

Nov. 23, 2009

## 21: HUMAN RIGHTS, COLLECTIVE RIGHTS

Read: Messer: Anthropologists in a world with and without human rights  
Goldstein: Human rights as culprit, human rights as victim: rights and security in the state of exception  
Nagel: Reconstructing federal Indian policy: From termination to self-determination; The problematics of American Indian ethnicity

### I. Introduction<sup>1</sup>

- A. I will first talk about history of development of ideas about human rights
  - 1. Discuss kinds of rights—women, children, civil, environment, etc.
- B. Then discuss contradiction between liberal and culturalist philosophies
- C. Followed by a brief discussion of ways to prevent human rights abuse
- D. Finally, ask whether international development helps secure human rights for all, or does it violate them?

### II. History of development of ideas about human rights

- A. In the United Nations: United Declaration of Human Rights 1948
  - 1. Out of the Commission for the Rights of Mankind
  - 2. Motivated by the Nazi atrocities and other examples of genocide
  - 3. Resistance to the Declaration came from Great Britain (its actions in India), the U.S. (internal problems with blacks), Soviet Union
  - 4. Of course earlier violations, like the massacre of over a million Armenians were seen as horrendous
  - 5. But while there were laws against murder, there were no international conventions against genocide, against state terrorism, etc.
- B. The first articulation of the notion of human rights saw them in terms of basic rights to life—no torture, for example
- C. Today the rights discourse more complicated
  - 1. Many kinds of rights are debated

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<sup>1</sup> This lecture follows the Messer reading.

2. For example, arguments are made that everyone is entitled to (has a right to) the benefits of Western technology
3. We have arguments in favor of rights of women, children, civil, environment, the right not to be impoverished, to health care, etc.
4. The Geneva convention governing treatment of prisoners of war
5. More recently: rights of the disabled, etc.
6. For example, protests against WTO (World Trade Organization), NAFTA are couched in discourses about rights
  - a. And other structural adjustment policies that lead states to eliminate nutritional, health programs social service, etc.
  - b. The protests argue that people have a right to these

III. Human rights is a very popular topic, a popular type of activism today

- A. We have what we can call a “culture of human rights”: “the preeminent global language of social justice” (Merry 2001: 38<sup>2</sup>)
- B. **DISCUSS**: student examples?
  1. Against sweatshop conditions in companies making MIT labeled products
  2. Institutes and centers have been opened, like MIT’s Program in Human Rights and Justice
  3. Other kinds of activities?

IV. Anthropological contributions to the debate early on:

- A. When ideas about universal civil-political rights were first being debated
  1. The American Anthropological Association objected
    - a. Saying the notion was ethnocentric
    - b. **DISCUSS**: possible cases?

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<sup>2</sup> Sally Merry, 2001. Changing rights, changing culture. In Jane Cowan, Marie Bénédicte Dembour, and Richard A. Wilson, eds., *Culture and rights: Anthropological Perspectives*. Cambridge: Cambridge U Press 31-55.

C. Also, AAA questioned the framework of national sovereignty that was to be held accountable

1. Familiar question: who is authorized to evaluate, to bring complaints, to decide on a course of action?

V. Anthropological issues, questions today

A. Who is entitled to rights?—Who is counted as a full ‘person’ or ‘human being’?

1. There are widely different notions about this; we can’t assume that our Western notion of “human” is universal

2. We see the definition of human in terms of animal species

3. Elsewhere we find more restrictive notions of what exactly is a human being who deserves protection

- a. In some societies some people are considered to in fact not be people, but witches

- 1) Who should be executed

- b. And other societies have categories of “used to be people” but have lost that status by their behavior

- 1) And are banished

4. Should we impose our notion of humanity?

5. Earlier in Western history there were debates about this issue

- a. Famous argument by Bartolomé de las Casas, a Spanish monk, regarding the humanity of New World indigenes

6. There still are

- a. Example: abortion: of an embryo or fetus, or an “unborn child”?

- 1) **DISCUSS:** Fully human, or only potentially human?

