

Not Philanthropy But Rights Rights-Based Humanitarianism and the Proper Politicisation of Humanitarian Philosophy in War ¹

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In his famous *Essay on Perpetual Peace* in 1795, the great German philosopher Immanuel Kant, reflected on why a state should show hospitality to refugees and strangers. In doing so, he seemed to voice a certain impatience with a particular kind of humanitarian thinking:

"Our concern is not with philanthropy but right, and in this context the right of an alien not to be treated as an enemy upon arrival in another's country...the right to visit, to associate, belongs to all by virtue of their common ownership of the earth's surface." (Kant, 1795, p118).

Kant's humanitarian philosophy is one of equality, rights and duties. Philanthropy as a rather generalised moral project is not sufficient unless it rooted in a considered political philosophy and connected to some wider political framework of rights and duties. Writing more than fifty years after Kant in 1848, two young German radicals, Karl Marx and Frederich Engels made a stinging critique of what they saw as the reactionary, palliative and self-serving nature of a certain type of charitable endeavour:

"A part of the bourgeoisie is desirous of redressing social grievances, in order to secure the continued existence of bourgeois society. To this section belongs economists, philanthropists, humanitarians, improvers of the condition of the working class, organisers of charity, members of societies for the prevention of cruelty to animals, temperance fanatics, hole-and-corner reformers of every imaginable kind. This form of Socialism has moreover, been worked out into complete systems." (Marx and Engels, 1848)

In the 150 years that followed the publication of *The Communist Manifesto*, just such a "complete system" of international philanthropy developed across the world through the missions and charities of the colonial period and beyond. After the decades of liberation and independence in the 1960s and 1970s, a similar system has been continued in the post-colonial era by the NGO, Red Cross and UN descendants of these earlier philanthropists. Alex de Waal has coined the term "the humanitarian international" to describe this system and to criticise its essential failure (de Waal, 1997). This label is a useful term and de Waal's critique is a vital one, albeit sharing the marxist tendency to describe relationships in monolithic terms that obscure as much as they reveal. Notions of humanitarian philosophy within the humanitarian international are varied (Slim and McConnan

1998). There has always existed something of a tension between a more radical rights-based understanding of humanitarianism and a more politically disconnected understanding based on charity alone.

In this paper, I want to draw on Kant's distinction between philanthropy and right to illustrate the current shift that is taking place in western humanitarianism's understanding of itself. In so doing, I want to take up Marx and Engel's challenge and explore what a more radical rather than a reactionary humanitarianism might look like. I want to argue that humanitarianism – as the perpetual project of restraining war² - is divided in its understanding of itself. A part of every international humanitarian worker understands his or her calling as a philosophy of simple and morally absolute charity. But another part is - and must be - concerned with the very political project of shaping laws and implementing programmes that seek to develop a very real political contract between people, state and non-state power about armed conflict in their politics. To think that humanitarianism is either *all* charity or *all* politics is simplistic. Humanitarianism in war is a strange and compelling mixture of the two pursuits of charity and politics. It is about bringing love and kindness into the midst of war. But it is also about engaging state power and non-state power in a moral, legal and political process that seriously limits war and understands the rights of people when they are threatened by armed conflict.

Potentially, the current shift from philanthropy to rights involves humanitarian philosophy in an appropriate swing away from a sentimental, paternalistic and privileged discourse of philanthropy and charity, to a more political, egalitarian and empowering ideology of rights and duties in war. This shift has been a long time in the making as both discourses have tended to exist simultaneously in most humanitarian and development organisations for much of the last century. However, it is fair to say that the shift to rights has recently accelerated. The geo-political events of the last 10 years have produced a dominant western liberalism that is at ease with talk of human rights and is, as yet, without a concerted countervailing force against them. This has combined with a new commitment by humanitarian agencies to put their core beliefs on paper since the Rwandan genocide. This process has

² In using the term humanitarianism, I am confining my definition to the narrow meaning of the term as implied by international humanitarian law (IHL). In other words, that form of non-violent and impartial action to assist and protect civilians and other non-combatants in armed conflict in line with rules set out in the Geneva Conventions and their Additional Protocols.

involved humanitarians being much more explicit about their values and urged them towards finding a common ideological language and a recognised legal framework to justify what they seek to do around the world.

There now seems to be a real possibility for a more permanent realignment in favour of rights over philanthropy in humanitarian thinking and practice.

While championing this ideological shift and its better balance between charity and politics, I also want to lay bear the risks of a rights-based approach to humanitarianism. These risks are essentially fourfold. First, is the risk of excessive and particularised politics. By allying itself explicitly with human rights, the universal values of the restraint of violence which are innate to humanitarianism's engagement with armed conflict, may over-identify themselves with a politics of human rights that is essentially contingent and faces the equal possibility of becoming as universally contested as universally valued. Secondly, that as a debate essentially concerned with a political, moral and legal framework, rights-based humanitarianism may never leave the paper and seminar rooms where it is debated and find the means to have a practical effect. It will require a grassroots movement as well as rhetoric. Thirdly, that the resilience of the philanthropic position is such that it can all too easily disguise itself with a veneer of rights-talk so that while one might think a humanitarian or a politician is talking rights, she or he might just be sporting philanthropy dressed up as rights. Finally, my liberal instincts mean that I remain very wary of advocating that there is only one way in which to be good and in which to talk about goodness. The human history of the last century shows all too clearly that ideological monism can too easily tend to exclusion and extremism. Like everything taken up into the hearts and hands of human beings, rights-talk could become a blessing or a curse. It depends on who is controlling it and to what ends. In proposing a move to rights-talk, I would never want to preclude other simpler moral talk of love, solidarity and compassion from humanitarian philosophy.

