Bill Bowring

Misunderstanding MacIntyre on Human Rights

Abstract: This short article starts with Alasdair MacIntyre's famous critical remarks on human rights in *After Virtue*, and proceeds to ask whether in fact MacIntyre can be read against himself, taking a range of his own texts. This provides the basis for a sketch of a substantive account of human rights, more historicised and political than those for which MacIntyre has so little time. The article engages with some leading English Aristotelians—James Griffin and John Tasioulas in particular. MacIntyre has been a Marxist: this article suggests that perhaps he still is and that a consistent Aristotelian is a Marxist, especially where human rights are concerned.

0. Introduction

In this article I start from Alasdair MacIntyre's notorious remarks about human rights in *After Virtue*, and cite a number of leading human rights scholars, each of whom would appear to have misread the text entirely, in startlingly different ways. I contend that these authors and others have missed the point about MacIntyre; and although he has moved a long way in his intellectual journey since his earliest works, there is an underlying core which has not changed so much.

I do not pretend to have fully understood MacIntyre; and certainly do not purport to understand him better than he understands himself. Furthermore, my own take on MacIntyre is highly selective, and not at all consistent with the general tenor of his thought. Nevertheless, I do seek to present his reflections on issues concerned with human rights, taken from a range of his many publications. I do have an ulterior motive, not connected with any desire to criticise MacIntyre. My reason for undertaking this exercise is that I am seeking to develop an account of human rights which is substantive rather than procedural. This is presented at greater length in my book (Bowring 2008). That is, I argue that a case can be made for an Aristotelian, substantive account of human rights; a case that is thoroughly historicised, but restores human rights to their proper status as always scandalous: human rights are the product of, and constantly reanimated by, human struggle.

I have found a number of points in MacIntyre's work at which, for reasons consistent with his Aristotelian frustration with the emptiness of contemporary rights talk, he provides strong support for my contentions. I would argue that there is significant consistency to his remarks, and that he can be taken to hold a

set of opinions which might seem to run counter to the bold statements in *After Virtue*. I recognise, however, that in his more recent work MacIntyre tends to an increasingly conservative set of conclusions, consistent with his Catholicism. But my own feeling is that not only has MacIntyre been misunderstood by his human rights critics: in an important sense, he may be taken, in this respect, more and more to have misunderstood himself.

My strategy in the paper is first to refer briefly to the critics already referred to. Next, I outline MacIntyre's own core positions as I read them. This takes me to an account of the thinking about human rights of two contemporary Aristotelians, James Griffin and John Tasioulas. Finally, I attempt a sketch of what an Aristotelian Marxist account of human rights might look like.

1. *After Virtue*, and Human Rights Critics and Supporters

In *After Virtue* Alasdair MacIntyre famously assaulted the contemporary discourse of "rights attaching to human beings simply *qua* human beings". He selected Gewirth (1978), and Dworkin (1976), in order to show that there are no such rights, and belief in them is one with belief in witches and in unicorns (MacIntyre 1990, 69). He specified that by 'rights' he did not mean those rights conferred by positive law or custom on specified classes of person.

> "I mean those rights which are alleged to belong to human beings as
> such and which are cited as a reason for holding that people ought not
> to be interfered with in their pursuit of life, liberty and happiness."
> (MacIntyre 1990, 68–69)

MacIntyre points to the fact that prior to the eighteenth century, where such rights were spoken of as 'natural rights' or 'rights of man', there was no expression in any ancient or medieval language correctly translated by the modern expression 'a right'. This of course does not mean that there were no such rights—only 'that no one could have known that there were'. In a rather later text, now explicitly Christian, MacIntyre referred to "[...] the inadequacy and the sterility of the modern idiom and rhetoric of rights." (MacIntyre 1991, 110) MacIntyre is not alone in considering that human rights are no more than rhetoric, the position held for example by Martin Loughlin (2001, 45).

