The Imperialism of Rights: Tracing the Politics and History of Human Rights

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Abstract

Voluminous scholarship that has followed ever since the advent of human rights has failed to sufficiently undertake a non-essentialist investigation of this seemingly attractive development of human history and progress. Rather than pursue critical tensions inherent in the obvious ambiguities of human rights, both as an ideology and a practice, scholarship has been devoted to the categorization of the colonizer and the colonized without probing the contradictions that beset each category. This essay identifies the otherness of the indigenous cultures in the calculation of the paternalistic, "superior" West as a problem that not only needs a critical probe, but also deserves to be the starting point of a more historically nuanced human rights discourse. It looks at the paradoxes of a human rights regime which touts common, equal, and universal humanity, while at the same time building and maintaining measures of legal and practical differences. As a major theme of this essay, the differential tiers of humanity, determined by civilization, has continued to dictate and dominate contemporary rhetoric of human rights. In discussing human rights, therefore, the different standards of civilization which have one civilization superior to others is a basic contradiction that must be urgently addressed.

Introduction

Cooper and Stoler (1997) argue, and I agree, that the current historiography which stops at the instrumentalist assumption that law and human rights discourses which it embodies were mere contrivances of colonial control, is no longer sufficient. They maintain that the whole phenomenon of colonialism can no longer be approached through a simplified matrix of colonizer and the colonized. Such categorization falsely obscures the tensions and ambiguities contained in each category. They therefore, urge for a more critical and nuanced scrutiny of the entire human rights rhetoric, especially the circumstances and motives from which it arose. Conklin's (1998) conclusions, just a year after Cooper and Stoler (1997), might well have been in reaction to the latter's mandate. Conklin (1998) characterizes the acquisition and rule by force of colonies by the most advanced democracies as "one of the fundamental paradoxes of the last century" (p. 419). The paradox arises from the coercive practices employed by the Western powers in violation of their own professed democratic values. Official claims notwithstanding, Western colonization, submits Conklin (1998), was in large part an act of "state-sanctioned violence" (p. 419). Indeed no greater violence exists than the colonial policy that treated the colonized as subjects – not citizens, even in their own land.

In keeping with the task of a more critical engagement of the human rights discourse, I have indentified the otherness of the indigenous peoples and cultures as one of the major critical tensions of colonial empire. It is in the dynamics of this binary relationship of otherness that any meaningful critical discussion of human rights must necessarily begin. In this essay I probe the contradictory, ambiguous, and paradoxical purpose for which early human rights jurisprudence was created and manipulated to serve – as a legitimizing tool for the colonial appropriations and violations of existing cultures and civilizations. Law, within which the rhetoric of human rights and liberties has been articulated, has been used as a deliberate instrument of force and coercion to consolidate European colonial control.

An obvious case of this legal debauchery is found in the colonial directive that governed British interests in Nigeria. The British colonial schema in Nigeria and many other British African colonies were articulated in the Foreign Jurisdictions Act of 1843 which mandated British officials in Africa to establish legal institutions and promulgate laws for the peace, order and good administration of the British and "those in commercial relations with them" (Foreign Jurisdictions Act, 1843; as cited in Ibhawoh, 2002, p. 61).

Ibhawoh (2002) contends that every action of the Crown in its colonies was guided, first and foremost, by this mercantilist commercial interest, and that human rights were designed to protect the colonial interests of the colonizer, not the colonized.

Curiously and sadly, human rights, in its current form, has continued to serve the barely masked economic and political interests of the West, even though it is all too often packaged as rescuing a self-destructing third world civilization (Roberts & Mann, 1991). This well scripted project of exploitation of the colonized was "hypocritically disguised as a process of civilizing" (Conklin, 1998, p. 421). Tracing the contemporary history and politics of human rights, especially in its essentialized, universal form, necessarily starts with the United Nations Universal Declaration of Human Rights by which the internationalization of rights has been pursued. As inspiring as the rhetoric of the Declaration sounds, it is one that embodies the starkest paradox of moral compromise in international relations (Philip, 2000). Yet, it is one that has been rarely scrutinized.