Charity and Philanthropy

In criticising charitable or philanthropic ideology, I do not object to the original values inherent in these words. Nor would I want to denigrate the great Victorian reformers, known as philanthropists, who engaged in very

real politics around the rights of slaves and children amongst others. There can be no greater practical moral value than the love or charity of the Christian virtues and its namesakes in other religions. Equally, as a secular version of this form of practical human love, there can be no better thing than philanthropy. People who unequivocally embody and share this form of love have no real personal need of theories of rights, even if their society may still require ideology and law framed in such terms. All of us have moments of such love and charity. But equally, all of us live in (and join in) wider systems that work against the realisation of such love.

My concern – akin to that of Marx and Engels - is what becomes of these virtues and their labels when taken up by rich givers without a real determination to engage just political relationships. In short, when charity and philanthropy are ends in themselves and left to float free of any serious challenge to power. The virtues of charity and philanthropy, which should have equality at the centre of their meaning, have all too frequently (and often unwittingly) become the means to make the opposite principle of inequality and its resulting suffering morally, socially and politically acceptable. In this form, while offering help but not redress, philanthropy can in fact throw a veil over the natural rights of particular people – the realisation of whose rights might threaten the status of the charitable. This has been a feature of international humanitarianism.

De-politicised philanthropic or charitable discourse of this kind tends to take two forms. It speaks either in a moral voice of pity, helplessness and rescue (Benthall, 1993, p188) or with the measured authority of science and its apparently value-free analysis of technical problems and technical solutions (De Waal, 1997, p70). Often it combines the two. Speaking in this way, what de Waal calls “philanthropic humanitarianism” has claimed its legitimacy by virtue of a general moral appeal that is combined with an apparently irrefutable technical expertise. This technical altruism is then expressed in projects of scientific certainties in economics, health, agriculture, education, micro-finance and social work. Such technical philanthropy has not only held a grip on humanitarianism. Firoze Manji and other “post-developmentalists” have observed how the rise of “development” has involved the same process at work (Manji, 1998; see also Munck and O’Hearn 1999, Rist 1997). Speaking, in particular, of the arrival of development ideology in the wake of liberation and independence in Africa, Manji notes that:

“the real problem was that the dominant discourse on development was framed not in the language of rights and justice, but in the vocabulary of charity, technical expertise, neutrality, and a deep paternalism (albeit accompanied by the rhetoric of participatory development) which was its syntax” (Manji, 1998, p26).

For Manji, this process saw the effective “de-politicisation of poverty” (Manji, 1998, p28). The same process has been at work in philanthropic humanitarianism’s frequent de-politicisation of armed conflict, reframing it as a famine or refugee disaster. In Latin America, by contrast, there has been a long tradition of challenging war and political violence in human rights terms. But wars in Africa have tended to engender a simple philanthropic response from the west focused on food, health and shelter needs.

Human Rights

The notion of human rights emerged in the thinking and writing of political philosophers and jurists during the European Enlightenment but came to the fore in the revolutions in France and North America in the last part of the 18th century. It is, perhaps in these practical struggles for freedom that the philosophy of human rights is most easily grasped. The best guides to the meaning of these rights are often those who have actively struggled for them. One of the most articulate and impassioned advocates of rights was a former maker of ladies corsets, turned customs officer, turned international revolutionary - Thomas Paine. Born in Norfolk in 1737 and brought up as a Quaker, Paine left school early and was essentially self-educated. Making the acquaintance of Benjamin Franklin in London in 1774, he sailed for America in the same year and became one of the most brilliant political pamphleteers of all time and one of the most significant influences on the American and French revolutions and their various declarations of rights.

While it is possible to make discussion of human rights extremely complicated, rights were always extremely simple and “natural” for Paine. In his *Rights of Man (1791)* he argues that “only the distinction of sexes” is evident in humanity and the created order of things and that “no other distinction is even implied”. From this he is able to discern “the

illuminating and divine principle of the equal rights of man (sic)” (Paine, p.117/118). This principle of equality is the foundation of the philosophy of human rights. From equality, Paine then identifies two types of rights - natural rights and civil rights. “Natural rights are those which appertain to man (sic) in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious of the rights of others” (Paine, p119).

However, it is obvious to Paine that an individual acting alone can never realise or enjoy all his natural rights and that any individual is also part of society and so in a position to either realise or violate the rights of others. Thus, a person’s natural rights must be protected by others in society and s/he also has a reciprocal duty to protect the rights of others in society. These rights enjoyed in society, which require an active reciprocity between rights and duties, he regards as “civil rights”. Every civil right “has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent” (Paine, p119). In short, we need each other as individuals or as governments or as organisations to protect the rights that we cannot ensure for ourselves - those “rights of imperfect power”. These rights we have to “exchange” with others so that they can be secured with others or by others on our behalf. In order to enjoy our rights we need to relate to each other by respecting our common rights and our common duties. In society this requires a special “compact” with government. In Paine’s view, this compact and its pre-requisite of equality was simply not recognized by the governments of his day in Britain and France which drew false distinctions between different classes of people and suppressed the freedom and comfort of many.

Most contemporary advocates of human rights follow in the tradition of “natural” rights as set forth by Paine and others, although different people find different reasons for what makes certain rights “natural” and so universal. Some deduce human rights from religious belief and some from political logic. Others, like John Finnis, accept them as “a valuable addition to the received vocabulary of practical reasonableness” and a useful “counter in political discourse” which helps to remind us of those self-evident and basic forms of good which enable human flourishing (Finnis, p221).