As a result of these arguments, MacIntyre has become something of a straw man for human rights theorists and apologists. Michael Freeman, who studies human rights as a political scientist, selects MacIntyre as someone who asserts that human rights doctrine is false; according to Freeman, MacIntyre holds the view that the belief in human rights is an ontological error (Freeman 1994, 500). According to Freeman, "MacIntyre misses his target, and the target he misses is a non-foundationalist defense of rights." However, a closer reading of MacIntyre's text would show that MacIntyre would be equally critical of a non-foundationalist account. In Freeman's more recent, and very popular, textbook he contends that MacIntyre's mistake is to think of "human rights" as "things" that we could "have" as we have arms or legs (Freeman 2002, 5–6). Freeman's

answer is that rights are not *things*, but *just claims or entitlements*. Thus, this "[. . .] defeats MacIntyre's objection that belief in human rights is superstitious, for there is nothing superstitious in thinking what human beings may be entitled to". But that is surely not MacIntyre's objection, which concerns the pretended universality of human rights, when their inception can be specified in both space and time.

Next, Upendra Baxi, a passionate critic of law and rights, characterises MacIntyre's position as "human rights weariness—a kind of moral fatigue with rights languages and logics, marked by an ethical disposition that contests the very notion of human rights as a moral language and rhetoric." (Baxi 2002, 51–52) I myself would reply that MacIntyre's views are characterised not at all by weariness, but by a lucid and ardent moral passion.

The Director of Centre for the Study of Human Rights at the London School of Economics, Conor Gearty, in his popular recent Hamlyn Lectures, observes as follows: "I think MacIntyre was wrong to hanker after a now impossible Aristotelian virtue but he was right that something needs to be done." (Gearty 2006, 57–58) It does indeed; but Gearty has clearly not read MacIntyre's *Dependant Rational Animals* (1999), which explicitly argues for the contemporary necessity of—the virtues.

Finally, in her *Who Believes in Human Rights?*, Marie-Bénédicte Dembour simply classes MacIntyre, with herself, as a "human rights nihilist or discourse scholar" (Dembour 2006, 258). Her own view is that human rights, far from being inherent or inalienable, are "a system of persuasion", a "kind of rhetoric", an 'expression of the will to power—even to domination—of those making the [human rights] truth-claims over those who are being addressed by them" (Dembour 2006, 275; citing Snyder 1988, xii). Her desire to recruit MacIntyre to her cause is perhaps premature.

2. Macintyre's Aristotelianism

In fact, MacIntyre (2006, 111) is very far from being a nihilist. Instead, he has argued for "socially embodied moral concepts". Aristotle, according to him, had the following position: "[. . .]that it was only within a particular type of political and social order that rationally practical and moral concepts could be socially embodied". This was in fact his position from at least 1967. In *A Short History of Ethics*, published first in that year, he wrote: "Moral concepts are embodied in and are partially constitutive of forms of social life." (MacIntyre 1999, 1)

Indeed, Steven Lukes described MacIntyre as "[. . .] developing a 'social ideological', quasi-Aristotelian view [. . .]" (Lukes 1981, 334). Another commentator, Susan Stephenson, summarises what she described as MacIntyre's "reworked Aristotelianism" as having three central terms – practices, narratives and traditions. Stephenson points out that MacIntyre defines "Practices" as "any coherent and complex form of socially established human activity through which goods internal to that form of activity are realised in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that

form of activity with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended" (MacIntyre 1985, 187). Furthermore, he defines "tradition" as "[...] an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition [...]" (222).

Moreover, MacIntyre has also criticised conservative thinkers, such as Burke, who wanted to counterpose tradition and reason, and tradition and revolution. MacIntyre makes what is for me a very profound and important remark: "Yet, if the present arguments are correct, it is traditions that are the bearers of reason, and traditions at certain periods actually require and need revolutions for their continuance." (MacIntyre 2006, 12) He is referring to the 'great revolution'—the French Revolution. Part of my own project is the rehabilitation of the great revolutions, and the restoration of their honour.

