When was the idea of human rights invented, and do we need it

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1. Professor Richard Sorabji

Are rights more than duties on others?

Are a person's rights anything other than the duties laid on other people to comply, by doing, forbearing, allowing, facilitating or not interfering? In that case, human rights would be no more than the duties laid on people, because of their common humanity, not to interfere with, or (depending on their relationship) to actively facilitate, the provision to others of certain human needs. It would take the mystery out of rights simply to talk about duties.

But although human rights may include these duties, we shall find a case shortly in which human rights evidently do not boil down to these duties and nothing more. We shall find that with human rights, it is taken to matter not only that people should perform their duties, but also that the recipients should successfully receive their rights. The performance of duties is not all that we are concerned about when we talk of human rights.

Some people go further. They think that to have a right is to have the power to claim the right. That would have an unfortunate effect in the case of human rights. It would mean that those who were weak, or not recognised by the provision of accessible courts of law, would have no rights. Human rights are rather based on those human needs whose satisfaction matters sufficiently to impose corresponding duties on others, insofar as they can contribute to the satisfaction. I recognise that this falls short of a definition.

Origins: human attachment in the Stoics?

Any society, that of the ancient Greeks included, is bound to give certain people rights corresponding to their roles. What we are looking for is something much rarer, the idea of human rights. One proposed origin for the idea of human rights is the Stoic theory of attachment (oikeiosis). The Stoics of the 3rd century BC made a huge leap forward in moral theory by developing the idea that justice is owed to all humans, to barbarians and slaves no less than to others. The theory was based on the natural attachment which parents feel for children and which newborn infants and animals feel for their own persons. This is an attachment that, in some degree, spreads also to others. The Stoic idea was that it would be in accordance with nature, which is not to say that it would be easy, to extend the feeling of attachment to all other rational beings, that is to all gods and humans. Justice should, on their theory, extend the same distance as the feeling of attachment, that is to all rational beings.

In later Stoicism, there was much stress on the importance of humans as humans. A much quoted saying was: 'I am human. I think nothing human alien from me' . Cicero, not a Stoic, but often reporting Stoicism and often influenced by it, says, 'If nature prescribes that a human should want to consider another human, whoever he is, just because he is a human,...' . Again, 'There is also a natural and communal concern of humans for each other, such that a human ought not to be seen as alien from another human, and that because of the very fact that he is human' .

This is certainly a theory of human justice. Is it a theory of human rights? I have argued elsewhere that it is not, first and foremost because of a further attitude that the Stoics took. The Stoics held the severe view, encountered in an earlier lecture, that in a certain sense nothing matters except character and rationality - the rest is, in their words, 'indifferent''. What, then, ought we to think of life, health, pleasure, beauty, strength, functioning sense organs, wealth, reputation and their opposites for ourselves and loved ones? All of these are relegated to the class of 'indifferents'.

Does that mean that we should feel no concern for them? No, but our concern should be of an unexpected kind. These indifferents are things that, in ordinary circumstances, it is right and natural to 'prefer'. The Stoic Antipater drew a comparison with the target in archery. The best archer is not the one who hits the target because on an unpredictable gust of wind, but the one who aims best, even if the unpredictable gust makes him miss. Just as the good archer does everything in his power to hit the target, so the good Stoic must do everything in his power to secure the naturally preferred objectives for himself and others. Their eventual indifference emerges only retrospectively, if he misses through no fault of his own. Then he should realise that the preferred indifferents did not matter in themselves, but only in that good character involves seeking them energetically and in the right way. What matters is the good character. In modern times, the same attitude has been taken about modern sports, cricket and American football. What matters in the end is not whether you lose despite your best efforts, but how you play the game.

