

Search for Human Rights

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THE CONTRAST between natural rights and the positive rights enacted by states in their role as law-makers is one which continues to warrant careful examination, and for two good reasons.

The first is the failure to define adequately the parameters of a natural right, such as "the right to property." The other follows the post-war attempt to obscure natural rights for political expediency.

We can take the second point first, because it is neatly dealt with by Maurice Cranston in his *What are Human Rights?** Natural rights are moral ones, and can be characterised by one single defining feature: their universal ascription to all human beings, whatever the time or place. But the international power blocs, in vying with each other in their attempts to formulate "universal" declarations which create the minimum embarrassment for governments, have in the past twenty-five years formulated a new class of rights - social and economic. But these, such as "everyone has the right to paid holidays," clearly lack universal application (not everyone on earth is an employee).

This new class of "rights" is happily embraced by Russia, for instance, which can now sit back and point to how citizens in the Communist bloc enjoy human rights. But any Jew in Russia will affirm that he is denied the natural right to freedom, which historically includes the right to free movement without hindrance at borders.

Cranston is far less satisfactory in the way he deals with his description of particular natural rights. In the

abstract, he is fine: "To assert, as do so many statements of the rights of man, that man has a right to property, is not to assert that everyone has the right in natural law to whatever possessions he is allowed to enjoy by the system of positive law under which he lives. The numerous cases of exiled criminals in South America having their ill-gotten fortunes recognised as legitimate possessions should make us aware of the ambiguity of the word 'property' - an ambiguity which corresponds to that of the word 'rights' with which it is logically connected. Possessions may be rightful in positive law, but not rightful in natural or moral law; although either form of rightfulness will justify the use of the word 'property' in speaking of such possession."

Cranston takes Locke as his main authority on the issue of property. Locke used the most effective plea for justifying a right, by maintaining that it had been earned. If I mixed my labour with the soil, then I'm entitled to claim the fruits of my effort as my own property, which includes my right to alienate that property in the way I see fit.

So far, so good. But how do we justify the claim to property in - rather than simple possession of - huge tracts of unworked land? Cranston states: "Locke does not fail to observe that property relationships become more complex with the introduction of money, and he goes on to suggest that the right to property extends to possessions which are not the fruits of a man's own labour, precisely because men give tacit consent to the introduction of money."

This transformation is clearly awkward to defend. The private appropriation of land before and after

* The Bodley Head, £2.00.

Locke's *Treatise* was published, was neither tacitly consented to by the expropriated, nor was it a direct result of the introduction of money as a means of exchange.

Cranston seeks to justify Locke's position by pointing to niggardly nature, and holding that a man who gathers food in order to survive is entitled to claim a natural right to that food. He states: "At this level, the right to property can be derived from the right to retain the possessions necessary to survival."

No-one, of course, can quibble with that. But remember - a natural right to life, and the things necessary for survival, is a universal right if it is to be justified at the moral level. This means that everyone has *equal* entitlement to the things that make life possible. To go a stage further and itemise those things which can now come within the purview of "a right to property" should surely be simple.

Land, above all else, is the key to life, and should head any such list. Locke contents himself with talk about acorns gathered and animals killed. But Locke, as we have seen, was happy to place land in the category of items which could be individually owned: a half-blind eye was turned to the landless, whose right to life became qualified by the magnanimity of landowners.

Locke's attitude is crystallised by Cranston, who points out that while Aquinas suggested that the right to life, being prior to the right to property, allows a starving man to steal to keep himself alive, Locke disagreed and held that it was the duty of the rich man to give the bread to the starving man; the starving man had no right to take what he needed. Who can be happy to place himself at the mercy of the rich in that fashion?

Cranston's attempt at dealing with this is wholly inadequate. He states: "The difference, perhaps, reflects a difference between the medieval and the modern Christian ethos. Attitudes to property are bound to differ from one culture to another, and no expression of a universal right to property can be other than exceedingly abstract."

But it is precisely the universality of the natural right which transcends time and space, and is cross-cultural - not subject to shifts in attitudes from one culture to another. To settle for an exceedingly abstract definition of property plays into the hands of those who, like Locke, find it socially convenient to impose their subjective definitions, despite the historical and anthropological evidence which ought to be the basis of our understanding of natural rights. Using these disciplines we can have no problem in establishing land as being something to which all men have equal right of access, to sustain their lives. Just how this right is institutionally guaranteed becomes the

problem of positive law, which can be adapted to suit prevailing needs; the right, however, is nobody's to juggle with at the expense of others.