- 2) Discourse is in terms of rights: fetal rights, maternal rights

B. In addition, the West’s concept of who deserves protection isn’t always agreed on

1. Example: disagreements over the rights of the child

- C. And certainly disagreements about what constitutes rights
  - 1. Example “Super-max” (“super maximum”)prisons
    - a. Some people argue that these institutions are contrary to the West’s notion of human rights
    - b. Because, the argument goes, although bodily needs are taken care of (food, shelter, health care) in these places, the treatment is a form of psychological torture
  - 2. **DISCUSS:** capital punishment

## VI. Indigenous rights

- A. First formal claims actually occurred during the 1920s
  - 1. With the Iroquois Confederacy appealing to the League of Nations against the Canadian government
- B. 1946: UN Human Rights Sub-commission for the Eradication of Discriminatory Measures against Minorities
  - 1. “Protection of minorities and prevention of any distinctions based on race, sex, language or religion”
  - 2. Quite remarkable; this document is little-known today
  - 3. Ignored because the UN is the United Nations—its members are nation-states
    - a. Member states, I don’t have to remind you at this point in the course,
      - 1) Had all kinds of problems with the idea of an international body like the UN surveying and policing their internal affairs, in particular their treatment of their minorities
- C. Only later did the notion of indigenous rights begin to be seen not as minority rights but rights of distinct “peoples” living within a state
- D. The “minorities” vs. “peoples” distinction has been much debated
  - 1. Distinct “nations” that lived within the boundaries of a state

- a. As distinct “peoples” were demanding self-determination and autonomy
  - 1) A quite different demand from the kind of demands to end discrimination and denial of civil rights seen to belong to every citizen of a state
- 2. This distinction began to be seriously addressed
  - a. This issue is discussed in your reading for next time: Warren and Jackson

## VII. Collective rights

- A. Early discussions of rights were framed as *individual* rights, not rights of a group (collective rights)
- B. Linked to, but distinct from, the question of rights to be an autonomous people
  - 1. Nagel asks: who decides?
  - 2. Example of an MIT research scientist finding out only at his father’s funeral that he was an Abenaki Indian
    - a. He then requested an MIT job as a target of opportunity candidate (affirmative action)

## VIII. Contradiction between liberal and culturalist philosophy

- A. At present liberal democratic theory is being challenged as the reigning theory about human nature and society
- B. By culturalist theory
- C. Major paradigm shift
- D. Liberal theory is still is the foundation for liberalism
  - 1. An ideology underlying institutional practices of Western capitalism and democracy
    - a. Examples: “one man one vote”
    - b. “All men are created equal”—Declaration of Independence

- 1) **DISCUSS:** which groups of people were not seen to be covered by this assertion in the authors' minds?
- E. These two theories are incommensurable—incompatible
1. Producing uncomfortable disjunctions
    - a. Nagel: Termination policy is an example of liberal theory in practice:
      - 1) Treat the Indian as individual, like any other citizen, give him money for his land
      - 2) And end the “special” trust relationship between federal government and tribes
      - 3) Argue that such an arrangement doesn't belong in a modern nation
      - 4) Nor is it good for them
- F. Liberal theory sees a modern, universal self emerging
1. A self that breaks with tradition
  2. Sees human beings as (or will be) inherently and universally:
    - a. Individualist
    - b. Rationalist
    - c. Persons
  3. Who will eventually cast off all identities except “citizen of the world”
  4. Relations between these individuals consist of rational contracts of mutual self-interest
- G. Culturalist theory fundamentally resituates humanity
1. Sometimes the contrast is said to be that between modernity and post-modernity
- H. Note that “liberal” here doesn't mean liberal vs. conservative

