

JUSTICE: RIGHTS AND VALUES

The words ‘rights’ and ‘values’ seem to be related, but we commonly use them in discoursing about two distinct areas of human affairs. Values are commonly thought to be in the first instance associated with groups and their belief-systems— as when we speak about religious values, or family values, or values that more generally describe what members of certain communities or societies or races hold as somehow being ethically or socially binding at one time or another. By saying ‘in the first instance’ a sufficient margin is left for us to explain our secondary discourse about values that an individual may be said to have that stand in stark contrast with the value-system upheld by that individual’s group —as a Jew who may believe women should be allowed to ride in buses alongside men in the midst of a community for whom this is classified as taboo, for example. Rights on the other hand are thought in the first instance to be attached to individuals. This implies that rights are therefore thought or assumed to cross group-boundaries. A typical

expression used nowadays, ‘human rights’, expresses this. Human rights are thought to relate to individuals regardless of those individuals’ group affiliations. Once again, though, by saying ‘in the first instance’ we can account also for our second-order discourse about group rights, as when we speak about the rights of peoples -for example, their right to self-determination.

Often, values and rights coincide, as when the value of caring for the old in some groups coincides with the rights a society grants to its aged members in the form of pensions or social benefits or suchlike. But values and rights can also conflict, as when gender values relating to children or women in a particular society are said or thought to conflict with the natural or human rights of women and children generally, and therefore with their rights even in that society.

There is an obvious and generally accepted sense of both values and rights being almost like human habits that form or develop over time, the former however having a continuous, and the latter a discrete genealogy: this distinction is best given expression by the fact that, while laws enjoining rights come in jumps and starts

throughout history, sharply defining specific turns in that history, values like customs different societies come to embrace seem to have a graduating ontogenesis, having more of a steady growth. Thus, while the Sumerian laws of Hamurabi for example spelling out regulations on the exchanges of goods stand out as one defining moment in the history of law-making, the custom itself in that society of adhering to some measure or another governing those exchanges among cattle-growers and farmers must have already begun to form as a trade habit. And indeed, it is easy to imagine how, contrariwise, some habits follow upon and come to be formed by laws that come to be enacted first. Whichever comes first, the difference between rights and values as being respectively discrete and continuous speaks for itself.

Unlike values, which, again like customs, seem deeply ingrained in societies, therefore being thought to require time and patience to be changed, rights are regarded as ready-made mechanisms or products that can be immediately applied or embraced –often to counteract customs or values that are beginning to seem outdated, and that begin to jar with newly-emerging values and

beliefs. One example is whether women have the right to drive cars in Saudi Arabia –a matter still in the balance; or to have the right to vote in Great Britain –a matter finally settled in the early twentieth century. A two-pronged discourse on rights is normally encountered in such cases –one defining them simply in terms of what the law in a society already enjoins, but the other portraying them as drawing legitimacy and inspiration from beyond state borders- from such sources as are described as being divine or natural or universal or human, or in any case as being somehow in existence, though not in a material form in that specific time and place. Those that are already enjoined by law are also often said to draw their legitimacy from those same sources, as clauses in constitutions declaring that all men are equal, or have the right to free expression.

It is little wonder, given this genealogical difference between values and rights, that conflicts evoked by a rights-discourse conjure up an aura of human drama, as that for example expressed in *Antigone*, where divine law –in this case, calling upon Antigone to bury her brother- comes into conflict with human law, expressed by the

prohibition of the burial inside the city of those who fight against it. This virtual clash between a custom that is already in place as actual law, and a value that is also regarded as a divine law enjoining Antigone in particular as the sister of the killed rebel to have him buried, leads in fated steps to Antigone taking her own life, and, in grief over her, to the suicide of her fiancé, who happens to have been none other but the son of the very king who is entrusted by his kingly role to have been her main antagonist, and at the penultimate stage to have had to pass the death sentence against her for having defied his orders.

