cosmopolitanism. The proposition I would begin with, then, is that human rights are not an ideal but a *contradictory and relative social form*. Contradictory because of the gap between the universality of human rights and their particular instantiations – between the freedom, equality and solidarity the concept promises and the dependence, class division and moral indifference their existence contains. Relative because *human* rights are a finite achievement in relation to all other rights – be they the rights of property, rights of moral conscience, rights of association in civil society or rights of political participation in the nation state – and should not be turned into a new kind of absolute. A *social* form because human rights are a precarious achievement of the modern age and neither an artefact of nature (as is imagined by natural law theory) nor a mere construction of the state (as is imagined in legal positivism). And finally a *form* because all right, human rights included, express various aspects of subjectivity in contemporary capitalist society.

With these introductory propositions in mind, I want to offer here a kind of genealogy of cosmopolitanism and human rights that identifies four moments in which their contradictory character is played out. These are republicanism, imperialism, totalitarianism and whatever it is that we have today. Each of these moments can be associated with a particular historical period, but I want to suggest that they should be seen more like archaeological layers of the present. The history of cosmopolitanism may be read in this light as a history of attempts to come to terms with the unfolding of the contradictory character of human rights.

2. Republicanism – or Kant’s moment

The idea of ‘the rights of man’ is the distinctive characteristic of republicanism. It signifies that every man or every human being should be conceived as a bearer of rights simply by virtue of the fact that he is a man. It contrasts with those societies in which the possession of rights – being a person in the terminology of Roman Law – was a particular status distinct from slavery, serfdom or other forms of unfreedom. Arguably for the first time in human history the idea of the rights of man universalised the status of the person – and designated what human beings may be deemed to possess simply through the fact of manhood.

Republicanism provided the frame in which struggles for the rights of women and workers were added to the limited original conception of bourgeois man. No sooner was this universal concept articulated, however, than it came into conflict with the particular organisation of political community. If the republican constitution posits the rights of man, it also designates that it is the nation that grants these rights and in its radical form it states that there are no rights that the nation does not grant. The existence of the rights of man is mediated by the nation.

The contradictions between the universal concept of the rights of man and its particular existence were resolved within republican thought through three key devices best articulated by Kant under the heading of cosmopolitanism. First, Kant argued that the generalisation of republicanism across all political communities would mean that the rights of man would not only be a mere concept but would in fact belong to all men. Second, Kant argued that the establishment of an international legal authority alongside the generalisation of republicanism would put an end to the major threat to the rights of man: wars between states. War constituted the main threat to the rights of man both for reasons of militarism at home and violence abroad. Kant maintained that the combination of republicanism and international legal authority could put an end to wars in the same way legal authority within a state puts an end to civil strife. Third, Kant argued that the enactment of cosmopolitan laws in the strict sense of the term, that is, laws guaranteeing the right of hospitality, would ensure the security of strangers when they step foot on a foreign land and thus fill the rights-gap left by the republican system of states.

Kant himself was not optimistic about the success of the cosmopolitan perspective. He had good reason. First, the inversion of the rights of man into a duty of unconditional obedience to the state or nation which grants those rights created an internal momentum toward uncritical authoritarianism and patriotic fervour. Second, the expansion of the republican form of state by means of war in itself contradicted the desire for peace and demonstrated the functionality of war for reinforcing the republican spirit. Third, there was no external international authority to enforce the precepts of cosmopolitan law except the offending nation itself and its allies and these leagues of nations proved as capable of constructing their own enemies as did individual states. The failure of cosmopolitanism, if so it was, should not be seen as invalidating Kant’s cosmopolitanism but rather as demonstrating the genius of Kant in seeing that nationalism was the pivot on which world history was turning and his courage in maintaining that there was an alternative to it.