Since Paine and others began to write down lists of these rights in the American Declaration of Independence, the American Constitution and the French National Assembly's 17 point Declaration of the Rights of Man and Of Citizens, people have continued to spell out what human rights might mean in new lists for different generations. The making of rights lists accelerated dramatically after the Universal Declaration of Human Rights in 1948 and is now manifest in the hundreds of covenants, conventions and declarations produced by the United Nations and different regional organisations of states. And, of course, these lists now function not only as assertions of moral rights and political ends but also as law, nationally and internationally. So Francesca Klug can rightfully say that:

“human rights are best understood as part law, part philosophy and part political movement. The values that drive the idea of human rights owe almost as much to poetry and music as they do to legal principles. They owe nearly as much to the spirituality of all the great religions and to the eternal quest for righteousness as they do to revolution and the demand for freedom from state tyranny” (Klug, 2000, p18).

But what perhaps distinguishes the philosophy of human rights from other religious or secular expressions of the equality and sanctity of human life is their implications of specific political contract with government and other organisations of power. This political and legal character puts human rights on a direct continuum with political responsibility and justice. A Christian might express a similar sense of equality and human value in the idea of all people being made “in the image and likeness of God”. An important part of the ICRC philosophical tradition will use the notions of “humanity” and “dignity” to describe the equal value that is inherent in all people and makes all people precious, no matter who they are or what they have done (Pictet, 1979). But such philosophies of human value do not necessarily imply an exact and reciprocal political contract that demands justice. The Christian position or Pictet's underlying charity could simply demand pity, compassion and care. But the moment one uses rights-talk, one becomes explicit in a demand for responsible politics and justice.

Humanitarian Law and the Specification of Rights in War

Human Rights, and the international legal instruments that express them, have developed largely in the genre of “manifesto” (Feinberg in Finnis, p214). They are represented as a series of “assertions” which Finnis notes as being essentially “peremptory” and “conclusory”, as per “everyone has a right to” and “noone shall be subjected to”. He argues that while human rights as they stand may usefully sketch “the outlines of the common good” they require much greater “specification” and must be translated “into specific three-term relations” in any given situation. This involves identifying the identity of the duty-bearer, descriptions of the content of the duty, the specific identity of the rights-holder(s), the conditions under which that rights-holder might lose his or her claim to a right etc. (Finnis, p218/219).

It is in this process of specification that human rights are brought down to earth. And it is also in this process that rights-based humanitarianism is able to draw on its greatest asset – the specific prohibitions and injunctions of international humanitarian law as spelt out in the Geneva Conventions and their Additional Protocols. For, while IHL is all about protecting human rights in war, it is not written in the manifesto form of human rights law but, as the laws of war, is formed much more in the way of Finnis’ “three-term relations”. ICRC’s lawyers now increasingly emphasise this important complementarity that exists between Human Rights Law and IHL. The great strength of IHL seems to be its legal and philosophical bilingualism that enables it to speak of rights and yet also specify them as rules in terms that relate to fighters. As Doswald-Beck and Vite point out, the provisions of IHL cover the greater part of civil, political, economic, social and cultural rights as represented in UN Human Rights law, but they do so in a way which speaks in terms of the specific duties of fighters. This means that IHL “is not alien to military thinking and has the advantage of being a realistic code for military behaviour as well as protecting human rights to the maximum degree possible in the circumstances” (Doswald-Beck and Vite, 1993). A similar view has also emerged from a recent consultation on humanitarian and political challenges in Africa convened by the InterAfrica Group and Justice Africa. Recommendations from this meeting urge African governments to put IHL at the centre of war in Africa as the best way to protect people’s human rights in war (de Waal, 2000, ch.7).

For humanitarians to be serious and committed about a philosophy of rights in war and armed conflict means committing themselves to a much greater engagement with IHL as the main means of protecting human rights in war. Alongside ICRC, NGOs and UN agencies need to know this law, to share it with those civilians enduring war, with politicians, with business people and with fighters. They need to make real efforts to use it in practice and to build a movement to normalise it as a fundamental way of forging a political contract about the form and limits of armed conflict in society.

THE PERSISTENCE OF PHILANTHROPY

With the politics and language of human rights making such headway in the years since the UN Charter (1945) and Universal Declaration (1948), and with the renewal of the Geneva Conventions in 1949 and 1977, the tenacity of the philanthropic paradigm in mainstream humanitarianism requires some explanation.

Throughout the second part of the 20th century, a great part of humanitarian activity and ideology remained firmly in a philanthropic mould. Until relatively recently, a majority of NGO humanitarian agencies were overtly more concerned with philanthropy than right. The ideology that drove their work was generally conveyed in the sentimental, de-politicised and frequently paternalistic moral tones of the philanthropist. Wrapped in the apolitical language of compassion and help, the moral case in favour of those suffering war and disaster was made in terms of such people's extraordinary and immediate "needs", their pitiful state and their inherent and miserable righteousness as "victims". Once established as the objects of such organised humanitarian philanthropy, people soon became known as "beneficiaries". An odious and de-personalising term, the label "beneficiary" served to undermine the idea that people were the subjects of their own survival and of equal worth to their "benefactors". It also assumed that people were always benefiting from the humanitarian aid on offer.

The staying power of the de-politicised philanthropic model seems to stem from six main factors: financial and fundraising incentives; canny Cold War political opportunism; the lingering colonial gaze; ideological ignorance of human rights, ICRC's protectionism over IHL and, at best, a not unwise belief in the supremacy of a simpler morality than rights.