Of course, MacIntyre is commonly categorised as a 'communitarian', although he declared his dislike for "[C]ontemporary communitarians, from whom I strongly dissociate myself whenever I have had an opportunity to do so", because they "[...] advance their proposals as a contribution to the politics of the nation state." (MacIntyre, in Horton/Mendus 1994, 302) However, he has also stated that "[...] Aristotle gave us excellent reasons for believing that both rational enquiry in politics and ethics and rationality in action require membership in a community which shares allegiance to some tolerably specific overall conception of the ultimate human good." (MacIntyre 1991, 99) In *Whose Justice? Which Rationality*, exploring Aristotle's legacy, he wrote:

> "Aristotle's presupposed social context is one in which evaluation is primarily in terms of the achievement of the ends of activity; Hume's is one in which evaluation is primarily in terms of the satisfaction of consumers. The individual envisaged by Aristotle engages in practical reasoning not just *qua* individual, but *qua* citizen, of a *polis*; the individual as envisaged by Hume engages in practical reasoning *qua* member of a type of society in which rank, property, and pride structure social exchanges." (MacIntyre 1988, 298)

MacIntyre has also said the following in the same text:

> "The conclusion to which the argument has so far led is not only that it is out of the debates, conflicts and enquiry of socially embodied, historically contingent traditions that contentions regarding practical rationality and justice are advanced, modified, abandoned or replaced, but that there is no other way to engage in the formulation, elaboration, rational justification, and criticism of accounts of practical rationality and justice except from within some one particular tradition in conversation, cooperation, and conflict with those who inhabit the same tradition." (MacIntyre 1988, 350)

This is what Charles Taylor has described as MacIntyre's distinction between "substantive notions of ethics" and "procedural notions of ethics"—the latter

in a powerful tradition from Bentham through Kant to Rawls, Dworkin and Habermas. (Taylor, in Horton/Mendus 1994, 27) Taylor says that for the former "[...] you have to start for your theory of justice from the kinds of goods and the kinds of common practices organised around these goods that people actually have in a given society" (Taylor ibid, 31).

It will be seen from these quotations which MacIntyre it is that speaks to me most directly. This Aristotelian MacIntyre is, for me, plainly arguing for a substantive and embodied rather than a procedural and deracinated understanding of ethics, one that is socially embodied and located in history. This understanding, I contend, is equally applicable to human rights as I wish to present them.

It seems to me that the later, more religious, MacIntyre has allowed himself to view rights as only and always "admirably suited to the purposes of individuals or groups who believe themselves restricted or restrained in any way by religious institutions or authorities." The very conservative tendency of this line of thought may be seen in the passage which follows on the same page: "Generally and characteristically [rights] are used to present continually renewed challenges to what is taken by those who present them to be the institutional *status quo*, challenges designed to dissolve the bonds, and undermine the authority, of all institutions intermediate between the individual on the one hand and the government and the justice system on the other: such institutions as, families, schools and churches." (MacIntyre 1994, 105) This in fact is very close to Burke's critique, *Reflections on the Revolution in France*, of the human rights contained in the French revolution's Declaration of the Rights of Man and of the Citizen: "While they are possessed by these notions [rights of men], it is vain to talk to them of the practice of their ancestors, the fundamental laws of their country, the fixed form of the constitution [...] they have wrought under-ground a mine that will blow up at one grand explosion all examples of antiquity, all precedents, charters and acts of parliament." (Burke 1790, in Waldron 1987, 104)

3. Human Rights as Substantive Rather than Procedural

So, what would it mean to think *substantively* about human rights (or for that matter about other categories and concepts which find their place at the centre of international law, for example the right of states to non-interference in their internal affairs, or the right of peoples to self-determination)?

