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Beyond the Illusion of Human Rights

Barton Kunstler

Universal Rights

The idea that natural, innately held universal human rights are the basis for human dignity and justice is so deeply flawed that the idea of rights may be obsolete as a means of resolving social disputes, regulating human behavior, or achieving the ends of social justice that rights were originally conceived to fulfill. To use rights as a reference frame for attempts to overcome oppression or extend justice overburdens a concept that does not have sufficient intrinsic authority to achieve these ends, and restricts our ability to draw upon alternative solutions to timeless problems.

The future is a screen upon which we project our hopes for liberation from the terrors of the past. The notion of human rights has, for the past two centuries, fulfilled this very same role: America as the longed for destination of the downtrodden; the promise of freedom, elections, democracy in every country throughout the world; the dream of liberation have replaced paradise and hyssop as balms for the human spirit. Rights seem palpable: they can be guaranteed, we can almost taste them. Rights, whether we hold them or only hope to one day possess them, guarantee our future. Rights, however, are as elusive as the future, and perhaps illusive as well. As social and ecological crises intensify, we must free ourselves of the delusion of rights before we can free ourselves of the delusions of the future.

In an attempt to do so, we shall examine the notion of rights and the alternative system from which it emerged, and finally offer an alternative suitable to the present age.

The belief in universal human rights as it crystallized in the 18th century is the central engine of modern legal, moral, and relational frameworks. It undergirds the social contract between citizen and society, and governs the parameters of legal protection and political participation. It profoundly affects our values. Outrage at poverty and oppression, the hopes of the oppressed, our belief that to expect justice in the world is rational, all rest on a deeply felt sense that all human beings have the right to live free of threats to body and property, and to participate fully in the social process. Psychologically, we tend to feel valued in a society that protects us and allows us full latitude of expression, while our self-worth suffers under a regime that sanctions our abuse or forbids us behavior allowed to others. The extent to which we are endowed with rights matches the degree to which society views us as human, while the extent to which we are deprived of rights defines the level of dehumanization to which we are subject.

Thus, violation of rights is not just an assault on a specific option (free speech or the right to vote), but strikes at the very identity and thus stability of self and society. If, as Paulo Freire states, citing Hegel, that "what characterizes the oppressed is their subordination to the consciousness of the master", then deprivation of rights is clearly a profoundly psychological as well as political act. Any society that allows or encourages the violation of rights is already, whether it recognizes it or not, in a state of violent disintegration. A society that does not actively maintain and extend the umbrella of rights, finds its freedoms eroded and itself liable to corruption and decay.

The identity, laws, and values of the United States, in particular, are founded upon the idea of natural, inalienable rights. Yet, despite an intensified concern for human rights today and many successful human rights initiatives, the idea of rights has been degraded as rights are increasingly used to advance an endless set of agendas. Some of these agendas are indeed just, but using rights as the focal point of discourse burdens the idea with a weight it never was meant to bear.

Today, intellectual property rights are extended to portions of the genetic code used in bioengineered products. The right to bear arms is taken to include the right to use protective vest- piercing teflon bullets. The conflict between the right to choose an abortion versus the right to life of the foetus marks a major social divide. Creationists claim the right to have their beliefs taught as the equal of scientific theories. Mining and timber interests claim that U.S. laws regulating their activities undermine their rights as distinct cultures (i.e., the "mining culture") . Accused rapists' lawyers, to protect their clients' rights, can examine a victim's psychological records, and in court twist the most personal revelations of fantasy life or the most painful life episodes into an alleged flaw in the victim that somehow prompted the attack. Advertisers of myriad products proclaim everyone's right to be stylish in their own way, while real estate developers may sue environmentalist opponents for depriving them of earning a living. At the same time, crime and violence convince entire societies that members' basic rights to life and property are more insecure than ever.