The Question of Money

Many humanitarian agencies in the second part of the 20th century were driven by quite radical idealism, some with an increasingly rights-based hue like many church related agencies, Oxfam and MSF. But many were not and were conventionally philanthropic. But, even the more radical agencies, seldom found it in their immediate financial interests to develop a more political rights-based consciousness with their domestic publics when appealing for large funds for suffering from war and disaster. In such circumstances, it was consistently assumed that the best button to press in potential givers was the generic philanthropic button. An apolitical description of people as needy victims requiring generosity was more likely to generate the giving reflex than an image of people as oppressed rights-bearers demanding a duty from states and peoples across the world.

Contested Rights

The second break on an earlier widespread development of a rights-based humanitarian paradigm was the contested status of human rights within the ideological contest of the Cold War. Human rights were despised by many on the political left and the political right. Considered as too individualistic to be meaningful in the collective societies of the Soviet bloc, they were regarded as subversive of order and property in hierarchical and elitist right wing polities like the Latin American dictatorships. This meant that it was bad tactics to pursue a human rights interpretation of humanitarian action in many of the world's wars and disasters between 1945 and 1989. Using rights-talk would simply place one in even greater confrontation with the national authorities in a given emergency. Political opportunism thus dictated that humanitarian agencies used the moral language of compassion and needs where there was censorship of rights-talk. Interestingly, such censorship has also traditionally applied in the UK where the Charity

Commission has consistently refused to recognise human rights work as charitable. It was, therefore, expedient for many British agencies at home and abroad to avoid using rights-talk when presenting their response to the relief of poverty and the suffering from war and disaster. In the 1980s, a British charity could get into as much trouble for explicit rights-talk in Conservative Britain as it could in Marxist-Leninist Ethiopia.

Racism and the Colonial Gaze

A third factor concerns the terrible resilience of the colonial gaze. Throughout the last 40 years, large sections of the public in Europe and North America continued to look on Africa and Asia in particular with the eyes of colonialists. Except in rare and extreme moments, it has been hard for the western imagination to recognize that coloured people enduring the horrors of war and disaster are fully “like us”. This widespread racism which still lingers from colonialism was often comforted rather than challenged by humanitarian marketing and reporting which took a patronising philanthropic view. Many personal acts of humanitarian giving were probably tainted by ideas of African and Asian inferiority. Indeed, the very act of giving might often have served to confirm such racism. The fact that the gift was necessary seemed to justify the "fact" that these people were not fully human “like us”. Although better denied by some than by others, the process of "seeing" distant suffering and then giving to it, often completed a vicious cycle of fundamental dis-regard for people in Africa and Asia. In some western societies, financial generosity could veil a lasting racist gaze. Despite agency attempts to alter the image of African and Asian people enduring war or disaster, such tinkering has not yet altered the dominant gaze. The scales have not fallen from most western eyes to see the equality that exists between peoples.

Humanitarian Ignorance of Rights

A fourth reason why the philanthropic paradigm proved so resilient was perhaps one of ideological ignorance. Up until the 1990s, most humanitarian personnel simply did not know about human rights in any meaningful way. Many still don't. Such ignorance was partly because of the censorship of rights-talk described above which was operating

nationally and internationally. But it was also partly because, thanks to the success of Amnesty International and others working primarily on civil and political rights, human rights were caricatured as a limited moral and political agenda around torture and freedom of expression. Most humanitarian agencies, therefore, saw themselves as something other than human rights agencies. Most humanitarian workers probably thought human rights were a good thing but very few had stopped to think about them seriously and to reflect upon their implications.

Separate Branches of International Law

Another important reason why explicit rights-talk took time to arrive in mainstream humanitarianism – so allowing philanthropy to prevail - concerns the slowly unfolding relationship between human rights law and IHL. In the late 1940s it was agreed to keep the development of human rights law apart from the further development of the laws of war. Configuring itself as the international institution of peace *par excellence*, the United Nations did not want to involve itself in the laws of war in a way which might imply that war was acceptable. As such the UN was happy to work on human rights while the ICRC continued to lead on IHL. Equally, during this time, the ICRC was glad not to be entangled in such an overtly contested political institution as the Cold War United Nations (Kolb, 1998; Schindler, 1979.).

But despite these institutional differences, the philosophical continuity between human rights and humanitarianism was always clear from the start. In 1949 and again in 1977, as IHL made major developments, the parallels with human rights were explicit. In his final speech during the signing ceremony of the diplomatic conference that drew up the 1949 Geneva Conventions, the President of the Conference, Max Petitpierre, compared these conventions with the Universal Declaration of Human Rights:

“Our texts [the Geneva Conventions] are based on certain fundamental rights proclaimed in it [Universal Declaration] – respect for the human person, protection against torture and against cruel, inhuman or degrading punishments or treatment. Those rights find their legal expression in the contractual agreements which your Governments have today agreed to

undertake. The Universal Declaration and the Geneva Conventions are both derived from one and the same ideal". (Kolb, 1998).

The same recognition of the overlap between human rights law and IHL was obvious again in 1977 at the drafting of the Additional Protocols where, as Schindler noted, "several of whose provisions, for example Article 75 of API (fundamental guarantees) and article 6 of APII (Penal Prosecutions) are directly derived from the United Nations Covenant on Civil and Political Rights" (Schindler, 1979, p9).

