Human Rights and Democracy: An Incompatible or Complementary Relationship?

Introduction

The purpose of human rights is to allow for a transcendence of the nation state in terms of individual entitlement to an enjoyment of rights wherever individuals may find themselves (Landman 2013, 26). However, with respect to the varying philosophical and historical foundations of human rights, the supposed universality of human rights is debatable. States that reliably receive praise for their human rights records include most European countries, the United States, Canada, Australia, and New Zealand. What these countries have in common is a democratic political system and independent judiciaries that protect citizen rights (Posner 2014, 5). This observable fact would lead us to believe that democratic institutions are necessary for a thorough protection of human rights. However, in a non-cosmopolitan context, the logic of democracy necessitates constructing a barrier between those who belong to the demos and those excluded (Mouffe 2000, 4). This creates the condition for the existence of democratic citizenship rights. It also challenges the supposed universality of human rights, since those excluded from the demos, such as refugees, stateless persons or the prisoners at Guantanamo Bay, have no government to protect their supposedly natural rights.

The purpose of this essay is to traverse the tensions between human rights and democracy. It is argued that these tensions originate from the incompatible values upon which human rights and democracy were distinctly founded, the ways in which they are applied and the types of politics that they make possible. Following a short history of the emergence of human rights into the contemporary political consciousness, I explore the conflicts and paradoxes inherent to the human rights/liberalism/democracy nexus. Drawing on the work of political philosopher Chantal Mouffe, I show that there is a bifurcated mutual dependency to this relationship. One the one hand, the appeal to human rights is necessary in order to naturalise the notion of popular sovereignty for the democratic nation state. On the other hand, the democratic logic of constituting the people and bestowing rights is necessary to subvert the tendency towards the abstract universalism that is characteristic of liberal discourse (Mouffe 2000, 44). Finally, against a discussion of the taboo against torture, the notion that the most effective way to protect human rights is through democratic institutions is considered.

A (Brief) History of Human Rights

Some scholars have argued that human rights have a centuries-long history (Ishay 2004). Others perceive them to be a modern legal construction that emerged out of the institution of citizenship rights (Moyn 2012; Posner 2014). Following the Second World War these rights were universalised via a set of agreements that generated the contemporary international regime for the promotion and protection of human rights (Donnelly 2006). In *The Last Utopia*, legal history scholar Samuel Moyn (2012) argues that human rights only entered the global political consciousness in the 1970s. Moyn claims that at this point in time other kinds of utopianism, such as Communism and national liberation, began to weaken. Human rights suddenly became attractive because they provided a moral discourse and a set of ethical standards superficially above politics, as well as offered a minimalist utopianism that mitigated suffering without seeking to radically transform the world (McLoughlin 2016, 304). During the same decade the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and*

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Cultural Rights finally took effect, the Helsinki process began, Amnesty International was awarded the Nobel Peace Prize, dissident movements across the world began to adopt the language of rights and President Carter proclaimed human rights to be central to US foreign policy (Posner 2014, 19). For the Left, revolutionary aspirations started to be replaced by a global morality that sought to alleviate signs of suffering (McNeilly 2016). Human rights abuses defined authoritarianism, so human rights protection became the logical antidote to such evils. Legal theorist Daniel McLoughlin (2016, 311) argues that in this environment anti-authoritarianism legitimated capitalist liberal democracies by opposing them to a political 'Other' that lacked respect for human rights. While some commentators argue that the moral discourse of human rights is "the most we can hope for" (Ignatieff 2001), there are others who challenge this paradigm by contending that we need to develop a radical critique of liberal democratic state power that abandons the 'good versus evil' dichotomy (McNeilly 2016; Whyte 2012). This is because human rights in their current liberal form operate to reinforce existing power relations, rather than enabling their takedown.

Human Rights and Citizenship Rights – Two Peas in a Pod?