The notion of rights simply has no relevance to many of these positions, and is inadequate to help contending groups resolve their disagreements. The idea of rights is so misplaced and diluted in the contexts in which it is being used, that once a claim is put forth as a right, discussion becomes futile, for "rights" is simply the wrong frame for the argument.

Circle of Familiars

Rights in archaic societies (or those that retain their archaic legacies) differ from our own, in that they have no notion of rights apart from that bestowed by full participation in community life. The collective is primary. As A.W.H. Adkins states of ancient Greece, before the city state era, "human beings ha[d] no rights *qua* human beings". Protection and participation derived from a person's position within a group whose members had mutual interests, a relationship denoted by the term *philotes*, "a circle of people with cooperative

relationships".

In fact, human beings are creatures of society from *before* the very beginning, as can be observed in the behavior of primates, wolves, elephants, and other social mammals. Ethologists such as Frans de Waal have observed animal characteristics formerly thought to be solely human: intense competition for hierarchy and status; behaviors that precisely express and reinforce an individual's place within the group; supportive, nurturing, and protective behavior other than parent/child relationships; interwoven alliances with apparent emotional bonds; communication of feelings of pleasure, displeasure, and belonging; ritualistic behaviors incorporating violence, dance, sexuality, and intoxication; and so on. One can hardly refrain from recognizing here aspects of individualized behavior, whether we choose to call it proto-human or not.

Always, however, among social animals, group life is primary. The differentiation of social roles that defines individuality is largely adaptive, aimed at regulating violent tendencies and sexual competition, and enhancing the efficiencies of survival. As Dudley Young shows, another element asserts itself: an irrational, intoxicating, celebratory aspect of character enacted by chimps, for example, in their evening drumming, their response to thunderstorms (Young 120 ff.), or the eating of the brain of the colobus monkeys that they hunt (Young, 66). Ritual, feelings of sympathy, hierarchy, intoxication, violence, identity: even in animal bands, the rudiments are there. Group behavior already arises out of the structure of social roles. Thus, both roles and the behavior that defines them establish the extent to which the group protects individuals and allows them to participate in its activities. In short, even among animals, we can discern a primeval version of rights. a primeval version of rights. The individuality of an animal can be described with reference to its position vis `a vis the "rights" accorded it by the group.

Thus, by the time humans emerged as a species, we had a long history of performing the behaviors that define selfhood and the self's place in a group. In many such behaviors - dance, cannibalism, signals of submissions and dominance - we see the early makings of human ritual, but it is not yet ritual. Rather, an act becomes sacred and ritualized because through that act we express the essence of individuality. The very act that distinguishes one from the collective - or, conversely, that allows the collective to experience the power and synergy of its own unity, itself as one - becomes at once both a sign advertising its own identity and a monument to that identity, thus permantizing it (neatly expressed by the dual meanings of the ancient Greek word *sema*, "sign" and "burial mound"). Establishing such a sign binds both psychological and social energies, and forms the core cathexis from which identity develops. Thus myth and identity are self-reflexive: they arise when consciousness turns back on itself to wonder at its own birth and its meaning; with this, comes the longing to secure the eternality of the identity that is embodied by the narrative content and structure of the myth.

Rights, then, have an inherent sacred aspect because they emerge in the same breath, so to

speak, as selfhood and identity. Identity is carved out of the collective mentality to the extent that individuals have rights. Yet neither rights nor identity are ever secure, for both exist by a kind of metaphysical sleight-of-hand. On the one hand, rights represent the foundation of one's role and belonging in the group. But one's role is always subject to challenge, hence, rights are negotiated with every bristle of a cohort's fur, with every physical threat. Because rights come into being as a consequence of the emergence of an individual self, and because they depend on the same act of self-conscious awareness that secures the self, every negotiation of rights is also a negotiation upon which the continued integrity of the self depends. Rights must uphold the integrity of self, but rights have no essential existence apart from the self that rights must uphold. As notions of self are elaborated, the idea of rights develops as well. This leads to a certain contradiction at the heart of the whole enterprise: rights are the "greenhouse" that nurture the development of individual self and identity. Meanwhile, rights themselves only make sense as projections of individuality.