Perhaps because of values being attached in the first instance to groups rather than to individuals, and because groups, such as societies or nations, are often found geopolitically separated from each other, we do not often come across conflicts conjuring up this aura of drama or tragedy when it is values that are involved. Indeed, there is a current liberalist tendency –represented best perhaps by the late John Rawles- to allow for a *modus vivendi* among or between societies and nations not sharing the same values, on the assumption that peoples aren't

constituted to have the same belief-systems, and it would be wrong for one society therefore to try to impose its own value-system on another. But when this happens, as in religious wars or in ideological wars, the conflicts generated are simply repugnant and bloody, with no redeeming air of Greek tragedy about them at all. An observer might stand in awe before a Greek-like drama, oscillating in her mind between what she considers right and what wrong. But no such wonder exists when one watches a war based on ideology –unless a rights-discourse is again invoked, as to wonder for example whether rights (one believes in) must be preponderant over values (one is critical of). Otherwise, those who are watching or following such wars normally have their minds already made up, being all out in favour of one ideology or religion or belief-system as opposed to the other. But the aura of a Greek drama is manifest when two presumed rights, as the right of Jews to settle in Palestine and the right of Palestinians to remain settled in the same area clash. One's own rights can also clash, as the right to build a future and the right to reclaim a severed past.

I began by saying that the two words, ‘rights’ and ‘values’, are generally felt to be related, but that there are many differences between them. Having pointed out some of those differences, I wish now to look at the commonalities. My working hypothesis has been that they are indeed genealogically related in being human habits that are developed or formed over time, sometimes the one coming after the other, and sometimes being followed by it. But having said this, or claimed that they both have the same origin, we are still left with having to determine what this origin is, and how come, if it is the same, it seems to have yielded, at one time or another throughout human history, besides harmonious symmetries in human conducts and relations, what also seem to us to be brazen infractions of such symmetries. It is difficult here to prize out neutral from evaluative language, whether moral or aesthetic, but by using the terms ‘symmetry’ and ‘asymmetry’ at this stage I am trying temporarily to withhold judgment on what we might normally view in some of those rights and values as examples of the uglier or darker side of human nature,

such as the custom made law and first related in *Gilgamesh* of the king having the right to enjoy the first night with each maiden being wedded in his province. We are told, in simplified elementary particle physics language, that the elusive Higgs boson is supposed to explain symmetry to us –how, for example, one side of my nose comes out more or less mirroring the other. It is easy, using such biological language, to see what I just called ‘an infraction of symmetry’ in human conduct in situations as that just described in *Gilgamesh*. Indeed, while rights specifically enjoined by laws (what we have come to call ‘legal rights’), and values (as what a particular society comes to see as an ethical code of behavior) seem to have as I said a common origin in human nature, it is important to note that many such laws and values reflect asymmetrical conditions brought about and sustained by power or force, that is, by an imbalanced distribution of these among the parties concerned, where one party –be it king or state or nation or gender or race or class- manages to tie down another in what, represented pictorially, could immediately be

seen as a relationship in which the scales are tilted in favor of one side against the other,

Although I have hopefully conjured up the image of the justice scale in this description, I have consciously nonetheless tried to use a non-evaluative language in describing the unevenness of the image before us, as if to ask us to imagine the skewed scales being held up by a sword only, with no hint of there being a Lady Justice in the background at all, holding them. Indeed we have to imagine her as not having come into the picture yet. Because, typically, the unevenness or lack of symmetry we have before us is not hidden or denied, but is on the contrary defended on some grounds that are deemed to endow it with justification. One typical example of such grounds is the special *worth* one party gives itself at the cost of another. Another is *fear*. Let me expand a little on these two sources of justifying asymmetry.