The United nations Universal Declaration of Human Rights

Today's notion of human rights arises from the modern articulation of legal entitlements and rights that the individual holds relative to the state (Ibhawoh, 2002). Its precise origin is traceable to the inauguration of the United Nations Declaration of Human Rights in 1948. It was this instrument that, for the first time, advanced a regime of universal and inalienable rights that individuals, by virtue of their humanity, were entitled to (An-Naim & Deng, 1990). What does humanity mean here? Who defines it? And according to what standards? The problem of differing standards of civilization in the definition of humanity was part of the initial disagreements which the 1947 drafting committee of the Universal Declaration of Human Rights had to grapple with. The committee met strong opposition from the Saudi Arabian delegation who argued that the committee had taken into consideration only the standards recognized and applied by Western civilization (Ignatieff, 2001).

Underlying the Saudi position is the protestation of the implicit proclamation of superiority of Western European values and civilization over all others and the construction of a universal standard of rights from this civilization (Ignatieff, 2001). As far as the Saudi delegation was concerned, the committee's proclamation overlooked and disregarded more prehistoric civilizations and their institutions that had demonstrated their wisdom through the centuries (Ignatieff, 2001). This debate has since grown into various forms of philosophical contestations, the most notable being the division between relativist multiculturalism and universalism in the human rights discourse. Ignatieff (2001) notes that the Saudi position has received a boost not only from the general Islamic opposition to the notion of human rights, but also from Asian despots who have contended that "…societies with communitarian values where the interests of society take precedence over that of the individual suit them better than the individualism of America" (pp. 62-63).

There is something to be said about this communitarian argument in relation to the core logic of human rights. Unless the right sought to be protected and defended is that to which the individual can lay claim simply as a human being, it is not a human right. In many non-Western states and cultures, rights were granted on the basis of membership of a community and family status (Obilade, 1979). Even in colonial times, rights were assigned on the basis of social status and race, and as Donnelly (1982) notes, they are ascribed "often with a clear distinction between the colonized peoples as citizens or subjects" (p. 303). Therefore, by the logic of the United Nations Universal Declaration of Human Rights, much of what the colonialists and the international regime touted as human rights was, strictly speaking, not human rights.

The increasing economic wealth and the sense of self-confidence that communitarian social and economic systems engender have been cited by Huntington (1996) as a major reason the United States and the West have not been particularly successful in enlisting the cooperation of Asia in the human rights project. Asian publicists, notes Huntington (1996), are quick to remind the West that the old era of dependence, subordination, and paternalism was gone, and that "the West which produced half the world's economic product in the 1940s, *dominated the United Nations, and wrote the Universal Declaration on Human Rights* [emphasis added] had disappeared into history" (p. 194). The Asiatic stance is that any effort at promoting human rights in Asia will do well to recognize the changed power distribution in a post Cold War world because the influence that the West had over East and South Asia has been hugely diminished (Kausikan, 1993).

On a rather normative and cultural level, the high divorce and crime rates in the West are cited by the Asians to anchor their argument that Western individualism, which is the basis of human rights, is subversive of the right kind of society and environment needed for the enjoyment of the rights (Ignatieff, 2001).

Within the West itself, the concept of human rights has received denunciation from liberal, academic establishments who have argued that human rights are excessively dependent on “a narrow, largely French, British, and American, rights tradition” (Pagden, 2003, p. 172). Even the Catholic Church, Pagden (2003) notes, has also been a source of ferocious opposition to what it perceived as “the triumph of lay individualism over the values of the Christian community” (p. 172). It was not until 1965 that the Catholic Church recognized freedom of religion as a right as opposed to a matter of prudence (Pagden, 2003).