The evolution of animal behavior towards human legal and political forms is evidenced in rituals of apportioning food that have been observed among many mammals. While female lions kill the prey, male lions get first go at it, devouring the delicacies and choice cuts. Wolves take turns at the feast according to status. Similarly, apportionment of slabs of meat among human hunters, or booty among warriors, is an early means of defining social status and rights (Kunstler, 1991). Among warrior societies, cannibalism and ingestion of psychotropic plants were marked by ritualized carving or division of the victim or plant, from which the sacred role of the steward in ancient societies derives, and Louis Gernet (1968, 1981) and Gregory Nagy (1979) have demonstrated the link between the distribution of the sacrifice and proto-legal ideas of justice.

Farther along, in ancient Greece, the foundation of new city states was formalized by apportioning land among the new citizens, and sharing food at the common table was an early guarantor, and symbol of, citizenship in the polis (Kunstler, 1991, Vernant, 1982), a precise parallel to the more primitive division of booty among warriors. Indeed, the *Iliad* begins with a conflict over one such division of booty, a conflict that inspires the "wrath" of Achilles, the first word and thematic note of the epic. In Homer, too, a formulaic phrase denotes the equal division of meat at the heroes' feast (*Iliad* 1.468, 1.602, 2.431, 7.320, 23.56). One hears echoes far more ancient than Homer in such passages.

In many myths, the bodies or substance of deities are divided and shared by celebrants, an act that often bestows identity upon a community and is linked with its discovery of a food source, i.e., a herd or agricultural crop. The inverse of such acts is the sacrifice or offering, in which the god receives portions of the slaughtered beast or the first fruits. Actually, all such acts of division and ingestion are close in meaning: the division of meat at the feast, the apportionment of land at the initiation of a colony, and the rewarding of rights are, in fact, the division of the god itself. Eating the gods distributes their power throughout the social

body and binds the community of sharers. Land, food, rights - these are all emanations of the magical substance of the deity whose division establishes a social compact and a compact with the natural sources of fertility.

Societies tend to become more stratified as wealth increases, and rituals grounded in ancient usage yield to formally defined legal relationships that precisely describe the claims of individuals to the *materia* of society. The more complex the society and the more wealth involved, the more painstaking the legal categories. Greek law evolves as the clan's claims to the deceased's property yields to the legal claims of an individual's linear descendants (Willets, 1967). The legal accounting of estates in anticipation of inheritance led to a more precise definition of rights and prerogatives in political society even as it was fueled by - and favored - the emergence of individual claimants over the groups that formerly stood as heirs.

At the city-state level, citizenship comes to replace the idea of *philotes* as the organizing principle of the larger community, but it is also exclusive and does not erase the strong feelings of membership in the *philotes* circle. One possesses rights only as a function of social responsibility, of one's contribution to the well-being of the community, and one's identity derives strictly from the polis and one's family. In most Greek poleis, only citizens able to afford the hoplite armor required to fight and protect the city and its citizens, had full participative rights. In the more democratic cities, rights under law were broadest. No one, however, would claim rights within their community by reference to innate, inalienable human rights: such a concept was meaningless to a *philotes*-oriented culture. *The magic circle of socially bonded individuals is the basis for defining rights; abstract notions of innate human rights do not exist.*

The shadow side of the circle of familiars is the fact that those outside the circle are nothing to those within it; they may be totally objectified. The horrors of genocide, the atrocities of torture prevalent in over 100 nations today, or the murderous ethnic cleansing witnessed in Bosnia, Rwanda, and Kosovo are grounded in the tensions between loyalty to the closed circle of familiars and the aggression endemic to human nature, whether one views this aggression as based in the animal or the social self. But even in times of peace, elaborate ceremonies of gift-giving are required to elevate one's status from outsider (i.e., nothing), to insider or ally.