3. Imperialism

In theory, empires enact the rights of man by drawing together different nations under a common legal framework and by constructing cities and militaries in which people from different nations can cohabit, collaborate and communicate. Under the shadow of a centralised bureaucracy empires extend the boundaries of what it is to be human and this is doubtless why empires have given rise to all manner of cosmopolitan ideas of becoming a citizen of the world. This model of empire derives from antiquity, especially the Roman Empire, and spawned the cosmopolitanism of the Stoics. It entered the modern age roughly in the shape of the Ottoman and Austro-Hungarian empires.

Modern imperialism, however, is a beast of a different nature. Whether in its Continental or British forms, imperialism was based on nation rather than law. Imperialism undermined the republican institutions of the mother country, substituted the rule of violence and diktat for the rule of law in the colonies, and introduced all manner of social and racial exclusions from the status of human being. It hemmed in the rights of man by denying the capacity to possess rights to colonised peoples and restricting them largely to the core members of the imperial nation. The growth of imperialism was invariably resisted by republican movements in the home country and by nationalist movements among colonised peoples, but both these movements were not only marginalised or repressed from without but also reshaped by imperialism from within. This is why the break-up of empires was generally accompanied by the rise of nationalist movements which subsumed the rights of man to the rights of nations to self-determination. The principle of national sovereignty was reinforced by the Great Powers which explicitly predicated the rights of man on the rights of nations to self-determination.

Many of the people who had lived together under the old empires found themselves no longer belonging to the nation which claimed for itself the right to its own state and were treated as second class citizens or were expelled altogether from the political community and displaced from their homes. Not surprisingly, many of these people had a nostalgic hankering for the old cosmopolitan empires and were condemned by the new nationalists as 'rootless cosmopolitans'. The fate of Jews is an instructive example: over time most were expelled from or murdered by the new nation states which filled the void previously occupied by the old empires. In the context of this conjunction of great power imperialism and the rampant nationalism that replaced the old empires, the republican idea of the 'rights of man' became the preserve of well meaning philanthropic organisations with no power to enforce these rights and no influence on those who stood in most need of them. The idea of the rights of man became a marker of having lost all else other than one rights as a naked human being and not surprisingly led to a culture of derision.

4. Totalitarianism

Under imperialism the denial of the right to have rights was justified in the name of scientific racism or exercised by the new ruling nations against those deemed to be non-nationals. It was but a short step to move to the totalitarian idea that there are certain groups of people (whether defined according to criteria of class or race) who by virtue of some essential quality (say, their Jewishness or bourgeois character) cannot possess the right to have rights and who display in their person the falsity of the very idea of the rights of man.

The totalitarian mind sets itself against all idea of right and common humanity. It recognises only the people and its leader as its subject. It subsumes all law to the laws of history or of nature. It repudiates all republican institutions and crashes through all national boundaries and limitations. It not only expresses hostility to the rights of man in theory but puts on a dramatic performance of its hostility at home through rallies such as occurred at Nuremburg, and abroad through the reign of terror and the death camps.

The road to this totalitarian assault on the rights of man was prepared by the hollowing out of the concept that had previously occurred in bourgeois society and in liberal thought. This terrible experiment, however, of revolutionising modernity on the basis of the destruction of the rights of man, was consumed by the fury of its own destructiveness. It set the triumph of the will over the rights of man to discover that the absolute freedom it craved meant only that everything could be destroyed.

5. Cosmopolitanism

Beneath the surface of modernity there lie concealed the ruins of the rights of man. In these ruins, however, cosmopolitanism finds artefacts not just of historical interest but of lasting beauty and contemporary significance. Grains that become pearls, to use a metaphor from Walter Benjamin. These artefacts are receptacles of collective memory; of the pure concept of the rights of man prior to its deformation; of Kant's philosophical endeavour to actualise the concept at the very point when nationalism was on the ascendancy; of the urban conviviality characteristic of multi-national empires and the nostalgia for this conviviality that the birth of nationalism constructed among those it excluded, humiliated and murdered; of a resistance to imperialism that yearned to do more than reproduce the violence and racism it opposed; of an anti-totalitarianism that reconstructed the idea of humanity from out of the death camps of the Gulag and the Laager. Such artefacts are the materials out of which cosmopolitans endeavour to understand the place of human rights in the crossfire of political interests and passions.