Many Jews, as well as many Christians, literally believe both in the Jewish people being God's favored among the nations, and in Israel's special role in God's overall divine plan for humankind. Such beliefs immediately reflect themselves on the state of unevenness that exists

in the part of the world I come from. One day a Jew with explicit design on a private piece of family property assured me with sincere self-conviction –as we both stood there, arguing- that he neither meant me personally any harm, nor himself personally any benefit from his planned action. It was, he said, all in the service of the divine plan. The divine plan, as he saw it, meant he had to displace my family from that property. More generally, Israel's coming into existence by force, and its continued appropriation of geo-political space in this manner, while sometimes being defended on grounds having to do with a so-called bellicose Arab nature, is more often and in more sober religious moments defended on grounds of religious beliefs. In this tilted scale held up by the sword, then, Lady Justice makes a special appearance in the form of God's plan for humankind. Through a series of laws and regulations emanating from this belief-system a city like Jerusalem can be made to metamorphose from having one character to having another one entirely, or a human being can metamorphose from being an indigenous inhabitant in a country to being a visitor to it merely, with no right of

residency; or to a new resident whose 'rights' to that residency can expire, and so on.

Fear is another costume Lady Justice is made to wear. In international relations discourse, fear is often regarded as having more scientific *gravitas* than religious beliefs, perhaps on account of its secular, and therefore more universal reach. An entire ballistic system of strike and counter-strike measures spiraling seemingly endlessly to the outer spheres is depended upon to avoid -it is typically argued- a catastrophic strategic entropy. Here, the tilted scales in the international sphere are surely obvious. But once again, and as the case was with the religious argument, the operative factor is the self, or the Hobbesian fear factor, which in essence is interpreted as being a fear for oneself. On its account, once again, Israel can put forth justifications for putting the Palestinians under siege, for developing its nuclear capacity while preventing its neighbors from doing the same, and for demanding total Palestinian acquiescence to its security doctrine. Objective causes for why Israel is compelled to act on fear can be cited, of course, but fear being *affective*, or a subjective state or condition, it is

self-sufficient, not requiring more than its being felt to be in existence.

There are of course other factors, arguably all ultimately ego-centered, that one party can use as justification for topping another. Once again, rules and regulations, even laws, can be enacted in order to legalize such asymmetries in human affairs. These become translated into rights and infractions thereof, as any Jew is allowed automatic right of citizenship in Israel under the law of return, but all my relatives who have been forced to leave their country during the '47-48 battles, and their descendants, are not. Even their titles to their properties are denied by law, this one having to do with having been in a country at war with Israel during that time, even though their presence there was forced as a result of the war itself. Reaching out beyond state borders for a hypothetical international justice system –as when Palestinians appealed to the Hague to protest land confiscations by Israel to build a security wall- is very quickly discovered to be a futile effort, for as long as the sword holding the skewed scales is held by none other than the belligerent State itself.

I do not wish to be understood here as simply trying to put a case together against Israel. For a start, I believe the asymmetry is so obvious that, like the fear that exists by merely being felt the asymmetry can be seen by merely being looked at. A case is not required. But, furthermore, I do not wish to be thought to be saying, if the Jews are not any better than the Arabs, that the Arabs or Muslims are better than the Jews. And even more than that, why is a Jewish child growing up today in a religious settlement in Hebron to be thought of as being guilty of and blameworthy for a value-system and a set of laws and rights derived thereof that can lead towards the tragic life or death of a Palestinian, any more than a grown-up Palestinian who has been harmed by such a settlement and by such values and rights can be thought to be guilty of and responsible for the taking of life of such a child? Both are, after all, prisoners of the paradigms they have been brought up to represent. Yes, the asymmetry is there. But it shouldn't for that reason be thought that a Jewish settler is more free of its chains than a Palestinian.

You might reasonably now think that I am here trying to zoom in on and to highlight the human being nesting inside her ideological cocoon, which is supposedly spun out to protect but which at once also determines her style of life. It is indeed important for us, especially in the midst of conflict, to take a step back and do this. And to do this we should look again at rights and values, and specifically to their origins in human nature. These, I claimed, are spun out over time, some discretely, like rights, and some continuously, like values and customs. But there is good reason to wonder what in human nature prompts them, or spins them out the way they become formed, whether representing symmetry or its opposite. And my simple and unoriginal contention is that they originate in the basic passions of the human being –these being subject in principle to being moderated by Reason. These comprise, on the one hand, reflexive passions like self-love and self-interest, and suchlike; but also, on the other hand, outgoing passions like caring for, or kindness, or being merciful or loving, or compassion, and suchlike. Fear is also a primal instinct, and I shall have a few words to say about it at the end. At the end of

the day, these different forces become resolved, as they say in physics, in one social state after the next in the various socio-political conditions we find before us. Sometimes, those conditions seem offensively skewed. But other times –Ghandi, speaking about what he calls ‘the power of the soul’ would claim *most* times- their resolutions are symmetrical.