So if the philosophical overlap between rights and humanitarianism were clear and acknowledged, why did the philanthropic rather than rights model remain predominant? The answer lies to some degree with ICRC policy. As the doyen of humanitarian agencies, since the 1950s, ICRC pursued two policies which effectively slowed the notion of rights percolating throughout the wider humanitarian community. First, ICRC judged it necessary to disassociate international humanitarian law (IHL) from human rights as a pre-requisite of its Cold War survival. ICRC has always recognized the parallels between the laws of war and human rights but has, until the 1990s, felt it to be bad tactics to emphasise them. A second ICRC attitude also prevailed. ICRC seemed determined to keep IHL firmly to itself as a matter between it and states. Until the 1990s, ICRC ensured that a distinctive aura of mystique surrounded IHL which made it near untouchable to other humanitarian agencies. To some degree, it gave off the impression that IHL was "ICRC law" and only they could really understand it and argue for it. In this way, the so-called "dissemination" of IHL was largely restricted to states, their military forces, certain academics and rebel groups. Until recently, dissemination priorities did not focus significantly on NGOs and other humanitarian actors, let alone civilians and community-based organisations. Throughout this period, few NGOs felt entitled or encouraged to pick up and read copies of the Geneva Conventions and their Additional Protocols. This meant that hardly any active humanitarians outside the Red Cross movement had any idea of what IHL was about.

This institutional (but not philosophical) disassociation between IHL and Human Rights Law (HRL), and an element of ICRC protectionism of IHL lead to widespread ignorance of both amongst many humanitarian agencies. It lead to a general perception that IHL and human rights were fundamentally different. More than that, the impression was created that

IHL was the sole preserve of the ICRC – Swiss legal turf marked with an implicit sign reading "Keep off the Grass". This lack of access to the philosophical and legal principles underpinning people's protection in war meant that, instead of becoming more politically sophisticated, NGO and UN humanitarian philosophy fell back on the paternalistic ideology of philanthropy with its ideas of need, compassion and help. Such moral generalities were then complemented with crumbs from under the Red Cross table: scraps of ideas about impartiality and neutrality. During the Cold War, ICRC never really educated its NGO humanitarian offspring – possibly because it regarded them as illegitimate and something of a liability.

An Ethic Beyond Rights

Finally, another reason why a philanthropic model of humanitarianism has remained resilient and dominant over the rights model is because it is not all bad! There is great truth in a humanitarian ethic that transcends a rights-based formulation of protection in war. Humanitarians are perhaps rightly afraid of their ethic becoming boxed into a particular philosophical and political formula of rights. People respond to the suffering of war by moral instinct - by identification and compassion. This is the stuff of spirit and emotion which presses upon us as charity or her more broken relation, philanthropy. To bind this urge in a transient political discourse is potentially to sacrifice it to a philosophical fashion. Such a risk is too great for many humanitarians who want to be allowed to use raw moral talk to vent their concerns above the sterility of elite political debate. Humanitarians want a moral model for their cause that does not complicate it with rights but states simply that it *is* right.

THE SHIFT TOWARDS RIGHTS

On paper at least, in both humanitarian and development ideology, rights are finally gaining the ascendancy over philanthropy. There are perhaps four significant areas that reveal this trend and provide the context to suggest that humanitarianism is becoming increasingly rights-based.

The United Nations and Rights

The first driver to be actively shaping a form of rights-based humanitarianism is the United Nations. The development of humanitarian policy by a United Nations Security Council (UNSC) which now more frequently agrees than disagrees has involved a serious equalising tendency in the old tension between state sovereignty and individual rights. At one reading, the whole of the recent history of humanitarian intervention in the 1990s has been about the storming, forming and norming of a new international relationship between the sovereignty of the state and the rights of the human person. Boutros Boutros Ghali's now famous observation in 1992 that "the time of absolute and exclusive sovereignty has passed" heralded a new era in the relationship between the individual and the state - first on paper and then in militarised interventions on the ground (Boutros Ghali, 1992).

Throughout the 1990s, the rights of the individual human person as the primary subject of politics and an end in herself became evermore obvious in the Security Council's humanitarian policy. The new centrality of individual human rights became explicit both in the interventions embarked upon in places like Somalia, Bosnia, Kosovo and East Timor, and also cried out by their absence in the UN's terrible failure to intervene on behalf of the victims of the Rwandan genocide. By the end of the decade, Boutros Ghali's successor, Kofi Annan could write:

"State sovereignty, in its most basic sense, is being re-defined...states are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time, individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the charter of the United Nations and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them" (Annan, 1999)

Throughout the decade, the UNSC gradually equated its mission to "maintain international peace and security" with the protection of human rights. In his report to the Security Council on the Protection of Civilians in Armed Conflict, Kofi Annan could therefore conclude that at the end of the

1990s, the Security Council: "now recognises that massive and systematic breaches of human rights law and international humanitarian law constitute threats to international peace and security, and therefore demand its attention and action." (UN Secretary General, 1999, para 30)

On paper, the UN Security Council has become rights-based. Its many resolutions of the 1990s condemn the actions of others and justify its own actions explicitly in terms of human rights law and international humanitarian law. And it has gone further than resolutions and interventions. Throughout the 1990s, the United Nations has also developed a capacity to bring the full judgement of the human rights law and IHL to bear on individuals accused of violations and grave breaches. The progress towards developing the Statute for a permanent International Criminal Court (ICC) has gone hand in hand with the interim setting-up of specific UN tribunals in which to prosecute and convict perpetrators from Former Yugoslavia, Rwanda and Sierra Leone. From 1997 onwards, Kofi Annan has also made it a priority of his reforms to put human rights at the centre of all UN agencies and their activities, albeit with limited success (Kenny, 2000).