Greek myth offers countless examples of such bonds established between members of different circles, which came under the *xenos* code of behavior. *xenos* refers to the stranger, the stranger's host (if one exists), and the code that binds them. When one travels beyond one's circle of *philotes*, one becomes *xenos*, a person with no rights except those defended by physical prowess. A native of another community, however, can extend to the *xenos* the status of guest and draw him into a local protective circle of *philotes*. The process also served to join two circles of familiars, and was the basis of marriage arrangements between phratries. The code muted aggression and mistrust and allowed closed groups to establish alliances with one another. It also modeled how rights were bestowed in all *philotes*-based

groups: via ceremonial exchange of vows and gifts.

Cult of the Object

Greek city states defined rights via laws covering criminal acts, due legal process, inheritance, and distinct levels of political participation based on property. As commerce expanded, limited rights were extended to metics, members of other communities who lived and conducted their business abroad. Thus, in a complex mercantile environment, the primitive *xenos* code became the basis for laws that defined the protections, obligations, and behavioral latitude of strangers living among the natives. Rome, of course, bestowed citizen rights to all qualified members of its vast empire, a way of extending the social obligation and responsibility that bound the empire together. The integrity of community, not individual, was still paramount.

The rights belonging to members of any given group ebb and flow with the economic and political power of that group and its ability to compel compliance to its vision. In general, rights travel from the more propertied classes on down, each new claimant group inspired by the (often unwitting) example of previous ones. As medieval Europe developed politically, economically, and technologically, the bourgeoisie claimed its freedom from caste, nobility, church, and even guild. The growth of urban society, fueled by mercantile activity, created the social and psychic space for an expanded notion of individuality to flourish, a trend evident in the arts. During the Renaissance, as John Berger (1973, 1981) notes, the lush qualities of oil painting reflected the desire of the *nouveaux riches* to celebrate their own substance, perhaps substance itself.

"Oil painting did to appearances what capital did to social relations. It turned everything into an object. Everything became exchangeable because everything became a commodity" (Berger, 87). In such paintings, the rich textures of clothing and drapes, the reflection and sparkle on the polished surface of fine furniture, the candy-like quality of the jewels, all reveal that however religious a painting's subject, the true subject was corporeal. The oil painters of the Renaissance celebrated the self as substance. They also celebrated the creation of a universe of perception, value, and values residing in the realm of art and object that was an alternative to the religious world view of the Middle Ages. The opening of pictorial space, evident in painting in a steady progression from the 13th century throughout the Renaissance (and, arguably, up to the present day), represents both the opening of the internal self to its own possibilities for growth outside the boundaries of birth and belief.

The aestheticized object is beautiful not just because of the craft or art that goes into its creation, but because it is an extension of a newly conceived concept of self, an extension of the myth that self composes about both itself and the myth of itself (i.e., that the myth is sacred, true, etc.). The modern object, that is, the object from the Renaissance on, is important precisely because it is not sacred, in the traditional sense. The realm of the sacred is highly efficient in its use of objects: it does not need many to function as symbols.

Royalty, for example, has its crown, throne, sceptre, and insignia. Yet, this selection of objects to receive the charge of symbolic meaning has generally occurred in a world relatively poor in human-made objects. (Contrast this refinement of symbology with more archaic notions of the sacred, such as those that hold every tree or animal to partake of holiness). Whatever the relative wealth of a king in, say, 1250 A.D., it was as nothing compared to the wealth unleashed by capitalism from its early stages on. The modern object, liberated from the constraints of the archaic economy, goes forth and multiplies. The deity of the modern age mirrors, structurally, the logic of economic forces and the machinery that serves them. The god of this new system, like all gods, is carved up and its substance distributed throughout the world, in this case into every object of beauty or wealth upon which an individual might stamp her or his ownership.