At this point I have drawn particular inspiration from a pair of articles in the *European Journal of Philosophy*, the first by James Griffin (Griffin 2001), the second John Tasioulas (2001). Both draw on a substantive account of human rights, developed by Wayne Sumner (1987). Griffin states that

> "We need a substantive account of human rights. By a 'substantive' account I mean one that adds enough content to the notion of 'human' in the term 'human rights' to tell us, for any proposed such right, whether it really is one—one that thereby supplies what I shall call 'existence conditions' for a human right." (Griffin 2001, 307)

The reader will note that this is what is entirely missing in Habermas' proceduralist (or Loughlin's) account. Griffin contrasts this with a "structural" or "conceptual" account—the accounts of Feinberg, Dworkin, Rawls, or Hohfeld. In order to supply a substantive account, he prefers a "bottom-up approach"—which starts with

> "human rights as used in our actual social life by politicians, lawyers, social campaigners, as well as theorists of various sorts, and then sees what higher principles one must resort to in order to explain their moral weight [...]" (Griffin 2001, 308)

For Griffin (in his Presidential Address to the Aristotelian Society in October 2000), human rights are grounded in "personhood" – with the constraint that they are rights not to anything that promotes human *good* or *flourishing*, but merely what is needed for human *status*. (Griffin 2001, 312) Griffin's Aristotelian account of human rights

> "[...] is centred on the notion of agency. We human beings have the capacity to form pictures of what a good life would be and to try to realise these pictures. We value our status as agents especially highly, often more highly even than out happiness. Human rights can then be seen as protections of our agency – what one might call our personhood. They are protective of that somewhat austere state, the life of an agent and not of a good or happy or perfected or flourishing life." (Griffin 2000, 10)

John Tasioulas argues for a broadening out of Griffin's approach, for a "pluralist" account—he means a pluralism of values. This follows from his notion of "temporal relativity":

> "on this view, human rights would be possessed by humans *qua* human, but not necessarily at all times and all societies throughout history. Instead, they would be possessed by all in certain broadly defined historical contexts." (Tasioulas 2002, 87)

His substantially Aristotelian conclusion is that: "[...] if we were to reduce the pluralist account to a slogan, it would be that human rights are to certain minimum conditions of a good life [...]" (Tasioulas 2002, 96) . In this account, human rights are not rhetoric, nor a claim to universality derived from some purported characteristic of humanity, but are embodied and socially embedded.

More recently Tasioulas has specifically criticised MacIntyre for overlooking another understanding of rights which is in fact Tasioulas' own:

> "that in order to 'complete the Enlightenment project' of human rights we need to go back beyond the Enlightenment to an Aristotelian tradition of thought about the human good and the special protection it merits." (Tasioulas 2003, 26)

I would agree to that. That is in part because my own understanding of Aristotle is close to that of Terry Eagleton, who reminds us that: "For Aristotle, ethics and politics are intimately related. Ethics is about excelling at being human, and nobody can do this in isolation. Moreover, nobody can do it unless the political institutions that allow you to do it are available. This kind of moral thinking was inherited by Karl Marx." (Eagleton 2003) That I think is also what MacIntyre had in mind when he used the phrase "historically extended, socially embodied" (see above) in relation to moral concepts.

4. A Sketch of Another Account

At this point I want to focus on the importance of 'temporality' as identified by John Tasioulas. I have already referred to the scandal attaching to the concept of human rights from the very first declarations of fundamental rights. For me, the delight of teaching human rights is that they problematise themselves at every step. Witness the substantial attacks made on the 'first generation', civil and political, rights of the French Declaration from the right (Burke), the centre (Bentham) and the left (Marx), with a few years of their promulgation (Waldron 1987).

For the purpose of my attempt at a substantive account of rights, I now turn to the schema—much criticised and perhaps primarily of pedagogical value—of 'three generations' of human rights, developed in the 1970s by Karel Vasak of UNESCO (Vasek 1977 in Crawford 1988, 41) It is interesting that this model gained currency as part of the fierce debate concerning a concept of human rights which has always been highly controversial. In the 1980s, it was on the crest of a wave, but is now largely disowned—the concept of 'people's rights'. First and foremost of these is the principle, now the legal right, of the right of peoples to self-determination. In chapter 1 of my new book (2008) I show how the originator of this concept was none other than Vladimir Lenin; and that in Bolshevik Russia he put it into practice.