What effect would this have on the pursuit of human needs for others? The good Stoic, out of justice, would energetically seek to save others from starving. But what if, through no fault of his own, his efforts failed and the others died of starvation? The important thing as far as the Stoic was concerned would have been achieved, the exercise of good character. And the only question that would matter about those who died would be whether they died bravely, with gratitude for efforts made and other virtues of character. Death itself is ultimately indifferent. This is why I said that human rights are about more than the performance of duties. If we believe in human rights, we think it important not only that people should do their duty, but, at least as much, that those with human needs should have those needs met. The satisfaction of human needs is precisely not a matter of indifference. That is what coloured my account of what human rights are, and what above all led me to say that Stoic justice to all humans was not thought of in terms of human rights. Theories of universal human justice do not have to be conceived in terms of rights. That is merely how they tend to be conceived nowadays, and one philosopher at least, J.L.Mackie, has held that all morality should be conceived in terms of rights. But that has by no means proved necessary to benign theories of human justice in the past. I conclude that the Stoic theory of justice for all, though of the highest importance and merit, was not a theory of human rights.

The cosmic city

Before I reach the next idea, which is sometimes thought to have inspired that of human rights, I will turn to a bridging idea that links the two. All these ideas are brought together, in a significant way, by the Stoics, and by Cicero drawing on Stoics, but all of them had earlier origins. The idea of human attachment draws on the earlier ideas of Aristotle about human friendship, and of Aristotle's successor, Theophrastus. The new bridging idea of a city transcending human cities is perhaps best known to us from Augustine's much later City of God. But already Socrates, who was executed in 399 BC, is said to have said that his country (civitas) was the world (mundana) . This may have influenced the Cynic philosophers in Athens at the end of that fourth century BC, Diogenes, who famously used a wine jar for a house, and Crates, who in turn taught Zeno, the founder of Stoicism. Both Cynics said that their country (politeia, patra, polisma) was the earth or the cosmos , while Zeno, describing an ideal city in the Republic, which he wrote when a pupil of Crates, said that only the good would be citizens . After them, the Stoics may have broadened out their conception of the ideal city to include all rational beings, gods and humans , not just wise humans, although it is still called a universe of the wise in the version ascribed to Chrysippus, and Epictetus elsewhere echoes Zeno, in saying that anyone not good should not be counted as friend, or even as human .

Natural law

The cosmic city forms a bridge to the idea of natural law. In the summary by Arius Didymus of the Stoic view of the cosmic city, it is said that gods and men form a community because they both partake in reason, which is natural law. And this reference to natural law is developed in his own person by Cicero.

Cicero described an ideal republic and its laws in his incompletely preserved On the Republic and On Laws. In On Laws 1. 23 and 33, he says that gods and humans have in common reason and hence right reason, and right reason is law. Hence we also have in common justice (ius), and hence have the same country (civitas). 1.33 adds that the right reason (which is law) is natural, or at least received from nature. The identity of law with the right reason found in gods and men is a strong claim. Cicero connects the Stoic cosmic city with both law and reason again, when he says that gods and men share a city because they live according to law by the use of reason.

I shall return to the idea of natural law next autumn, when I talk about ideas of just war in antiquity, Islam and the Spanish conquest of the American Indians. The history of the idea of natural law goes back earlier than the Stoics and Cicero. Already the Pre-Socratic philosopher Heraclitus in the fifth century BC says that all human laws are fed (trephesthai) by the one divine law.

Incidentally, I do not think that when people talk of a divine or a natural law, they are necessarily thinking that, when formulated in words, it would necessarily look like a set of rules such as the Judaic ten commandments. It might instead, for example, tell you what mattered in the universe, without telling you exactly what to do. An important statement of natural law is made by Aristotle. Particular law is made by people for themselves, but there is a common law (koinos nomos) that accords with nature, and a common justice just by nature to which everyone bears witness, even if they are not associated in a community or by contract. Three examples from literature of the fifth century BC are given, although the text of the last is accidentally truncated. First, it was by nature just for Antigone to bury her brother, even though the king had forbidden burial. This prescription, in the words of the tragedian Sophocles, 'lives for ever'. Secondly, the Pre-Socratic philosopher Empedocles felt that the ban on killing animals was not just for some people and not for others but was universalisable. In his words, it was a law for all (panton nomimon). The third, truncated example was from a pupil of the sophist Gorgias.