Emerging from these cultural attacks on human rights is a clear acknowledgment that rights are mere cultural artifacts camouflaged as universal values (Ibhawoh, 2002). This is a view which Pagden (2003) holds when he submits that rights, in the context of human rights, are the construction of the ancient Roman legal tradition, particularly that of the great Roman jurists. Rights as developed in this tradition are not only constructive, but also prescriptive, employing moral codes to institute a regime of behavior. As Hart (1955) notes, even when rights are not explicitly used in the creation of this regime of behavior, there are standards of conduct framed as moral codes. These codes consist of wholly prescriptive models of what should be done for the actualization of happiness and personal perfection (Hart, 1955). In the Greek legal tradition, to which both Plato and Aristotle belonged, terms which implied rights in contemporary discourse, were not treated as distinct from justice and most Greek jurisprudence was in the category of prescriptive codes about achieving the highest good (Hart, 1955).

The history of rights, therefore, is one that reveals its culture-specific origin in the sense that such rights were not just a creation of the Romanic legal tradition, but were also propagated in their current form, in the context of imperialistic and legislative practices (Ibhawoh, 2002). Rights history has remained tied to imperial expansionism and its implications. As Roberts and Mann (1991) explain, Europeans used the laws and notions of human rights to promote a self-serving agenda of colonial hegemony. Europeans and Americans camouflaged their baser motivation for colonies and seduced the indigenous masses into “supporting colonization as a force for good, when in truth it was always an unmitigated force for evil” (Conklin, 1998, p. 421). The historical evolution of the various European empires and its relationship to the development of rights suggests a model for understanding and evaluating the belief that Eurocentric values are necessarily coterminous with the values of the entire human race, hence the basis for the articulation of the universality of those values (Pagden, 2003).

Evolution of Rights

The concept of right, as we understand it in today’s human rights discourse, was alien to Roman law, at least in its early stages (Philip, 2000). Equally absent in early Roman law was the notion of a natural, universal category of laws (Philip, 2000). Romans could obtain judgments under the law, but they did not make any such claims by virtue of being human (Pagden, 2003). It was not until the sixth century that Emperor Justinian launched the notion of a natural law (Pagden, 2003). Human rights have developed from those categories of rights which the Roman legal scholars, jurists, and theologians characterized as natural rights, and these became the central premise of the natural law regime (Hart, 1955). It was little surprise therefore, that the evolutionary process of natural law and its supporting argument became the most contested in the history of Western European legal and political development (Pagden, 2003). In the Justinian conception of natural law, only those patterns of behavior, such as eating, sleeping, procreation, etc. – behaviors shared by all living beings – qualified as subjects of natural law (Pagden, 2003). The appropriation of natural law for human beings only was the initiative of later jurists who constructed a natural law system that covered forms of behavior deemed appropriate only to humans (Donnelly, 1982). But even in that era, the humans subjected to the jurisprudence of natural law were only Romans (Pagden, 2003). It was not until the thirteenth century that Thomas Aquinas would embark on a transformative agenda of building a body of universal and self-effectuating principles of natural law common to all humankind (Hart, 1955). In Aquinas jurisprudence, such a body of law would serve as a link between the human and the divine (Hart, 1955).

The notion of a universal mankind and a universal world order was one shared by Roman jurists (Hart, 1955). In its original form, natural law, and the resulting conceptual universal mankind, served to designate the relationship between Romans and the foreigners they had dealings with (Hart, 1955). Pagden (2003) notes that by the thirteenth century natural law regime was transformed into a very intricate corpus of rules regulating the relationships among independent states. To achieve this, natural law was used to advance the primacy and priority of the community of all humankind to the legislative cultures and practices of individual states (Pagden, 2003).

Thus, the jurisprudence of natural law was articulated in hegemonic terms that suggested that no kingdom or nation state may choose to disregard it. By this paradigm of an all pervasive natural law, the law of nations emerged, representing what had the effect of an international legal system (Hart, 1955). One offshoot of this thinking is the bestowal of supranational jurisdiction on any agency of this conceived international system (Hart, 1955). Such agency acquired the authority of the whole world, as it were, and could act extraterritorially. By this logic, the law of nations regime acquired authority over Christians and non-Christians, and became a vessel for the extension and imposition of Romanic jurisprudence and authority over independent nations of people (Pagden, 2003).