The proliferation of objects and the ballooning spatial framework available to increasing numbers of people created the ability to distinguish oneself from others, and the choices subsequent to this ability. The self was refined and cultivated by exposure to the wondrous new dimensions of the objective. The cult of possession was inevitably turned on the self: one's self, or the true self of another (as in love), becomes one's most treasured possession, and begins to displace God as the object of civilization's devotion. *As the self becomes exalted, so too must the notion of rights that protect the self and that guarantee its ability to experience all the marvelous possibilities the brave new world offers.* Out of this came a sentimentality of self that encouraged the development of romantic love and, eventually, the Rousseauvian view of Nature and childhood.

The revolution of rights in 18th century Europe and America is unthinkable without this long cultural preparation. Such thinkers as Rousseau, Thomas Paine, and Locke advanced the idea of universal rights that attach to human beings by virtue of their being human. Thomas Jefferson, the contradictions of his personal life and exclusivity aside, majestically evoked this belief in paragraph two of the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator, with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed". It is noteworthy that Jefferson, in his own draft, referred to the "self-evident truths" as "sacred and undeniable". As Edwin S. Gaustad writes, they "required no argumentation, no Aristotelian syllogism, no Platonic presupposition, no authority whatever except Reason to establish their validity."

That all "Men", by virtue of their creation and in line with the intent and will of the Creator, possess rights, *reverses* the most ancient sense of rights, and overthrows the general insulated tendency of the *philotes* system in favor of an all-inclusive, universal formula. One no longer has rights by virtue of belonging to a circle of *philotes*. Rather, community or state must be reshaped to conform with the individual's possession, as individual, of divinely ordained rights. Rights are no longer carefully apportioned by formal ritual, law, or

traditional usage. They are now distributed throughout the entire world and attach to one at birth. To the Enlightenment minds that disdained the irrationalities of religion, the automatic dispensation of rights did away with any need for rites. And of course, if rights are automatically bestowed at birth, so too is identity, a notion that fit well with Rousseau's vision, and even Locke's *tabula rasa*, since an infant's mind begins growing at least from its earliest training.

Thus, beyond the tensions inherent in any notion of rights are added others: *rights no longer need to be earned, nor do they incur obligations equal to the status they confer upon a person*. The job now is to protect one's rights (one's *intrinsic* wealth), rather than to earn them. And the idea that one exchanges rights contractually in order to strengthen social bonds has today become anathema to many; individual rights are no longer seen as part of any exchange mechanism, including gift exchange. Rights are viewed as so essential and innate they become indivisible; hence, they inspire a strong tendency towards isolation and lend support to arguments that societies comprise discrete entities and have no innate unifying force.

The extensive claim to rights that culminated in the Enlightenment is inseparable from the cult of the object that developed hand-in-hand with the market economy. Rights are viewed as possessions precisely because they evolved in harness with the cult of the object and the principle of possession. Rights become the ultimate commodity even as they are enshrined as our most valuable possession. Their possession represents the gateway to possibilities as vast as the manufacturing and market system of the burgeoning Industrial Revolution and as broad as the scope of economic and psychological terrains pursued by colonizers across the globe. As Harold J. Laski points out: "By 1600Émen are living and working in a new moral worldÉwhat permeates them [its sources] all is the sense of a new wealth at hand for the seekingÉThe passion for novelty is intense." (Laski, p. 64). Laski points out that the new doctrine of non-governmental interference with business and trade "assume(s) that economic liberty is in the nature of thingsÉ" "Freedom" is just another word for the chance to pursue prosperity unfettered, and the traditional Christian deity is driven back from his governance of social and economic affairs into the realm of "private faith" (Laski, 100-101). Locke (Laski, 101) articulated the ethic that "The supreme power cannot take from any man any part of his property without his own consent." In other words, the new god is the god of property and it both drives the old god back into his cave and assumes the mantle of "national salvation" (Laski, 100) as its own.