Aristotle does not make the move from the idea of natural law to the idea of human rights. But a curious example of a human right has been cited from Aristotle. Humans must not be hunted in order to eat or sacrifice them. The scope of this right is limited, because they may be hunted in order to enslave those who are natural slaves, and in any case the example is isolated. Aristotle is not looking for human rights. It would also be hard to say what human right was exemplified by the case of Antigone, especially as the historian Herodotus had pointed out in the fifth century that some nations would think burying, instead of cremating, the worst possible thing to do. As for Empedocles, he is concerned with animals, even if only because they may be reincarnations of humans.

The Stoics were the next to take up the idea of natural law. If we take the first three Stoic heads in turn, Zeno is reported as saying that men should not live by separate laws. Cleanthes talks of the universal law of Zeus by obeying which humans could lead a good life. The third head, Chrysippus, makes law king of all things, human and divine, as the standard of right and wrong, prescribing to humans what they should do . This does sound more like a set of rules, although I do not believe that the Stoics thought that there could be a comprehensive set of rules covering everything. There are further ascriptions to the Stoics of the idea of natural law, but a statement by the Stoic Epictetus in the first century AD concerning not law but goodness will become relevant in a moment. For preconceptions about goodness, he says, we should look within ourselves.

Cicero in the previous century had already appealed in On Laws 1.58 to the Stoic idea of conceptions within us, directly in connexion with natural law. Humans have understandings sketched in the mind (adumbratae intelligentiae) and a divine spirit in themselves (divinum ingenium in se), which is an image (simulacrum) of God. To find the true law, he adds in Republic 3.22.33-4, we need not look for anyone else. The true law is right reason in accordance with nature, unchanging , eternal, not different for different cities and times. It is one law, one ruler, and its author is God.

In another work, On Duties 3, he supplies the first two extant references to the law of nations (ius gentium). Instead of referring to the court founded in Rome of the third century BC, which administered a law of nations chiefly concerning commerce with foreigners, he gives the law of nations a much grander meaning. It is identical with nature, and he goes on to speak of the reason in nature (ipsa naturae ratio) which is divine and human law. This law forbids you to injure another for your own advantage, and more particularly forbids deceit (insidiae) in selling your house, even where this is not forbidden by civil law or custom, on the grounds of the community (societas) among humans. Cicero does not distinguish the law of nations from the law of nature, although certain later writers were to distinguish them. In the nineteenth century, Moritz Voigt connected the law of nations and the law of nature with human rights. In an earlier discussion, I

confined myself to saying that in the Stoics and in legal practice, the law of nations was not connected with human rights. But the theoretical development of the idea of a law of nature and of nations is something else, and I shall now concentrate on looking at that further, with a view to possible influence on the idea of human rights.

By a happy coincidence, St Paul in the century after Cicero wrote in a very similar way in Romans 2.14-15:

When Gentiles who have not the law do by nature what the law requires, they are a law to themselves, even though they do not have the law. They show that what the law requires is written on their hearts, while their conscience also bears witness.

St Augustine, writing after 400 AD, had read both Cicero and St Paul. It is St Paul's phrasing that he cites more closely when he explains that on stealing the pears as a child, he knew theft was wrong, because of the law written on the hearts of humans which even iniquity cannot delete, Confessions 2.4. Elsewhere, he speaks rather like Cicero of the law as the highest reason (ratio) imprinted (impressa) on us. And there and elsewhere he says that temporal laws are, or should be, derived from this law, which he calls eternal.

Roman jurists, who often represent legal theory rather than practice, include Gaius from the 2nd century AD, who describes the law of nations rather in Cicero's way as established by natural reason among all humans. Other jurists of the second and third centuries AD sought to distinguish the law of nations from the law of nature by saying that the law of nature extended even further to animals.

The extension to animals looks a rather forced attempt to draw a distinction, but, thanks to the rediscovery of the Digest in the third quarter of the twelfth century, it is repeated by Thomas Aquinas. Thomas is also aligned with Cicero and Augustine, when he says that God inserted (inseruit) the law of nature into the minds of humans, and, again that rational creatures participate in the eternal law by having an imprint (impressio - cf Augustine's impressa) of it, and that this participation is called natural law.