The 1776 *United States Declaration of Independence* and the 1789 *Declaration of the Rights of Man and Citizen* are widely cited as the provenance of human rights (Landman 2013, 28). For example, human rights scholar Agostinho Reis Monteiro (2014, 373) argues that since both these declarations made the respect for human rights directly connected to the principle of popular sovereignty, these two concepts are therefore "historically, conceptually and politically indissociable." Indeed, the Rights of Man states that 'men are born and remain free and equal of right', which is also a claim echoed in the opening article of the 1948 *Universal Declaration of Human Rights*. Here, equality and liberty are decreed as "natural entitlements" (Douzinas 2013, 55). However, the Universal Declaration is clear about the basis of universal human rights by stating that "the aim of any political association is to preserve the natural and inalienable rights of man" and that "the principle of all Sovereignty lies essentially with the nation" (Articles 2 & 3 respectively, quoted in Douzinas 2013, 55). Thus, as McLoughlin (2016, 315) argues, the political history of modern liberal democracies is characterised by the gap between "the universalism of the rights of man" and the rift between "white propertied men with full citizenship rights" and "slaves, women, workers, and people of colour" who have been traditionally excluded from the political sphere. By virtue of being allowed to participate in the political, those with citizenship rights are thus able to reify their humanity (Shaap 2013, 4).

Political philosopher Hannah Arendt (1966) interrogates this dynamic between human rights and citizenship rights in her seminal book, *The Origins of Totalitarianism*. Arendt critiques post-1948 human rights developments for being based on an abstraction of humanity rather than on a viable opportunity for political participation. Arendt argues that human rights only become meaningful when they are recognised in a political society. Thus, for Arendt, more significant than the right to freedom or the right to equality is "the right to have rights." Ultimately, the problem with the rights of man is that legal rights depend upon membership to a political community. Those excluded from political communities do not have citizenship rights to protect them, so are in reality left with no rights at all. This is premised on the notion that when man and citizen are separated, we recognise that "the world finds nothing sacred in the abstract nakedness of being human" (Arendt 1966, 299). While there has since been a massive growth of the international human rights regime, Arendt's skepticism concerning the universality of human rights still carries weight. Excluded-citizens may enjoy some human rights, but they ultimately remain the most vulnerable to persecution and expulsion (Nash 2009, 89).

Similar to Arendt, political philosopher Giorgio Agamben's (1998, 127) analysis of the Rights of Man criticizes its assertion that the rights it affirms are bestowed to both citizen and Man. For Agamben, the universal and abstract image of Man is a modern representation of "bare life." This metaphor reflects the existence of a human prior to belonging to the political. In Ancient Greek society the conceptual opposition between Man and citizen was expressed in a distinction between citizens who made up the polis, and the slaves, women and children who were excluded (McLoughlin 2016, 312). The modern expression of this classical separation between life and politics manifests itself in a different way. These days, liberal democracies justify their sovereign power on the need to protect the life of their citizens. To do this, modern democratic states now produce more extreme forms of political exclusion that the abstract framework of human rights is unable to address (McLoughlin 2016, 312).

Contemporary democracies are therefore inherently paradoxical because "the territorial borders of a democracy

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cannot themselves be democratic" (DeGooyer 2014, 101). While nation states profess to grant rights to their citizens based on their common humanity, they also exclude all those located beyond their borders in the name of maintaining national sovereignty and demarcating national identity. In this context, the refugee logically becomes an anomaly of the international system of sovereign states. According to international migration scholar Emma Haddad (2008, 69), refugees are not an indication of this system "going wrong". Rather, they are "an inherent if unanticipated part of the system." Citizenship attempts to sort bare life into harmonised territories but in the process some individuals become stuck in between. In this way, the refugee demonstrates a failure of certain governments to protect their citizens and of the state system as a whole, which fails to protect all humans as citizens (Haddad 2008, 69). The refugee also becomes the necessary 'Other' so that national citizens of the modern state are able to forge an identity. According to Haddad (2008, 47), the rise of national identity, which attached itself to the system of international relations following the Declaration of Independence and the Rights of Man, has become "the new indicator of allegiance," while the refugee is "the imagined outsider who allowed the concept of the nation-state to take hold." Thus, the state and the stateless "are caught in a mutual embrace" (DeGooyer 2014, 101). In light of this analysis, even if the most effective way to protect human rights is through democratic institutions, it seems almost disingenuous if the same human rights cannot be enjoyed by individuals excluded from the demos.