The 'first generation', the civil and political rights, together with the right to private property, have temporal and geographical origins: they sprang directly from the French Revolution in 1789, and the American Revolution of the same period. I have already mentioned the horror inspired by the Declaration in England. However, Marx a little later provided the most devastating critique of the 'first generation' of rights, the civil and political rights. In his short polemic *On the Jewish Question* (Marx 1975a; Waldron 1987, 119–150), written at the same time as the *Contribution* referred to above, he engaged with the rights set out in the French Declaration of Rights of Man and of the Citizen, and the Constitutions of 1793 and 1795. Marx stated as follows:

> "Liberty, therefore, is the right to do everything that harms no one else. The limits within which anyone can act *without harming* someone else are defined by law, just as the boundary between two fields is determined by a boundary post. It is a question of the liberty of man as an isolated monad, withdrawn into himself [...]. the right of

> man to liberty is based not on the association of man with man, but
> on the separation of man from man. It is the right of this separation,
> the right of the *restricted* individual, withdrawn into himself [...].
> The practical application of man's right to liberty is man's right to
> private property."

Marx' critique of 'first generation' rights was and remains incisive, indeed definitive. What he could not anticipate was the increasing importance, as a direct result of political events and struggles, of the 'second' and 'third' generations, namely social and economic rights, and peoples' rights. I suspect his response now would be rather different.

The temporality of the recognition in international law of the 'second generation' of human rights, social and economic rights, *as* human rights can also be located very accurately. These rights achieved the status of legal rights, and, most important, became available as instruments of legitimation and struggle, as a direct consequences of the events of 1917, more specifically in the creation of the International Labour Organisation in 1919. The ILO remains the most important source and mechanism for protection of social and economic rights. These rights have recently become much more concrete, in the context of the collapse of the USSR, by way of the Council of Europe's 1996 *Revised Social Charter*[1], which came into force in 1999, with its mechanism for collective complaints, by Trade Unions and NGOs, to the European Committee of Social Rights. In Chapter 10 of my new book (Bowring 2008) I explore the scandalous nature, to this day, for the United Kingdom, of these rights.

The 'third generation'—the peoples' rights to self-determination, to development, to a clean environment, to peace - were recognised as rights in international law following the colonial struggles of the 1960s, specifically with the coming into force of the two great UN Covenants on Human Rights in 1976. They have lost none of their relevance in the context of continuing cruel injustice of the global economy (Crawford 1988; Alston 2001; Bowring 2008).

5. Conclusion

There is another way of putting this point. That is, as the successor to Hegel's (fundamentally Aristotelian) critique of liberalism. As Stephen B. Smith put it:

> "Rights, then, are not simply given, but are part of a larger historical
> struggle of human beings to achieve, or to become worthy of respect
> or recognition." (Smith 1989, 114)

Thus, as I have argued above, rights have a real, substantive content, which may be located temporally. This is not to relativise human rights. On my account, the concept of the universality of human rights on a foundation of natural law has no moral content. It cannot assist either in the critique of ideology or indeed actuality; nor can it provide the bridge which can indicate the actions we ought to take.

---

[1] ETS No. 163

On the contrary, it is my case that human rights are real, and provide a ground for judgment and for action, to the extent that they are understood in their historical context, and as, and to the extent to which, they embody and define the content of real human struggles. That is also for me the meaning of the doctrine of the UN's Vienna World Conference on human rights in 1993, that all three generations of human rights are indivisible. The doctrine of indivisibility and inseparability is—and in my own view will prove to be - much more subversive than at first glance it seems. I would argue furthermore that this is also what Patricia Williams meant by 'alchemy' in her profound book *The Alchemy of Race and Rights*. She observes: "To say that blacks never fully believed in rights is true. Yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before." (Williams 1992, 13)

Human rights discourse is often and increasingly the meaningless rhetoric of the powerful and the oppressor. This is the true meaning of Dembour's remarks noted above. But it is only part of the story. Human rights become real when articulating the present, not the endlessly deferred, claims of the oppressed.