At the end of 1999, Kofi Annan could recognize a new "developing international norm in favour of intervention to protect civilians from wholesale slaughter" (Annan, 1999). This strongly emerging norm is framed expressly in terms of human rights and humanitarian law. In its resolutions and in the practice of its new courts, the discourse of the UN has clearly moved from a philanthropic morality of "needs must", to a political principle of "rights demand".

ICRC and Avenir

ICRC's "Avenir" process of increased open-ness has witnessed a real commitment by ICRC to work more closely with NGOs and human rights agencies on developing a complementary rights-based framework for humanitarianism. ICRC is now much more content to make explicit links between HRL and IHL, both in legal terms and in the building of new relationships with other agencies. Since 1996, ICRC has convened an annual inter-agency workshop on humanitarian protection in Geneva to develop practical combined HR and IHL strategies for the protection of

civilians in war. In its official statements and the writing of its members and staff, it has also been careful to recognise the importance of integrating human rights with international humanitarian law in policy, practice and law enforcement (Aubert 1989, Doswald-Beck and Vite 1993, ICRC 1995).

ICRC has also determined on a wider remit for the dissemination of IHL to include civil society, young people and NGOs (Harroff-Tavel, 1998, ICRC, 1997). To mark the 50th anniversary of the Geneva Conventions of 1949, ICRC carried out a global survey which canvassed opinion across whole societies - civilians, military forces and armed groups in 12 countries (ICRC, 1999). It is to be hoped that the voices from this survey are bound to influence the direction and style of ICRC's future dissemination strategy by encouraging them to engage directly with civilians and civil society organisations to generate a popular movement in support of IHL. National Red Cross societies are also working more closely on IHL dissemination with national NGOs. For example, in the UK, the British Red Cross is working with a group of 14 leading British NGOs to increase their knowledge and capacity in IHL (Slim et al, 2001).

NGOs, The Humanitarian Charter and Humanitarian Protection

Another area showing evidence of tectonic shifts towards a rights-based humanitarian paradigm is to be found in the international NGO community in a small but revealing document attached to their series of minimum technical standards for disaster relief (SPHERE, 2000). This small document, entitled *The Humanitarian Charter*, is an explicit call to a rights-based humanitarianism. A summary and reaffirmation of three core humanitarian principles (the right to life with dignity, distinction between combatants and non-combatants, and the refugee principle of non-refoulement) this document precisely grounds the signatory agencies' understanding of their humanitarian work in terms of human rights law, refugee law and humanitarian law. The Humanitarian Charter marks the passing of key sections of the international NGO community – on paper at least - from philanthropy to rights. By directly linking the Humanitarian Charter to the technical standards which follow it, NGOs are seeking to make plain what the realisation of rights would look like in practice in the midst of war, disaster and displacement. SPHERE's specific standards in

the provision of health care, water and sanitation, shelter, food security and nutrition translate people's rights into specific agency duties.

A further sign of the shift to rights in the international NGO community is to be found in the emergence and re-definition of the term “protection” in NGO consciousness. What was “relief” (the great philanthropic term of the Victorian Poor Laws and the defining term of Britain’s ancient charity laws) became humanitarian “assistance” in the 1990s and is now merging with practical legal notions of rights in war and asylum to shape a new overarching term “humanitarian protection” that seems set to become the NGO term of choice to cover all humanitarian work. Several important pieces of work emanating from NGO and academic circles have put human rights at the centre of humanitarian action in a practical way that NGOs can understand and act on. Notable amongst these are the work of Oxfam’s Humanitarian Department (Darcy, 1997) and the important series by the Humanitarianism and War Project in the US (O’Neill, 1999; Frohardt et al 1999). ActionAid are also developing their humanitarian work with a practical rights-based approach, urging all their staff to wear “rights-based glasses” when analysing conflict and disasters (Morago-Nicolas, 2000).

Take-up of the idea of humanitarian protection in NGO circles looks set to make NGO humanitarian practice more akin to the wider type of ICRC and UNHCR mandate which is grounded in international law and goes well beyond the simple provision of relief commodities. Protective humanitarian practice now sees NGOs wanting to work for the protection and realisation of the full range of people’s rights in war. The work of humanitarian NGOs looks set to overlap with traditional human rights techniques of accompaniment, monitoring and reporting of violations (Paul, 1999).

Rights-Based Development

Alongside the shift of the United Nations, the Red Cross and NGOs towards rights-based humanitarianism, lies a parallel process in the re-definition of poverty and development by the UN, western governments and NGOs alike. In their Human Development Report 2000, UNDP went rights-based. Drawing heavily on the work of one of the report's main authors, the Nobel Laureate Amartya Sen, UNDP's report championed a new philosophy for

development (UNDP, 2000, esp ch 1). This used Sen's new over-arching concept of human freedom (Sen 2000) to draw the rather tired project of development into the firm philosophical, political and legal embrace of human rights (UNDP, 2000).

In Britain, a theory of rights has been informing both government and NGO development philosophy since the early 1990s when Oxfam began to re-conceptualise its work in terms of human rights (Oxfam, 1995). Also from the mid-1990s, Save the Children UK has been undergoing a thorough reorientation to become a rights-based agency in which all that it does is determined by the UN Convention on the Rights of the Child. ActionAid followed suit in 1998 by expressing its strategic plan in terms of human rights (ActionAid 1999). In 1998, Julia Hausermann - a long time champion of rights-based development - wrote an initial paper for the British government's Department for International Development (DFID) which laid out in detail the relationship between rights and development (Hausermann, 1998). This became the prototype for DFID's current rights-based strategy for achieving the international development targets. The object of this strategy is to "enable all people to be active citizens with rights, expectations and responsibilities" so recognizing explicitly that "development is a political process" (DFID 2000, p7 and 18).