Navigating the Tension between Liberalism, Democracy and Human Rights

Political philosopher Chantal Mouffe's theorising on the impact that liberalism has on democratic institutions helps to deconstruct the compatibility of human rights and democracy. For Mouffe (2000, 2), democracy is both a form of rule upholding the principle of the sovereignty of the people, as well as a symbolic framework within which this democratic rule is employed. What makes modern Western democracy truly 'modern' and 'Western' is that this symbolic framework is now informed by the liberal tradition constituted by the rule of law, the respect for individual liberty, protection from oppressive state interference and the defence of human rights. These values form the key tenets of the contemporary Western worldview. Conversely, the democratic tradition emphasises the values of equality, popular sovereignty and a division between the governing and the governed. Indeed, as Amartya Sen (2003) has argued, democracy as manifested through liberalism and the ballot box is a Western construct, while democracy as expressed through 'public reason' (in other words, deliberation) is truly universal. Mouffe (2000, 3) claims that there is no necessary connection between liberalism and democracy, "only a contingent historical articulation," which I have explored in the preceding paragraphs. Nevertheless, there is a widespread assumption that democracy and human rights are inherently compatible (Landman 2013, 7). For Mouffe (2000, 4), this assumption has had the effect of privileging excessive liberalism, whilst neglecting the fact that the legitimacy of liberal democracy remains premised on popular sovereignty.

It thus follows that hegemony of neoliberalism becomes a threat to democratic institutions. States are the main agents in the realisation of democracy and human rights. However, globalising forces have encroached on the state's ability to freely implement policies, including policies concerning human rights. This phenomenon has been identified as a "democratic deficit" (Mouffe 2000, 15). Here, elected governments lack the power to control neoliberal economic processes and the follow-on effects of major world crises (Cedroni 2012, 261). Indeed, one only has to consider the history of decisions made by the World Bank, the International Monetary Fund, and the World Trade Organisation, which have overwhelmingly served the interests of the Global North without much concern for negative human rights consequences. Neoliberal creeds about the inviolable rights of property, the sweeping virtues of the market and the risks of interfering with its logic have become common sense in liberal-democratic societies. But as Mouffe (2000, 6) explains, the ensuing "democratic deficit" can severely threaten allegiance to democratic institutions by those citizens whose concerns have been excluded from the elite's political and societal priorities. Indeed, the recent rise of right-wing demagogy in the West seems to eerily confirm Mouffe's trepidations. Democracy is about compromise and negotiation between disparate opinions, "not zero-sum scorched earth attacks on anyone who does not follow the orthodoxy of one political group" (Shattuck 2016, 182). A commitment to democracy constitutes a never-ending task to ensure popular control and political equality (Charlesworth 2013, 280). Yet, since there is always the threat of "a tyranny of the majority," liberal democratic institutions should never be taken for granted. As Mouffe (2000, 4) prescribes, this necessitates recognising the tension originating from the inner workings of democracy on the one hand, and liberalism on the other.

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The Universal Violation of Human Rights

Through the *Universal Declaration of Human Rights*, states have committed themselves to respecting and safeguarding human rights. Nevertheless, states remain the greatest violators of human rights (Cedroni 2012, 257). However, the moralisation of human rights has led to a shift in attention away from the structural violence triggered by neoliberal capitalism towards more egregious acts of violence (Whyte 2012). In this way, human rights tend to prioritise the rights of individuals, which draws focus away from the rights claims of societies, communities and families (Donnelly 2006, 616). For example, political theorist Robert Meister (2011, 66) has observed the phenomenon of "the humanitarian melodrama," which is the enjoyment of the moral feeling we get through witnessing the pain of bodies. For Meister, physical pain is always perceived as an egregious violation of human rights. However, the same is often not said of other types of violence such as abuses along the supply chain or mass incarceration (Whyte 2012). For example, Amnesty's 1976 report that documented abuses in Argentina, which contributed to the organisation being awarded the Nobel Peace Prize, did not comment on the growing poverty or the cutback of social welfare programs (as was the policy linchpin of the junta government) (Whyte 2012). Indeed, the international human rights regime is not a complete solution for social justice or human emancipation (Donnelly 2006, 616). In theory, this is unproblematic since different ethical, legal, and political practices need to come together for the functioning of an effective society. In practice, however, human rights today often exclude larger emancipatory visions and can even have morally perverse unintended consequences (Donnelly 2006, 616). For example, the way in which torture is construed as the ultimate human rights violation has the effect of limiting the ways we conceptualise violence and rights violations at a broader structural level (Kelly 2011, 328). In this way, the pathologising of torture has reduced the politics of human rights to a discussion about the need to limit gratuitous pain, rather than, for instance, the collective redistribution of wealth (Kelly 2011, 328).