The revolutionaries of America and France took the next inevitable step: if a government is not created in harmony with the demands of individual rights, then citizens can seek redress to the point of overthrowing it. Individual rights have been given precedence over community cohesion and the need to uphold community obligations, although to the 18th century mind, responsibility to the community was a given. Nonetheless, the shift in perspective is crucial to the future degradation of the idea of rights.

With the concept of natural, or inalienable rights, a new pattern is set forth, radically visionary because it asks everyone to see in everyone else the potential for full actualization. The new ethic undermined traditional forms of oppression, and certainly inspired the fight against slavery and, eventually, the struggle for the liberation of women, colonized populations, and "minorities". All our attitudes have been profoundly shaped by this ethic, and it has inspired countless people in the daily struggle for freedom and dignity.

Despite its triumphs, the principle of universal rights can also be viewed as a sentimental conceit verging on deceit, sentimental because it feeds on what we suppose it demands we feel rather than what we truly do feel. For our emotions cannot sustain the demands of a belief in all people as ends in themselves, especially in a globalized era in which the entire suffering population of the world is nightly marched into our living rooms via television. Our minds dutifully regard each new round of suffering as an outrage, but our feelings recoil or turn off. We know we must feel for the literally billions of people whose rights are being trampled, but we have nothing but the term "rights" to guide us in our feelings or response. No wonder the term has become meaningless. We watch sentimentalized movies of Gandhi or elevate Mother Theresa to the role of global saint because we must believe it possible to universalize compassion, and for some few, it may have been possible. But the gravitational pull of the *philotes* circle, indeed, of the multiple circles that claim us, is far too great and our core feelings cannot go where our minds might lead.

Triumph of the Object

The relationship of person to object is primary to economy and to law. In the market economy, a person "owns" an object, whether the object is money, a house, a slave, a radio, or a tin of sardines. "To own" means to absorb a thing into the sphere of psycho-social space that an individual has managed to claim as his or her own. People considered wealthy and powerful command greater regions of socially acknowledged identity than the poor and dispossessed. To take a possession from another is to pierce the boundaries of ownership, and law exists in large part to sustain the illusion of "own-ship", i.e., self-through-ownership. The corollary is that the law exists to protect the notion of ownership so that the most powerful are granted legitimacy in their pursuit of greater ownership.

It has long been acknowledged in social formulae that the transference of ownership is intrinsically dangerous to the self. Rituals of exchange guarantee safety during the awkward liminal moment when goods are passed across boundaries. Any exchange can easily erupt into violence unless the most formal protocols are observed. Today's economy is no less free of threats: one might be "ripped off", "devoured by sharks", "beaten up" at meetings, and worse.

Because ownership bestows *de facto* rights as well as rights by law, and one's social wealth quite palpably determines one's access to rights, the relationship of an individual to the objects and structure of exchange strongly influence the character of rights in society. The

market economy has achieved its pinnacle in this era of corporate capitalism: everything is an object, everything bought and sold, including air rights, the flow of electrons and information throughout the world, water rights, land rights, mineral rights, fishing rights, timber rights, the right to pollute, and the right to market parts of the genetic code or medicines derived from specific bodily parts. All that was once holy is now for sale and "human rights" converge with the notion of "rights to" the very substance of the world itself.

The self, too, as we noted, is marketed as the ultimate product behind the pitch for most products: advertising sings the hymn of the Self-Adoring Self. But this is logical, considering that the identification of ownership with self has permeated every aspect of our relationship to objects.