Thus, just as humanitarian philosophy is edging from philanthropy to rights, so too is development. In many agencies, government, UN and NGO alike, a new philosophy of rights has emerged as the theoretical underpinning for all their work on poverty, war and disaster.

RIGHTS-BASED HUMANITARIANISM AS PROPER POLITICISATION

If human rights seek above all to engage some form of political contract to ensure their enjoyment, what does such a philosophy imply for humanitarianism in war? What does it mean to speak of rights-based humanitarianism rather than charitable or philanthropic humanitarianism? What are the advantages of rights-talk over philanthropy and what are the risks of rights-talk?

The notion of rights-based humanitarianism is only novel to some. The idea is self-evident and even tautological to those whose humanitarianism has always had a philosophy of right. Alex de Waal's writing on famine and war makes clear that rights and broad-based political contract must be at the heart of any real attempts to prevent famine and limit political violence (De Waal, 1997 and 2000). But to the predominantly philanthropic mind, it may well be a puzzling idea. For, to understand rights requires something of a Copernican revolution in philanthropic thinking. It requires humanitarians to reorientate their morality and thought so that they orbit around equality, contract and justice rather than pity and help. From such a perspective comes the proper politicisation of humanitarianism – a consistent and still impartial political philosophy grounded in basic goods, natural rights and justice which can make political space for itself to challenge, mitigate and even transform the particular politics of violence and war.

In his recent review of politics and humanitarian action, Neil MacFarlane, urges humanitarian agencies to recognize and explicitly advance their politics. He notes how the tendency of international humanitarians to regard politics as “bad” and humanitarian action as “good” and “moral” is absurd and concludes that “the positioning of humanitarian agencies outside or above politics may prove self-defeating” (MacFarlane, 2000, p7 and p89). By recognizing the strength of their own impartial political philosophy of rights in war and by advocating it in the proper political terms to the proper political targets, humanitarians can make an impact on politics from their rightful place within it.

Advantages of a Humanitarian Philosophy of Rights

But this is lofty stuff! What are the pros and cons in practice? Here are what might constitute a few of the basic advantages of a humanitarian philosophy of rights in action.

The emphasis on rights as they are set out in human rights law and specified in international humanitarian law and refugee law gives humanitarianism an integrated moral, political and legal framework of affirming universals of human values. Grounding humanitarian action in rights, duties and laws makes the values of humanitarian work explicit to all and it links humanitarian values directly to justice. This means that humanitarianism is

not left free-floating as some generic act of kindness but is rooted in explicit values, precise political contracts, exact military duties, particular types of assistance, functioning courts, tribunals and truth commissions. Such political and legal *connectedness* makes humanitarian action less vulnerable to being shrouded in moral generalisations and driven by mixed motives.

At a personal level, rights dignify rather than victimise or patronise people. They make people more powerful as claimants rather than beggars. They reveal them as moral, political and legal equals. Using rights-talk together with, and on behalf of, those civilians who endure the suffering, atrocity and impoverishment of war puts them centre stage in the prosecution of the war and international response to it. As Finnis has pointed out, alongside the recognition of equality and dignity, human rights make two other important contributions to any political encounter (Finnis, p221). These are as relevant to armed conflict and humanitarian action as to any other situation. First, by affirming universal rights and duties, human rights “tends to undercut the attractions of the ‘calculations’ of the consequentialists”. Explicitly recognizing people’s rights in war makes it more difficult to marginalise their violation as a somehow collateral, accidental or unfortunate outcome of the otherwise moral violence and politics of the conflict. When rights are clear, moral arguments and political or military strategies which tend to see people as means rather than ends in the light of some greater good are more quickly challenged. Secondly, rights lists give clear details of the various things that make for a good life so that these can not be lost from view in war but constantly challenge those with a duty to contribute to their realisation, either by protection or peace. Rights can also act as standards. As they are listed in human rights law and specified much further in IHL, refugee law and specific humanitarian technical standards, human rights and their related duties provide objective criteria against which to judge human behaviour in the heat of passion and prejudice or in the coldness of neglect so common in war. The lists and laws of human rights can act as a restraint to the violent and a spur to the negligent. People, politicians, fighters and humanitarians can check the rightness of their actions against the rights and rules of international law. Rights and laws that flow from them can operate as standards of practice against which all involved can be called to account now and retrospectively.

MITIGATING THE RISKS OF A PHILOSOPHY OF RIGHTS

There are perhaps four main risks in using a rights-based approach to people's protection in war. While these risks are serious in practice, there may also be ways to mitigate or even overcome them.

The Utopian Tendency in Rights

By explicitly aligning humanitarianism in war with a philosophy of rights, there is a real risk of imbuing it with an unhelpful utopianism. Norman Geras has observed how easy it is for theorists to espouse new political theories which may have no practical effect on the ground whatsoever:

"Theories of rights and justice which do not seriously measure themselves against the realities of violation – violation of the norms about which they theorise, violation of the lives of human beings – and do not seriously measure themselves against the factors conducive to such violation, might be reckoned by this failure to be lacking in an important way". (Geras, p. 26).

For an explicit philosophy of rights to be a real improvement in practice on humanitarian philanthropy, it must be able to leave the paper on which it is written and show itself to work on the ground by protecting people better. It must be possible to prove that it is an approach which positively re-politicises a contract around humanitarian action in armed conflict and has a good effect in the face of extreme violations. In short, rights-talk is not enough. It is easy to write political philosophy for a place that does not exist (utopia). So what can be done to curb the utopian tendency of rights? The answer must lie with the greater use of IHL – the laws of war in which rights lists are transformed into specific political, military and humanitarian duties. The duties set out in IHL must be widely known and widely argued for in the political space in and around every armed conflict.