This extension of Romanic authority became more visible in relationship to war, as war was the most obvious circumstance under which a person is liable to suffer injustice (Pagden, 2003). And as observed by Tuathail and Luke (1994), war is the condition with the notoriety of flagrant violation of the frontiers that exist between different peoples, and by implication, between different civil codes. It was therefore on the premise of warfare that the Romans saw the need for a legal regime that governed and regulated rights in a manner that transcended cultural boundaries (Galtung, 1981). The system of rights that we most commonly, if not exclusively, refer to as either natural or human rights, evolved first in the context of what was in practice "an aggressive and expansionist power, deeply bound by a highly sophisticated legal culture" (Pagden, 2003, p. 177). Padgen (2003) further claims that this has also been the case of all subsequent European empires.

This expansionist, imperialist agenda of human rights has been deliberately camouflaged in a dubious construction of a human community with common and universal values. It is important to expose the imperial undertone of this universalizing project of humanity and human rights as a new way of engaging the age long philosophical debate between cultural relativism and universalism in human rights discourse. It is possible that the dialectics of the two positions will be better advanced by a cleansing and absolution process that first demands a confessionary of the imperial expansionism disguised and implemented as a universal rights ideal. This cleansing ritual, which is needed as part of the reconciliation process, will also address the civilization-based classification of humanity and, consequently, the discriminatory regimes of rights.

Civilization as Determinant of Humanness

One of the theoretical assertions of enlightenment universalism is the fundamental equality and unity of all humankind; yet, in practice, it created a view of non-Western cultures that are not only different from, but also inferior, to the West (Conklin, 1998). Having successfully constructed and constituted the non-Western civilization as the irreducible 'other,' the West put itself to the proselytizing task of civilizing it (Said, 1979). In colonial Nigeria, for instance, many of the early proclamations and ordinances were geared against what the British considered barbaric and uncivilized native practices that offended the standards of Christian humanism and English libertarian culture (Ibhawoh, 2002).

Part of the argument of this essay is that human rights, especially at the international level, have become very much like an emerging global standard of civilization. Institutional relations among cultures and nation states have been defined, not only by power and interests, but also by commonality of higher values (Vincent, 1968). These values have come to be dominated by a moral order that seems to suggest the existence of some social cement, which in turn, generates a general sense of an international community (Vincent, 1968). The binary categorization of societies is not pursued only by geography and history; it is equally practiced along the lines of cultural values that not only make insiders different from, but also, and in many ways superior to, outsiders (Wight, 1977). This categorization, no doubt, undermines and contradicts the enlightenment claim of human universality. As Conklin (1998) notes, the content of these universal claims and their effect on both the colonized and the colonizer can no more be ignored than the "many exclusions these claims authorized" (p. 423). Sameness, just like difference, became a language that flexibly responded to temporal and spatial dynamics.

International legitimacy, which Franck (1990) calls "the collective judgment of international society about rightful membership of the family of nations," is multidimensional – one of its parts being an appeal to high culture and civilization (p. 190). Depending on the level of civilization achieved by a culture, it is classified as either civilized or barbaric, and such classification determined the differential rules that applied to it (Franck, 1990).

When differential humanity is not being pursued through the theory of social Darwinism, it is being manipulated through scientific racism by constructing an objective basis in science that argues for the superiority of Western culture (Hawkins, 1997). By this manipulated superiority, Western dominance was made a “necessary expression of scientific laws rather than an accident of power politics” (Donelly, 1998, p. 6).