Bibliography

Adiprasetya, J. (2003), *Whose Aristotle? Alasdair MacIntyre's Communitarian Virtues and Martha C. Nussbaum's Non-Relative Virtues*, Boston University School of Philosophy, at: people.bu.edu/joas/papers/ts961-virtues.pdf

Baxi, U. (2002), *The Future of Human Rights*, Oxford

Bowring, B. (2008), *The Degradation of the International Legal Order? The Rehabilitation of Law and the Possibility of Politics*, Abingdon

Crawford, J. (1988) (ed.), *The Rights of Peoples*, Oxford

Dembour, M.-B. (2006), *Who Believes in Human Rights? Reflections on the European Convention*, Cambridge

Dworkin, R. (1978), *Taking Rights Seriously*, New York

Eagleton, T. (2003), Living in a Material World, in: *The Guardian Review 20*, 34–35 (extract from T. Eagleton, *After Theory*, London)

Freeman, M. (1994) The Philosophical Foundations of Human Rights, in: *Human Rights Quarterly 4(3)*, 491–514

— (2002) *Human Rights: An Interdisciplinary Approach*, Cambridge

Gearty, C. (2006), *Can Human Rights Survive?*, Cambridge

Gewirth, A. (1978), *Reason and Morality*, Chicago

Griffin, J. (2000), Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights, in: *Proceedings of the Aristotelian Society 101(1)*, 1-28

— (2001), First Steps in an Account of Human Rights, in: *European Journal of Philosophy 9(3)*, 306–327

Horton, J./Mendus, S. (eds.) (1994), *After MacIntyre: Critical Perspectives on the Work of Alasdair MacIntyre*, Cambridge

Loughlin, M. (2004), *The Idea of Public Law*, Oxford

Lukes, S. (1981), *Can a Marxist Believe in Human Rights? Praxis International 5(4)*, 334–345

MacIntyre, A. (1999), *A Short History of Ethics. A History of Moral Philosophy from the Homeric Age to the Twentieth Century*, London

— (1990) *After Virtue: A Study in Moral Theory*, London

— (1988), *Whose Justice? Which Rationality?*, London

— (1990), *The Privatisation of Good: An Inaugural Lecture Review of Politics 52(3)*, 344–361

— (1991), Community, Law and the Idiom and Rhetoric of Rights, in: *Listening: Journal of Religion and Culture 5*, 96–110

— (1994), A Partial response to my Critics, in: Horton, J./Mendus, S. (eds.), *After MacIntyre: Critical Perspectives On the Work of Alasdair MacIntyre*, Cambridge, 283–304

— (1999), *Dependent Rational Animals: Why Human Beings Need the Virtues*, Chicago

— (2006), Epistemological Crises, Dramatic Narrative, and the Philosophy of Science, in: *The Tasks of Philosophy: Selected Essays 1*, Cambridge, 3–23

Marx, K. (1975), On the Jewish Question, pp.146–174 in: Marx, K./Engels, F., *Collected Works 3* (Marx, K./Engels, F., 1843–1844), London, at: http://www.marxists.org/archive/marx/works/1844/jewish-question/

Smith, S. (1989), *Hegel's Critique of Liberalism: Rights in Context*, Chicago

Snyder, J (1988), Translator's Introduction in: Vattimo, G. (1988), *The End of Modernity: Nihilism and Hermeneutics in Post-Modern Culture*, Cambridge

Stephenson, S. (1999), Narrative, Identity and Modernity, ECPR Workshop, Mannheim, at: www.essex.ac.uk/ecpr/ events/jointsessions/ paperarchive/mannheim/ w22/Stephenson.pdf

Sumner, L. (1987), *The Moral Foundation of Rights*, Oxford

Tasioulas, J. (2002), Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps, in: *European Journal of Philosophy 10(1)*, 79–100

— (2003), The Moral Reality of Human Rights UNESCO Seminar Oxford, March 2003, at: http://portal.unesco.org/shs/en/file_download.php/ 8d5b01d4c9074aea 070631bff932dc52jonh_Tasioulas.pdf

Vasak, K. (1977), *A Thirty Year Struggle—the Sustained Efforts to give Force of Law to the Universal Declaration of Human Rights*, Paris

Waldron, J. (1987), *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man*, London

Williams, P. (1992), *The Alchemy of Race and Rights*, Boston