The Spanish debate on the American Indians

If the ideas of the law of nature and of nations were likely anywhere to be connected with the idea of human rights, this would seem especially likely in the 16th century Spanish controversy on the conquest of the South American Indians. The most powerful monarch in Europe, Charles V of Spain, halted the Spanish conquest for a year in 1550-1, while two leading thinkers, Bartolome de Las Casas for the Indians and Sepulveda against, debated the morality of the conquest. Would this be possible nowadays? Although verdicts were postponed and the American Indians saw no immediate benefit, the very fact of the debate being called at the highest level extended consciousness of the issues. The controversy, which started earlier in the century and included another supporter of the Indians, Francisco de Vitoria, itself led to a major advance in thinking on the subject. A central issue for both Vitoria and Las Casas was whether the Indians were by Aristotle's definition 'natural slaves' in need of a master. I shall discuss this question in the autumn in the context of just war. But for now I am interested in the fact that ideas closer to those of Cicero and the Stoics, including ideas of natural law and the law of nations, also arose in the controversy, as well as the better known ideas from Aristotle.

Vitoria appealed in 1528 in On Civil Power the idea of Cicero's Republic that the whole world is a single republic, and said that that it is how it enacts the law of nations. Also before the debate of 1550, Las Casas wrote in Spanish a History in Defence of the Indians, in which at Ch.48 he quotes from Cicero On Laws 1.29-33, saying that all humans are alike and that there is only one definition of them, namely that they are rational. From the period of the debate, there survives only a Latin translation incorporating revisions, from shortly after the debate, of a defence written shortly before the debate. It has been translated into English as: Bartolome de Las Casas, In Defense of the Indians. Here the references to natural law and the law of nations seem to be mostly negative in character. It is the chmpions of conquest who are opposing natural law. The Indians are not the kind of barbarians who leave the path of reason and law and have no part in contracts governed by the law of nations, Chs 1-2, but are the sort of barbarians who have reason, and in any case they may not be forced to do what the law of nature enjoins, Ch.4. As regards their alleged cannibalism, this is against natural law only in some circumstances Ch. 33, and as for human sacrifice, it is not something that natural reason on its own cannot show wrong - compare Abraham's readiness to sacrifice his son in the Bible, Chs 34-6. These appeals to natural law and the law of nations are used in the Indians' defence, but not to ascribe any particular human rights to them. Rights are indeed discussed from ch.6 onwards for much of the rest of the work. But this is in order to show how limited are the rights of the Church over the Indians, not to assign human rights to them.

The same is partly true of Vitoria's work On the Indians, delivered in 1539. He often discusses rights in order to show how limited are the rights of the Spaniards. They would get rights from the law of nations, if the Indians had no ownership, q.2, a.3, and the law of nations gives the Spaniards the right to travel, trade, seek for gold or pearls, fish the seas, put in to any port, to have citizenship there for children born there, and to send ambassadors. But if these rights are not violated, there is a strict limit to what the Spaniards may do, q.3,a.1. In his very interesting On the Law of War, also delivered in 1539 with the Indians in mind, Vitoria sometimes treats the law of nations as a second best. In q.3, a.6, there is nothing in itself against killing combatant prisoners after victory, but we have to respect the law of nations which forbids it. Again, although the law of nations allows the victor to keep all movable booty, this may need modification, q.3,a.7.

When Vitoria discusses the rights of the Indians, as opposed to the Spaniards, he does so chiefly in terms of a different concept, that of dominium. He asks whether the Indians are altogether deprived of dominium, rights of rule over each other and of ownership, q.1 aa. 1-6. The answer is that they have dominium - even children and slaves do, and even madmen, though possibly the dominion of the last is not a civil dominion. The concept of dominium had been much used by the Roman jurists, but it has a longer history too. It arises in Genesis 1.26, where God gives humans dominion over all animals. This might be thought to constitute a kind of human right, but as there was no meat eating until after the Fall and the new covenant with Noah, it may have rather been the responsibility of guardianship. Cicero speaks in the Republic of dominion being granted instead by nature. Augustine, returning to Genesis, says that although our dominion was intended to be only over irrational animals, sin and the Fall of Man has led to our exercising dominion over eachother, and Thomas Aquinas speaks similarly of there being no dominion over each other before the Fall, but if there is afterwards, that is through sin having made us like irrational creatures. Vitoria is very much against the idea that sin might have robbed the Indians or anyone else of dominium.