Let us examine early European attitude toward Sub-Saharan Africa, for instance. In the calculation of the West, Sub-Saharan African nations and their peoples were typically weak and unusually savage (Gong, 1984). The initial European engagement with the continent of Africa was defined by this thinking. As Conklin (1998) points out, the forcible acquisition of French colonies was articulated and rationalized as part of a universal project of French civilization referred to as their “*mission civilisatrice* – to uplift the inferior races” (p. 420). It was this mindset that influenced the kind of restriction which European international society imposed on itself at the Berlin and Brussels Conferences, refusing to enact serious regulatory regime to govern colonial management of the continent (Oppenheim, 1914). Early international law took no account of ‘uncivilized’ natives; it left them to the conscience of the colonial powers to which they were awarded (Oppenheim, 1914).

Like many aspects of early efforts at the articulation of an international system, lack of consistency in defining differential regimes of civilization and the status of the various cultures in the international scheme, continued to present serious confusion. Donnelly (1998) observes that China presented a different kind of challenge for early international human management system as it could neither be colonized, be tossed aside, nor be ignored. And even with their rabid contempt for Chinese civilization, nineteenth-century Europe could not dismiss China as savage (Donnelly, 1998). This seeming double standard is made even starker by Lugard’s (1922) declaration that Africa has been justly and rightly characterized as “the Dark Continent,” drawing a contrast to Persia, Arabia, Assyria, and China (p. 1). Even with their recognition as more than savage but less than civilized cultures, China, Japan, and the Ottoman Empire were treated as sovereign states but were not allowed membership of international society (Donnelly, 1998). As sovereign states, these cultures were given authority over their own peoples, but they did not have any authority over Westerners in their territories who refused to submit themselves to Asiatic barbarism (Willoughby, 1927). Such Westerners, residing and conducting their businesses in those Asiatic states, were therefore placed beyond the sovereign jurisdiction of the local culture and were placed under the extraterritorial authority of their own consuls (Willoughby, 1927).

A further example of these disparate standards of humanness is the British colonial system in Nigeria. Indigenous people were categorized, assigned rights, and treated based on their mode of acquisition by the British. There were three different ways that territories were appropriated by the British – by treaty arrangement, by cession, and by conquest (Omoniyi, 1977). Apart from Lagos and the northern Sokoto Caliphate which were won by cession and conquest, respectively, the rest of Nigeria was acquired by bilateral treaties of friendship and trade (Ibhawoh, 2002). The territories acquired by cession and conquest were treated as extensions of the British Isles, and the laws of England became operational in those territories (Obilade, 1979). For instance, Ordinance No. 3 of 1863, which was applicable in the colony of Lagos, declared that the laws of England shall have the same application and force in the settlement.

Of equal transnational implication was the Supreme Court Ordinance of 1876 under which the Supreme Court of the Lagos colony was established. The Ordinance provided that English common law and statutes of general application in England as of 1874 also applied in the colony of Lagos. The practical implication of this arrangement is that it created two categories of colonial subjects out of the same country and their relationship with the colonial establishment and the rights they enjoyed were determined by this. Nigerians in the ceded and conquered territories, were given the rights and liberties of, and treated as, Englishmen and their allegiances were owed to the imperial Crown in London (Ibhawoh, 2002). For the rest of Nigeria – the Southern protectorates – the Crown only owed them the duty of protection; they did not enjoy the same rights as the rest of Nigeria.

What we see from this arrangement is a deliberate institutionalization of tiers of humanness determined by civilization. A culture’s right and the status of its people depended on how it fitted into the civilization of Western Europe. A state’s governmental authority was tested by its capability of controlling white men and whether it had the right social and cultural environment under which white civilization can exist and thrive. The evil hand of power asymmetry is not hard to detect in this game of civilization and the humanity that it created. Donnelly (1998) laments the misery of China in the years following the Opium Wars and the atrocious invasion of Africa, and describes them as examples of non-Western cultures being compelled into the worst forms of savage barbarities on the pretext of a superior Western civilization.

It is in the light of these historical episodes that a proper discussion of human rights must be situated. Human rights rhetoric must therefore be tested against the historical contexts that gave rise to the concept in the first place.