This trend of sensationalising overt pain has inadvertently led to a pernicious form of torture (Kelly 2011, 328). Far from being the leftovers of our pre-civilised past, or a custom reserved for authoritarian regimes, political scientist Darius Rejali (2007) argues that there is a particular type of torture practiced by liberal democracies, namely what he has dubbed "clean tortures." These are techniques that are designed to leave no traces. Such techniques include: Tasers; extremely hot or cold showers; refrigerated cells; sleep deprivation; and the infliction of noise (Rejali 2007, 553-7 for complete list). Rejali (2007, 39) links the development of clean torture techniques to the corresponding development of democratic monitoring, both domestic and international, that are intended to prevent torture. Rejali (2007, 390) argues that it is no coincidence that clean tortures began to spread rapidly in the 1970s, right about the same time when Amnesty was raising awareness of the significance of torture as a human rights issue. This increased sensitivity to signs of pain in our collective conscience has thus had the effect of perpetuating a type of torture available to democracies that is arguably more insidious given that it is harder to see.

In *The Twilight of Human Rights* legal scholar Eric Posner (2014, 112) argues, that even if human rights at the international level were enforceable, there is little reason to believe that individual human rights would promote the wellbeing of all people in a diverse collection of countries "where the interests, values, and needs of the populations cannot be captured in a simple list of rights." Consider the rise of living standards and advancement of economic rights in China over the last 30 years. Hundreds of millions of people have been brought out of poverty. Posner (2014, 91) suggests that given the lack of democratic culture in China, and the extraordinary political turmoil that existed there until rather recently, there would be a significant risk to the management of the economy (and even societal peace) if China were to suddenly comply with civil and political rights. Liberal democracies run into the mirror image of this predicament. Democratic legislatures are often reluctant to formulate laws in compliance with the cosmopolitan norms of human rights. In the example of counter-terrorism measures in the US and UK, courts have repeatedly judged legislation intended to allow arbitrary detention unlawful. In any case, governments remain unwilling to respect well-established international human rights norms (Nash 2009, 99). As elected representatives, politicians are often unwilling to risk appearing soft on those who are perceived to threaten the state's safety. This broad trend in contemporary politics shows that even in democratic societies there are contexts in which human rights are simply not popular (Nash 2009, 99). As we can see, it is thus impossible to separate the world into "good democratic states" that protect human rights and "bad authoritarian states" that are the biggest violators (Posner 2014, 121).

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Conclusions

This essay has sought to navigate some tensions between human rights and democracy. It was argued that these tensions originate from the conflicting values upon which human rights and democracy were distinctly founded, the ways in which they are applied and the kinds of politics that they make room for. The careful juggling between the preservation of democratic institutions and the protection of human rights will thus remain shaky, even in the best of times. These tensions have risen out of the rift between liberal democracy's conceptualisation of the universal Man and the national citizen, or rather, "the real beneficiary of rights" (Douzinas 2013, 56). Since rights form the basis upon which people are allocated into rulers, ruled, and excluded, it is hard to imagine a utopia in which human rights exist for those who do not belong to a demos (Douzinas 2013, 59).