Is the Indians' dominium seen by Vitoria as a primitive natural dominion, like that of madmen, or as a civil dominion, either as regards rule over each other, or as regards property? One view is that Vitoria recognised only civil dominion, but this view has been convincingly answered. Admittedly, we have seen, Vitoria is keen to say that the Indians are not in a primitive state, but enter into contracts governed by the law of nations, and in showing that they are not mad, he says that they have properly organised cities, industries, commerce, proper marriages, magistrates, laws and - most relevantly - masters (domini), all of which are said to require the use of reason. But to get the full story, we must look at the discussion of dominion in the commentary Vitoria wrote 4 years earlier in 1535 on Thomas Aquinas.

Vitoria's story is that humans were created in the state of nature with shared dominion given to them by God over all created things and with equality and no princes. He supports this by appeal both to the Bible (Genesis 1.26-8 and Psalms 8,6-7 for God-given dominion) and to Aristotle's Politics 1.5, which says that all things are for humans. The dominion is the right (facultas) to use everything, not the faculty otherwise to dispose of it. At n.16, he says that it is not only the human race, but any individual human (quilibet) who has this right in the state of nature, and everyone has it by natural law (ius naturale). But (n.20) after the Fall of Man, the Bible tells us, Abraham and Lot, and others before them, began to divide up land into private ownership for separate ploughing. This was done by consent, but the consent could be virtual, not formal, and by a majority, not all. Although natural law allowed this division and the majority decision, the decision itself was by human law (ius humanum). Similarly (n.21), people were free by consent to choose a prince. On the Indians clarifies that the prince's civil power is instituted not by nature, but by (human) law (lex), but nonetheless may have its origin in nature, and he cites again Aristotle Politics 1, for the natural authority of father and husband. We were earlier reminded in the Commentary on Thomas Aquinas of the biblical claims in Psalms 8.15 and Romans 13.1 that kingship and power comes eventually from God.

What are these rights that are due to human law, yet eventually based on nature and God? We are talking of the law of nations. For the commentary on Thomas Aquinas tells us that the division and appropriation of goods is carried out by the law of nations (ius gentium). Moreover the law of nations has exactly the same double-edged character that we have been discussing. It is primarily a positive (i.e.human) law (ius), often based on a virtual consent, but it is also based on the natural reason among all nations, and is sometimes, though not always, derived from natural law.

What about Las Casas? Here Brian Tierney has shown that a different text is again relevant. As his 'last testament', Las Casas wrote in Spanish On the Treasures of Peru. There Las Casas does say that the Indians have rights (iura) by natural law and the law of nations, and he specifies the right to wage war and (as in Vitoria) the right to choose their princes. Moreover, the right attaches to each individual, so that a single contrary voice would debar the Spaniards from ruling the Indians.

What conclusion can we draw? In our language, which is not theirs, I think we can say that Vitoria and Las Casas have recognised human rights. In Vitoria, it is only the original God-given rights of use that are wholly natural, whereas the rights to property and rule have at best, a basis in nature. Las Casas appears more unequivocal in appealing to nature, and both thinkers insist that natural rights belong to each individual, although, with the law of nations, Vitoria does not follow Las Casas' refusal to allow the individual to be overridden by a majority.

At last, then, we may have a case of human rights connected with natural law and the law of nations. But what has perhaps emerged is that what matters is justice for all humans. This can be supported, as it is by the Stoics, in a manner incompatible with the modern notion of human rights. Or it can be framed, as it is by Vitoria and Las Casas, in a way that we might paraphrase in terms of human rights, even though their own rationale is partly derived from the Stoics. It doesn't matter. What matters is that the idea should continue to be fostered of justice for all, a word we could afford to hear more often, and now, unlike the Stoics, we rightly take animals into account as well as humans.