- I. Liberalism translates, embodies the principles of 16<sup>th</sup> and 17<sup>th</sup> century physical science
1. That culminated in the 18<sup>th</sup> century philosophy known as The Enlightenment
    - a. A market-based social order
    - b. As its center is based in the modern West,
      - 1) Liberalism necessarily tends to equate difference from that center with evil, ignorance, retardation
  2. With modernization, the assumption is, this difference will be eradicated, modernized
  3. Liberal theory posits an end point of a human who
    - a. Is “emancipated” and unsituated, atomic
    - b. Lives in a community through choice
    - c. Whose basic nature is that of an individual rational being, presocial and ultimately separate from the social
    - d. A self that owns his/her own person, selfhood
    - e. A self that owes nothing to that community or society for its basic existence of identity
- J. **DISCUSS:** the real world: how does it differ from liberal theory’s world?
1. Real world: people have families
  2. There are some pretty basic differences—like those distinguishing the 2 sexes
  3. People have emotions in addition to rational faculties
  4. The government in fact gives all sorts of advantages to groups, to categories of people—individuals are *not* treated equitably
    - a. Farm subsidies, dairy subsidies
    - b. GI Bill of rights—veterans’ benefits following WWII: ongoing discussion today of just what those benefits, rights should be

- c. Federal housing loans are available only to those who can contemplate buying a house
- d. \$\$ for highways rather than public transportation
- 5. But liberal philosophy ignores all of these in its construction of human nature
  - a. And its construction of the nature of society and culture “as if” everyone were the same
  - b. Ignores power differences

IX. The concept of culture rights

- A. Culture theory brings Western modernism into view as itself a contingent cultural form
  - 1. Is a radically different concept of human nature, society, humankind’s position in the universe, etc.
- B. The notion of culturally specific rights is clearly incommensurable with liberal theory
  - 1. We see disjunctures everywhere
  - 2. Liberal theory does not permit special treatment based on difference
    - a. Yes, if the difference results from unfair treatment
      - 1) If Affirmative Action policies are based on the notion of compensation, restitution
      - 2) They fit better into liberal theory

X. Examples of culturally particular rights

- A. In the U.S., Canada and many Latin American countries constitutions allow indigenous communities to police themselves and manage their own justice
  - 1. So long as basic human rights are observed (no killing, no torture, no banishment)
  - 2. In Colombia a Nasa court pronounced a sentence of whipping on a Nasa senator who broke an agreement about an upcoming presidential election



- a. Traditionally, whipping was seen as a way to reinstate the defendant, is accompanied by notions about the cleansing power of thunder, etc.
  - b. A complaint was made that this sentence went against the basic law of the land—big struggle
  - c. His punishment ended up being having to take a swim in the incredibly cold lake
- B. As you can imagine, blending customary law with Western positive law is difficult
- 1. Due process is often impossible in customary law
  - 2. Evidence might be obtained from divination by shamans, etc.
  - 3. Other problematic cases: killing twins at birth, executing witches
  - 4. In the U.S.: a case of a sentence of temporary banishment:
    - a. A tribe in Washington state sentenced the traditional punishment: a teen-ager had to live by himself on an island for a period of time
    - b. The sentence was appealed; the tribe lost—went against the basic law of the land
- C. And of course conflicts arise over environmental rights, animal rights
- 1. The Makah (on Olympic peninsula) organized a whale hunt<sup>3</sup>
    - a. Huge protest—Greenpeace, etc.
- XI. How to ensure observation of human rights?
- A. Legal
- 1. Nazis were punished
  - 2. The chemical explosion in 1984 in a Union Carbide subsidiary pesticide factory in Bhopal, India, mostly settled with civil, rather than criminal, lawsuits

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<sup>3</sup> See Patricia Pierce Erikson, 1999. A-whaling we will go: Encounters of knowledge and memory at the Makah Cultural and Research Center. *Cultural Anthropology* 14, 4: 556-583.

- a. Between 8,000 and 15,000 died
- B. Legislation, signing conventions, covenants, treaties
  - 1. U.N., World Bank, many countries sign these
- C. Surveillance and publicity, letter campaigns, delegations
  - 1. Amnesty International, Witness for Peace, Survival, Cultural Survival
  - 2. “The politics of embarrassment”

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21A.226 Ethnic and National Identity  
Fall 2009

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