Cosmopolitans find reasons for hope today in the establishment of albeit imperfect institutions to prosecute and punish heads of state and officials who commit atrocities against those they have in the power. It finds hope in the proliferation of human rights conventions and legislation against crimes against humanity and genocide. It finds hope in the use the military force not for *raison d'état* but to stop genocide and crimes against humanity taking place in far off places. It finds hope in the reconstruction of multi-nationalism in the form of political federations such as European Union It finds hope in the cosmopolitan intellectual currents now traversing the disciplines of the social sciences, which confronts the vast contradictions inherent in the rights of man without resorting to cynicism on the one hand or naïve wish-fulfilment on the other.

Some years ago I wrote an article on the thinking of Hannah Arendt in relation to crimes against humanity. I looked first at her work, written at the time, on the Nuremburg tribunals for the prosecution of Nazi war criminals and then to the trial in Jerusalem of Adolph Eichmann, the man responsible for the transportation of Jews to their death camps. She strongly supported these efforts to bring to judgement and punishment to rulers who had ordered or executed atrocities against vulnerable people

in their power. And there was more to her position than this. She battled at every stage not merely to celebrate these anti-totalitarian trials, but to confront the lost opportunities which occurred when these trials were corralled back into the nationalistic framework which provided the elements of totalitarianism in the first place. She was thinking, for instance, of the effects of the gulf between the few Nazis accused at Nuremberg and the mass of perpetrators Nazism spawned, or of the gulf between the universal ends of the trial of Eichmann for crimes against humanity and the nationalistic uses this trial was put to for specifically Israeli nationalistic purposes. The correspondence with her friend, Karl Jaspers, reveals that Jaspers tended simply toward the idealisation of the Nuremberg trials (as the dawn of new cosmopolitan age) and toward the invalidation of the Jerusalem trial (as the regression from an international tribunal to a nation court). It was as if the former were all good from a cosmopolitan point of view and the latter all bad. Arendt saw it as her task to fashion out of these experiences something different: a sense of the difficulty of cosmopolitan understanding and judgement in a world in which cosmopolitanism exists more as a glimmer of light than as a historical trajectory. The endeavour to construct a 'new law on earth', as she put it, in a world in which anti-Semitism, imperialism and totalitarianism were either fresh memories or ongoing realities, was not going to be free from the contradictions of human rights.

This line of thought links contemporary cosmopolitan thinking to another Kantian thematic: not to the constitutional law of his political writings but to the role of judgment as 'the faculty for thinking the particular'.¹ Arendt writes:

'One judges always as a member of a community, guided by one's community sense, one's *sensus communis*. But in the last analysis, one is a member of a world community by the sheer fact of being human; this is one's "cosmopolitan existence". When one judges and when one acts in political matters, one is supposed to take one's bearings from the idea, not the actuality, of being a world citizen'²

Cosmopolitanism finds a home in the world through our taking our bearings from the idea of being a world citizen. Of course, there is a danger of turning human rights into an abstract ideal of global citizenship. What I want to suggest, however, is that the cosmopolitan perspective can begin to confront the radical incompleteness of human rights politically – that is, without reducing the idea of right to the logic of power, conspiracy or mere contingency.

Endnotes

¹ Kant, Immanuel (1987) *Critique of Judgment*, translated by Pluhar, Werner (Cambridge, Hackett Publishing Company) p 18.

² Arendt, Hannah (1992) *Lectures on Kant's Political Philosophy*, edited with an interpretive essay by Ronald Beiner (Chicago, Chicago University Press) pp 75-76.

References

Arendt, Hannah (1992) *Lectures on Kant's Political Philosophy*, edited with an interpretive essay by Beiner, Ronald (Chicago: Chicago University Press).

Kant, Immanuel (1987) *Critique of Judgment*, Pluhar, Werner (trans.) (Cambridge, Hackett Publishing Company)