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Stephen Sedley will continue the story of human rights with some little-known reports of how the ideas came to England first in the Civil War and then in the anti-Slavery Movement.

2. Lord Justice Stephen Sedley

The Renaissance, which marks the closure of the middle ages and stands at the head of Europe's long path to modernity, sprang out of societies which, though increasingly mercantile, were still essentially feudal. We have learnt to think of feudal societies as based on obligation, and of rights as one of the jewels in the crown of the European enlightenment; but to do so is to overlook the ubiquitous power in early modern society of custom as a source of rights.

A great part of the law - in daily life probably the greatest part - was customary and was locally recognized and enforced as such. To take a single small example, the monasteries which surrounded the prosperous German town of Esslingen were defied by local women who use the open ground between the rows of vines to plant onions and who by determined resistance established their right to be exempted from the tithes which by law gave a tenth of all local produce to the monks and nuns. Such rights were not written: they were achieved, recognized and, once recognized, defensible.

The customary rights which meant most to the poorest people, were the rights of common which governed huge open tracts of manorial land, and which modern scholarship now recognizes as having provided a significant level of economic security for villagers; grazing, fuel, fodder, sand, rushes, straw and stones, game, fish, birds, wild plant and fruit.1 The enclosures which gathered pace from the early 16th century eventually robbed the rural poor of all this, and the bitterness and sporadic resistance which they provoked were grounded in an entirely legitimate sense that ancient rights were being taken away by the rich who had access to legislative power. 2 The losers were the uncounted people who were driven off the land and into the new cities of the ironmasters. Their children became the industrial workers and artisans who were prosecuted and goaled for forming trade unions and to whose resistance we owe in large part the acceptance of freedom of association as a human right. That is one example of where human rights have come from. Another is the right of free expression for which bitter journalistic and legal battles were fought for three centuries and in important senses (over privacy for example) still are being fought.

It is important to recall, however, that the medieval sense was not of rights in the vocabulary of today but of right: a sense, in other words, not of a portable legal armory for individuals but of fixed forms of propriety - the propriety of kinship as the unit of agricultural production, for example, or the propriety of protection in return for manorial labour. 3 The Indian caste system is still defended, and not unintelligibly, on very similar grounds. The shared sense of what was right, and increasingly therefore of what people had a right to, is again vividly present in what E P Thompson called the moral economy of the 18th century crowd: the sporadic reassertion, condescended to by historians for two centuries as mindless mob violence, of

received forms of respect and autonomy of which history was now robbing them. 4

The first usage I know of "rights" in anything like the modern sense is in the work of a minor, and in my view, underrated pamphleteer, John Warr, who in 1649, at the climax of the English civil war, argued that good laws required "a spirit of understanding big with freedom and having a single respect to people's right". "People's rights" is a remarkable phrase, a century and a half ahead of its time - for the idea that rights inhere in people rather than in societies or structures belongs to the age of the French and American revolutions and the polemics of Tom Paine. The notion of freedom, by contrast, is much older. Almost a tenth of the population recorded in the Domesday Book were slaves, and the condition of serfs and villains four and even five centuries later was often little better. The demands of the peasant uprisings in late medieval Europe included the abolition of serfdom and the restoration of the customary right, which made freemen free. The sense of a lost balance of dependence and independence is still there in John Warr's belief that the Norman yoke now rested upon a once free people; but the civil war had taught that there was no going back, and it was Warr's achievement to look forward instead to a society of free individuals: "There are some sparks of freedom in the minds of most, which ordinarily lie deep and are covered in the dark as a spark in the ashes."

To us it seems too obvious to require stating that if freedom means anything, it means that one person cannot be another person's property - though if you substitute "child" and "adult" it isn't quite so obvious even today. Moreover, now that it is much too late, most of us would acknowledge that indigenous peoples have a prior right to the land they inhabit. But the opening up of the Americas by Europeans in the sixteenth century and the wholesale capture and transportation of black slaves from Africa to the American plantations created a series of ideological waves which have not wholly subsided with the formal outlawing of slavery.