This is true as well of objects in the grammatical sense: the "I", the modern Self, stands as Subject over a vast kingdom of objects. At its moment of greatest power, of greatest ownership, the Self is actually at its most delusionary and fragile, at its vanishing point. Why? Because it is distributed throughout all its objects. The Subject is the apportioned God distributed among its objects, only the Subject actually worships itself through its objects. Eventually, it is divided into and invested in so many objects that it becomes fully objectified. The Subject that wanted so many things disappears piece by piece into the inanimate objects of its desire. Relations between Subjects are mediated through complex negotiations whose function is to regulate the transmission of self masquerading as ownership. Hence, connective bonds among people and groups becomes less and less important to the regulation of exchange. Abstract legal formulations come to define the algebra of contending claims typically advanced by discrete "selves-as-Subjects". Along with the wealth of objects there is also a wealth of objectified qualities such as freedom, right, beauty, etc. In an ironic twist, once the object has absorbed the sacredness of Self, the self becomes mere container, and the object appropriates the substance of the apportioned god. The object-world, in which the Self is wholly invested, becomes a new God, supplanting the Subject. The Self, fixed upon the object, loses its connection not only to deity, but to its own narcissism, and has been severed from the moorings that bound it to its own identity.

The Gift

In mythopoeic consciousness, the boundary between subject and object, and between a person and things, tends to be blurry. The two are often strongly identified with one another, an identification based on the mutual identification and obligation that charge through them. The reverence with which hand-crafted objects were handled; the sacred investiture of symbolic clothing, weapons, musical instruments, and jewelry; the numberless myths and fairy tales regarding birth tokens; the sacred shields and headdresses of warriors; the powerful taboos around food, blood, flesh, and hair; the magical regard in which early technical achievements were held: the list is endless. Person and object were traditionally united by a strongly felt mutual identification and ongoing exchange - even

circulation - of identity which bestowed a sacred identity upon each object. (This sacredness is not due to the role of the object as symbol; it is sacred in itself due to its sharing the numina of identity with the individual or community).

This identity of self and object reflects the mutual identification between individual and community. The immense energy inherent in the organically forged bonds of the animal band was a *tremendum* capable of extinguishing any individual who did not respect its power. Early notions of individuality were linked with ideas of apportionment and division: the deity is divided and eaten so that its pieces may be individualized. In effect the primal deity is both superego and id. The necessities and catastrophes governing organic life, and submission to the *tremendum*, give form to the superego, while the rhythmic pulse of natural life asserts itself as id. In sharing a portion of the god with one's fellows, one gains a measure of individual sovereignty (by identifying it as oneself) over the *tremendum* represented by the collective's energy. This sovereignty contains the seed of individual awareness and integrity, the ego. Any occasion in which boundaries are crossed - birth, death, puberty, marriage, conflict, friendship, travel, shamanic journey, exchange of objects - not only connects the partners in the crossing, but actually opens up the passageways to that powerful swarm of energy out of which both community and self have been scribed.

The gift economy belongs to archaic cultures for whom objects and, more importantly, the circulation of objects, activates the energy of the *tremendum*. It derives its framework from the impulses and behaviors of the *philotes* circle, but had been left behind by many societies that still retained the *philotes* as the basis of the social contract. The northwest American Indian custom of the potlach first drew special attention to the notion of a gift economy. Marcel Mauss (1950, 1990) explained how sumptuous gifts offered by one tribal phratry to another were "woven into an inextricable network of rites, of total legal and economic services, of assignment to political ranks in the society of men, in the tribe, and in the confederations of tribes, and even internationally" (Mauss, 6). He remarked on the hostility and competition for prestige that accompanied the potlach, and the fact that the potlach not only included giving away all a phratry's wealth, but might involve mass destruction of goods as well.

In both highly formal and informal settings, the gift establishes a magical or religious bond between giver and receiver in which the latter incurs an obligation to give a gift in return, often one more "valuable" than the original. As Dudley Young observes of the *xenos* code, which belongs to the gift economy, "the offering of hospitality is no less than the bridge that enables man to move from a warring world into one of politics and other peaceful communications" (Young, 277). Anxiety underlies the gift, whether the seemingly senseless destruction of goods in the potlach, or the offering that marks a long-standing, affectionate alliance. Anxiety is alleviated by giving up what one has become overly attached to - but this only works for a society that has a clear sense of the alternative, the balanced state its sacrifice or gift seeks to achieve.

