

Human Rights and Democracy: Marking the Boundaries of Community

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Abstract

Within the New World Order, there is one instance that is deemed responsible for the globalization in human rights, one court whose judgments are reportedly increasingly quoted by national courts all over the world and accepted by them: the European Court of Human Rights has been hailed as a 'sort of world court of human rights'. At the level of general expressions and abstract language, human rights may, perhaps, be universal. But as soon as they turn into actual claims of rights, made in particular contexts to defend or criticize particular distributive choices, they become an effect of politics. There is no authoritative catalogue of rights that would be politically innocent: in an agnostic world, rights cannot be but legislative constructions, constantly referring back to alternative notions of the political good. In every social conflict, the claims of opposing sides may be portrayed as rights claims: my right of freedom against your right to security. The boundaries of freedom and security are drawn in accordance with cultural and political presumptions about the values that a good society prefers. And the process whereby an aspect of reality comes to be characterized in terms of rights is not dictated by any essential nature of the matter, either. It is a matter of political preference: only certain visions of the good life merit being accorded the level of protection that the classification as a 'right' entails. Moreover, the rights-language is imprecise and indeterminate in ways that defer back to policy concerns. Even a core right like the right to life has no meaning independent of the way it is interpreted by the relevant authorities. And, like all legal rules, human rights cover cases we did not wish to cover and leave uncovered cases that we think should have been covered. Accordingly,

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rights must always be supplemented with exceptions. The scope or the criteria for the application of the exception are never clearly defined, however. Within the European Convention on Human Rights, the relationship between rights and the power to derogate from them is conditioned by what is deemed 'necessary in a democratic society' — a contextual and politically loaded criterion, surely. Rights, then, are a product of a political society. Given the ethos of international law ('law against politics'), to say that human rights are the effect of politics, is nothing short of a scandal. But, let me emphasize from the start that I do not consider the banal administration of rights language a perversion or a scandal — quite the contrary. What I wish to assert is that the idea of human rights may bring emancipation precisely because it is the stuff of politics. This is what I shall do in my paper: using the case law of the European Court of Human Rights as my example, I shall look at the various ways to come to terms with bureaucratization and the possibilities of reserving the idea of human rights as a source of powerful critique of existing social institutions and practices. I also want to reflect on the consequences that the bureaucratization of human rights has on the current project for the New World Order, on the liberalism of certainties.

Keywords: Human Rights; Democracy; Globalization; European Court of Human Rights.

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