Among the first Europeans to make contact with native Americans, principally in the west, were Spanish and Portuguese missionaries. To the more humane of these, Indians were souls to be saved, not natives to be exploited or exterminated, and the Dominican friar, Bartolomé de Las Casas, wrote early in the sixteenth century in genuine distress at what he had witnessed. His answer, however, to the exploitation of native Americans was to import African slaves, and his prescription was adopted when, for complex reasons, the Spanish monarchy in 1540 banned the enslavement of Indians. The massive human traffic from Africa which followed during the seventeenth and eighteenth centuries and into the nineteenth is an enduring scar on Western civilation. It was attacked from an early date by clerical writers not on principle but for its unnecessary cruelty; but it was also defended, notoriously but by no means solely by the Jesuit Luis de Molina, who before the end of the sixteenth century was following the chancellor of the University of Paris, Jean Gerson, in explaining slavery in voluntaristic free-market terms as a bargain by which a person was deemed to have sold himself, even if only for beads. In modern terms, these men were propounding a mercantile theory of human rights which you can find replicated today in some of the farther reaches of Libertarian ideology.

It was in countries like Britain that the most remarkable and in the end productive ambivalences about slavery developed: on the one hand, a loud and self-righteous rejection of slavery on English soil ("The air of England", said the judges of Star Chamber in 1567, "is too pure for a slave to breath" 5); on the other hand, a ruthless and highly profitable Atlantic slave trade, principally out of Liverpool and Bristol. The philosopher, John Locke, managed to combine the two, denouncing slavery as "vile and miserable… and … directly opposite to the generous temper and spirit of our nation", and simultaneously, as a stockholder in the Royal Africa Company, justifying the slave trade on the grounds that it was saving Africans from an even worse fate in Africa. 6

But behind and beyond the hypocrisies and the insular rhetoric there developed in the course of the eighteenth century a genuine and powerful humanitarian movement in Britain. It was the Anti-Slavery Society which funded the great cases in the later part of that century which made the prohibition of slavery part of the common law and led finally, in the second quarter of the nineteenth, to legislation banning it throughout the empire and on the high seas. 7 During the American civil war, Lancashire millworkers refused, at sometimes great personal cost, to process cotton from the slave states.

If this were the whole story one might say that in the course of history the brotherhood of man had vanquished chattel slavery. And yet within our own lifetimes it was still legal in this country and in most other advanced societies to discriminate against other human beings on the ground of their colour or, for that matter, their gender. Indeed, in certain marginal respects it still is. History does not come to abrupt ends.

Why am I telling you this? Because I want to illustrate how profoundly the very idea of human rights is a product of time and place. The point about the history of attitudes to slavery is that even the recognition that all people are human has been a long time coming. Indeed, where children are concerned, it is still some way off. And the same is true of the content of what we regard as human rights. If this were a theocratic society, a list of human rights, engraved on a stone slab, would have been brought down to us from a mountain by the Archbishop of Canterbury. Instead as a secular society we have had to negotiate and elaborate them ourselves. The French Declaration of the Rights of Man and the American Bill of Rights are classics of history in the making, milestones on a long road, not standards of uniform applicability.

The history of how the great postwar human rights conventions - most importantly for us the Universal Declaration and the European Convention - came to be composed and adopted is still being written 8, but they represent above all the endeavour of a shattered world to shut the door for ever on Nazi authoritarianism. While they recognize the need for an organizing state, they are essentially documents of nineteenth century liberal individualism. Would any such instrument, if it were being written today, leave out as these do the right to a clean and safe environment, to a minimum of food and to basic shelter? Certainly the Asian Human Rights Charter, drawn up in 1998, has these things high on its list.

The idea of human rights, I suggest, is a slow-growing aspect of the modern world's social contract: a pagmatic recognition that to be treated fairly means being prepared, through the mechanisms of the state, to treat others fairly; and a moral recognition that since all that human beings have in common is their humanity, a code of mutual respect is worth having. If we need it, it is not because human rights can change the world, but only because in the gathering darkness of what promises to be another dreadful century the spark which John Warr saw in the ashes in 1649 will furnish, if not a flame, at least a point of light.