Still Contested

Utopian problems are not the only risk to threaten a humanitarianism of rights. Human Rights as currently formulated are highly contested between

different cultures and their polities – both theoretically in their very idea and also in the cultural detail of their specific articles (Donnelly, 1989, ch 6). Human rights are viewed as morally, politically and culturally imperialism by some and as subversive by others. This tension is bound to continue. The particular expression of a human right will always be historically contingent and the contest will continue. But by adopting an explicit philosophy of human rights, humanitarianism will enter the arena of that contest. For a profession so currently dependent on physical access and cooperation with so many diverse regimes, this will be problematic on occasions. But to pretend that access is not already problematic for humanitarianism as it is currently framed would be disingenuous. Once again, the best means of maintaining a humanitarianism of rights when those rights are contested is by emphasising IHL over human rights law.

Proliferation and Devaluation

The proliferation of human rights may also be a problem for rights-based humanitarianism. A sort of Parkinson's Law tends to function around rights which means that rights lists multiply apparently *ad infinitum* and *ad absurdum* to many of their critics. Swift has argued that simply listing rights that are not fully regarded as universal, nor clearly justiciable, nor specific in attributing a reciprocal duty is pointless and reduces the value of other rights that do meet these criteria (Swift, 1999). The fact that the general proliferation of rights may affect the value and currency of particular rights is a real problem for alligning the protection of civilians in war with rights. But again, IHL comes to the rescue by meeting Swift's criteria and ensuring that rights in war and genocide remain universally acknowledged and specific in their attribution of duty and redress.

Legalese

Another risk involved in developing a rights-based approach to humanitarian protection is the legalism associated with human rights and IHL. Although expressions of moral and political value, human rights are expressed as law and so written in legal jargon. This has two main problems: deterrent and scepticism. Like all professions, the legal profession across all cultures has invested a great deal in maintaining a

significant element of mystique and unintelligibility around the law. This means that people are usually put off from practising it themselves and decide either to do nothing about their predicament or resort to paying a lawyer. The mystique and complexity of the law gives rise in many cultures to what might be called “jurisphobia”. People are afraid of the law and think it too complicated or expensive to pursue. And they are often right. Equally, a widespread scepticism about the power and efficacy of laws (especially international laws) affects many societies, especially those most in need of protection from those laws. In many societies enduring violent conflict and poverty, the law has a good reputation for looking good on paper but not in practice. This innate scepticism also prevents people from looking at rights and their legal expression as a source of hope.

If rights-based humanitarianism is going to take root beyond humanitarian agencies and form a wider people’s movement for rights in war, then the dry and complex laws which currently enfold these rights must be brought down from the mountain and given to people to make sense of for themselves. The human rights lawyer, Helena Kennedy, has described human rights as the “ground where we can bring the law back to the common conversation of humankind” (Kennedy, 2000). In many places where war and rights are the burning issue, this hope is still very far from the truth. Although ICRC’s global survey showed that the great majority of people cherished the basic values of restraint in war enshrined in IHL, not many villages threatened by war around the world are humming with a conversation about the laws that seek to protect their rights. This common conversation must be had and humanitarians must help to enable it. Odinkalu has criticised the human rights movement for failing to share a common conversation around human rights in Africa, becoming instead an elite and “select professional cadre” with its own specialised language and certificates (Odinkalu, 2000). Humanitarianism’s adoption of rights talk must avoid this pitfall by taking the Geneva Conventions to the people that need them most.

Finally, the legal texts in which human rights are presented do not easily catch the moral imagination. The philosophy of human rights is possibly one of the first of the great human ideologies which has no great narrative running through its holy texts. It has no over-arching story that means it can be told to every child sitting on the knee of a parent or grandparent. How does one begin to talk of human rights and their protection in war without a narrative comparable to the Exodus, the life of the Prophet

Mohammed or Marx's great narrative of history? This too is a problem in the communication of a philosophy of rights. The story of human rights seldom grips the heart or quickens the mind. But even though there is no great single narrative, there are lots of smaller stories of people who have stood up for their rights and the rights of others. More of these stories are being lived and told every day locally, nationally and internationally. Humanitarians need to know these stories so that they can tell them. But they also need to be a part of the making of such stories.

Conclusion

The Anglican cleric, Dean Inge, once said that “the man who marries the spirit of the age will soon find himself a widower”³. Human rights is undoubtedly one of the moving spirits of our age and so it indeed may be profoundly unwise to join it to so important a matter as the protection of civilians in war. However, I feel strongly that such a marriage is worth the risk for three main reasons. First, because a philosophy of rights, if digested really seriously by western humanitarians, could at last free us from the colonial legacy of philanthropy and charity with its implicit paternalism and racism. Secondly, I feel confident that in international humanitarian law, we have the necessary and very practical buffer we need to protect humanitarianism from the fadism, vagueries and utopianism of human rights. The protection of people's rights have been at the heart of international humanitarian law since its renewal in 1949. With a new ability to use rights-talk more freely, I feel sure that we can use IHL effectively in the business of specifying precisely what human rights are involved in a given situation of armed conflict. So IHL enables humanitarians to move beyond an apparently simplistic “manifesto” approach to rights. Finally, I think that the explicit adoption of rights by humanitarians will allow us to connect with a proper politics that leads beyond humanitarian protection to justice and to the development of real political contracts between people and power about the place and extent of armed conflict in their politics.

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³ I am grateful to David Turton for providing me with this quotation and in so doing serving me with an important warning that I probably should have heeded.

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