It is tempting to think that, where the conditions are skewed, then that is a case where unbridled passion must have managed to subdue Reason. But I would rather claim that when such conditions obtain, they are better or otherwise describable as being cases where one set of passions have been allowed to become so inflated as to cause imbalance –a golden mean being the fulcrum sustaining symmetry. For such a fulcrum to be placed at the right point a redistribution of weights of rights and values needs to be undertaken, rights having to be introduced in order to counter-balance value-systems, and value-systems in turn having to be worked on and changed in order to facilitate such changes in the legal system. For instance, laws can be enacted to allow non-Israeli Palestinians basic civil rights, or even political

rights, this needing the Israeli value-system to be changed. It is easy to see that Lady Justice Herself, as opposed to her look-alikes, would truly be holding the scales when the fulcrum is placed at exactly that point as to reflect symmetry.

There are two further and inter-related points I wish to raise before I conclude, one having to do with the fear instinct, and the other with why we have to be on the look-out lest the seductive language of rights in political regimes like democracies is allowed to submerge and replace completely a values-culture constituted by a symmetry of passions in the way described, giving expression to what can be called ‘values of the heart’.

Fear, of course, and as was already pointed out, occupies a central place in political theories. What this means is, not only that cause is therefore identified for why states are readily endowed by their citizens with the legitimacy they themselves have to use force in their own self-defense, but for why states -that is, those meta-biological entities which are supposed to provide security for the individuals- can resort to the use of force to defend themselves. One can readily see the logic of the

argument –that in order for the State to protect its individuals, it has to protect itself. But one can also readily see the argument’s fault: that in such a case as that of Israel and the Jewish people, for example, this strategy could well backfire, bringing the security of the individuals concerned in even graver danger than they were in before. Understanding the cohesion of a political leviathan as being based on a primal fear *for oneself*, where ‘oneself’ can easily transmute from the singular first person to the plural, and then to the singular abstract, can in this way help concoct a security doctrine in which human safety can only be sustained if *the other* is kept at arms length, and sufficiently weaker –a doctrine that by its very nature is not sustainable, for as long as *the other* is there, working on the basis of the same doctrine.

The North African Ibn Khaldun (d.1406) offered us an alternative reading of the primal instinct of fear, where primal human ties are already presupposed, and where this primal fear is therefore a fear *for the other* in the first instance. This very interesting switch in the picture re-introduces the other-oriented passions alongside the

merely reflexive ones, making for a less paranoid and perhaps therefore a more efficient and realistic security doctrine, based, in other words, on assuming communality instead of solitariness.

Communality also implies human solidarity. There is clearly much to be said for a society in which those other-oriented passions –what normally go under the name ‘community values’, and what more accurately perhaps can be called ‘values of the heart’, such as, care, respect, kindness, friendliness, compassion, neighborliness, love, and suchlike- are in constant and obvious practice. A rights-sensitized society, where great efforts have been spent on ensuring that the marginalized and the homeless and the old and the poor and the weak and the physically or mentally challenged and the millions of others having various needs are all protected by an extensive regime of rights –such a society stands to risk having all the above-mentioned human beings become mere numbers, figures and graphs, each becoming solitary in the midst of distracted crowds. It is well here always to remind oneself lest values come to be entirely replaced by rights. And as to the asymmetry in

the Israeli-Palestinian context, here it is well to remind ourselves that we all are, first and foremost, human beings, and that whether we are speaking about values or about rights, the only point a fulcrum can be justly placed on the scale is that where human symmetry is fully expressed.