This essay has also considered the broader shift in contemporary political discourse that interprets human rights as a moral story of 'good versus evil.' This is a false dichotomy, since states fall along a continuum of human rights compliance. Many states with authoritarian governments are responsive to the needs and interests of their populations and do protect the more significant human rights just as well as democratic governments are able to (Dryzek 2016, 362). This discussion is important because we ought to interrogate whether the human rights project epitomised by Amnesty International is the best solution to the banal lack of freedom, justice and equality experienced by people in all parts of the contemporary world.

References

Arendt, H 1966, *The Origins of Totalitarianism,* Harvest Book, San Diego.

Agamben, G 1998, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford.

Cedroni, L 2012, 'Rights in Progress. The Politics of Rights and the Democracy-Building Processes in Comparative Perspective,' in C Corradetti (ed), *Philosophical Dimensions of Human Rights: Some Contemporary Views*, Springer, Dordrecht, pp. 253-264.

Charlesworth, H 2013, 'Is there a Human Right to Democracy?', in C Holder and D Reidy (eds) *Human Rights: The Hard Questions*, Cambridge University Press, Cambridge, pp. 271-284.

DeGooyer, S 2014, 'Democracy, Give or Take?', *Humanity: An International Journal of Human Rights, Humanitarianism and Development*, vol. 5, no. 1, pp. 93-110.

Donnelly 2006, 'Human Rights', in JS Dryzek, B Honnig and A Phillips (eds), *The Oxford Handbook of Political Theory*, Oxford University Press, New York, pp. 601-620.

Douzinas, C 2013, 'The Paradoxes of Human Rights', *Constellations*, vol. 20, no. 1, pp. 51-67.

Dryzek, JS 2016, 'Can There Be a Human Right to an Essentially Contested Concept? The Case of Democracy,' *The Journal of Politics*, vol. 78, no. 2, pp. 357-367.

Haddad, E 2008, *The Refugee in International Society: Between Sovereigns*, Cambridge University Press, New York.

Ignatieff, M 2001, *Human Rights as Politics and Idolatry*, Princeton, Princeton University Press.

Ishay, M 2004, 'What are Human Rights? Six Historical Controversies,' *Journal of Human Rights*, vol. 3, no. 3, pp. 359-371.

Kelly, T 2011, 'What We Talk About When We Talk About Torture', *Humanity: An International Journal of Human Rights, Humanitarianism and Development*, vol. 2, no. 2, pp. 327-343.

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Landman, T 2013, *Human Rights and Democracy: The Precarious Triumph of Ideals*, Bloomsbury, London.

Meister, R 2011, *After Evil*, Columbia University Press, New York.

McLoughlin, D 2016, 'Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Ranciére', *Law Critique*, vol. 27, no. 1, pp. 303-321.

McNeilly, K 2016, 'After the Critique of Rights: For a Radical Democratic Theory and Practice of Human Rights' *Law Critique*, vol. 27, no. 3, pp.269-288

Mouffe, C 2000, *The Democratic Paradox*, Verso, London.

Moyn, S 2012, *The Last Utopia*, Belknap Press, Harvard.

Nash, K 2009, 'Democratic Human Rights', in R Morgan and BS Turner (eds), *Interpreting Human Rights: Social Science Perspectives*, Routledge, New York, pp. 87-103.

Posner, EA 2014, *The Twilight of Human Rights Law*, Oxford University Press, New York.

Reis Monteiro, A 2014, *Ethics of Human Rights*, Springer, Cham.

Rejali, D 2007, *Torture and Democracy*, Princeton University Press, Princeton.

Sen, A 2003, 'Democracy and its Global Roots', *The New Republic*, 6 October 2003, pp. 28-35.

Shaap, A 2013, 'Human Rights and the Political Paradox', *Australian Humanities Review*, no. 33, pp. 1-22.

Shattuck, J 2016, 'Democracy and its Discontents', *The Fletcher Forum of World Affairs*, vol. 40, no. 2, pp. 173-184.

Whyte, J 2012, 'Intervene, I said', *Overland*, no. 207 Winter, viewed 19 October 2016, <https://overland.org.au/previous-issues/issue-207/feature-jessica-whyte/>.