The Context of Human Rights

From the context of these Western cultural standards emerged the concept of human rights; it was a conception that sought to protect the taste of the West who, out of economic and political interests, found its interaction with a 'barbaric' culture inevitable (Conklin, 1998). But it was an interaction that the West was going to strictly regulate so that sovereignty, even in the severely truncated form that the West allowed non-Western states, was not sufficient for full membership of, and participation in, international society (Conklin, 1998). Foucault's (1980) power/knowledge theory finds expression in the coalescing relationship of power and economic interests into a distinctive imperial system that has imposed this classic standard of civilization.

Ibhawoh (2002) alleges that human rights and the civilization and liberation of indigenous peoples from their primitive past were mere subterfuges employed by European imperialists to mask their real motives of economic resource exploitation and quest for power. Ibhawoh (2002) further claims that human rights were just part of a grander legal scheme designed to achieve a consolidation of the military gains of the colonialists. As far as the colonial empires were concerned, the whole idea and essence of law "was never simply to serve the ends of justice or protect native rights and liberties" (Ibhawoh, 2002, p. 55). From Ibhawoh's (2002) perspective, human rights, and the rhetoric it has generated, were merely instrumentalist tools employed to legitimize and rationalize an otherwise unexplainable invasion and violation of the colonies and cultures.

In no more obvious way is the hollowness of human rights demonstrated than in its economics. The influence of econometrics in international human rights can be seen in the ambivalences that have characterized the West's attitude toward such countries as China, Indonesia, and Singapore. Huntington (1996) recalls incidents of gross human rights violations in these countries which were overlooked because pursuing corrective sanctions against those states would upstage the economic interests of the West. The ability of these Asian states to defy Western human rights pressure is due largely to the pressure of American and European businessmen who need to expand their trade and investment interests in these emerging economies. China's human rights record has been a source of concern to the international community; yet, no sanctions have been imposed on it as a corrective measure. The international community has not only continued to watch the atrocious treatment of the Tibetan population by the Chinese government, but has also behaved in ways that serve to encourage further violations by the Chinese government. President Bush's insistence on attending the opening ceremonies of the Beijing 2008 Summer Olympics, against widespread calls for boycott, is a testament to the priority of econometrics over human rights.

Conclusion

In this essay, I have looked at the notion of human rights and how it has been packaged, introduced, and apparently received, as a major generosity of the West toward the vulnerable non-Western civilization. Voluminous scholarship that has followed ever since has failed to sufficiently undertake a non-essentialist investigation of this seemingly attractive development of human history and progress. Rather than pursue more critical tensions inherent in the obvious ambiguities of human rights, both as an ideology and a practice, useful scholarship has been devoted to the categorization of the colonizer and the colonized without probing the contradictions that beset each category.

This essay identified the otherness of the indigenous cultures in the calculation of the paternal, superior, West as a problem that not only needs a critical probe, but also deserves to be the starting point of a more historically nuanced human rights discourse. The essay looked at the paradoxes of a human rights regime which touts common, equal, and universal humanity, while at the same time building and maintaining measures of legal and practical differences. The paper also challenged the hypocrisy of a human rights rhetoric that celebrates the liberating mission of one civilization on another while masking its real motive of imperial, economic, and political hegemony.

Tracing the history of human rights to the Romanic jurisprudence reveals its derivative affiliation to early notions of natural law. But even in the early naturalist paradigm of humanity, only Romans were treated as humans. It would take the transformative and transcendental crusade of St. Thomas Aquinas to interpret natural law in divine terms and extend its application to all humankind.

This extension was necessary to give the Roman authority a philosophical justification for extraterritoriality. As a major theme of this essay, the differential tiers of humanity determined by civilization, has continued to dictate and dominate contemporary rhetoric of human rights. So also has economics gained priority over human rights in cost-benefit calculations. In discussing human rights, therefore, the different standards of civilization which have one civilization superior to others is a basic contradiction that must be urgently addressed.

Common, equal, and universal human rights and humankind must move beyond hollow rhetoric and must be weaned from a corrupt and dubious imperial history that has continued to shape them.

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