Every act of giving transforms the character of human interaction, shifts it from one laden with conflictual potential to one marked by affection (*philotes*) and collaboration. Yet, as Mauss indicates, the gift-giving transmits hostility as well. To offset this build-up of tension, the gift must keep circulating, and it is the *circulation of wealth* from one person to another, or among groups, that creates the web of relations and hence the value of the objects. Accumulation, production, and ownership for their own sake are not the objectives here. Indeed, to halt the circulation of gifts is to interrupt the flow of life force upon which the well-being of the community depends. Value intrinsic to the goods, anxiety over conflict, and resolution through alliance are fused in a continual dance that, while by no means utopian, offers an alternative to the systems of rights based on the *philotes* circle, on the one hand, and innate, natural rights on the other.

Lewis Hyde (1979) suggests that creative activity, both in regard to the internal dynamics of the creator and the role of the artist in relation to her or his auditors, can only be sustained by the dynamics of the gift economy: "Éthe commerce of art draws each of its participants into a wider selfÉIn the realized gifts of the gifted we may taste that zoe-life which shall not perish even though each of us, and each generation, shall perish" (Hyde, 152). Hyde's insight applies as well to all gift-based economies: circulation of energy and wealth through gifts is linked to notions of group cohesion and immortality. The gift economy lies at the heart of the archaic community, and Hyde (88) notes the "struggle between legal contract and what might be called 'contracts of the heart'" when gift and market economies collide.

Yet the gift and market economies stand in evolutionary relation to one another as well. The obligation incurred by the gift is identified by both Gernet and Mauss as a key feature in the early history of law. Indeed, in early law, as Mauss (49) states, "things themselves had a personality and an inherent power. Things are not the inert objects that the law of Justinian and our own legal systems conceive them to beÉ [In Roman law] they form part of the family." Mauss (48 ff.) and Hyde (86) both indicate that real law (regulating things) and personal law were not always discrete categories, but often were identical due to the mutual identification between law and object.

The role of the object in the gift economy stands as far from the notion of commodity as an object of exchange or desire can be. The gift economy's subject/object distinction is erased by the close identification of gift with self. Because the gift perpetually moves between giver and recipient. The indirect object (recipient) in one exchange becomes the subject (giver) in the next. The gift, oddly enough, never actually serves as direct object because it always belongs to the essential nature of both the giver (subject) and recipient (indirect object). The dynamic tension of the scheme is inherent in the imbalance of a grammar that possesses subject and indirect object, but no direct object at all. And if the object is never direct object, and instead only partakes of the nature of those who keep it in motion, then in a sense it is simply not an object at all. This paradox further unsettles any pretense at the social order being founded on a stable platform; it reveals the profound instability at the heart of

economic exchange and law by revealing the syntactical absurdities at their core.

Gift-giving is also associated with offerings to nature or the gods via sacrifice, pointing to another key notion of the gift economy: the vacuum that one creates by giving inevitably draws wealth back to oneself. This can only work when supported by a strong set of obligations that accompany the offering. The gift creates an obligation, which is the basis of contract law. The vacuum is creative, and out of it comes the necessity of contract as the basis of economy and law. As long as the object resists reification the system resists entropy; as the energy of the object is spent - in both senses - it is more likely to be possessed, and with possession comes weight, matter, gravity, and time.

The rights established by exchange of gifts are conceived very differently from the innate rights we receive in a commodity-based economy. In the gift economy, rights can never be taken for granted and they come with strict obligations attached. Innate rights are prior to a social connection because the object has extended its dominion over consciousness, and the relationship of owner to object becomes the model for all other relationships. Hence, we own rights just as we own the things to which we have a right. As Paolo Freire (40) writes, "The earth, property, production, the creations of people, people themselves, time - everything is reduced to the status of objects at its ('the oppressor consciousness's') disposal." In the struggle over rights - in a world where rights are objects - those with most power over objects tend to win. And remembering that the *philotes* model of rights co-existed with a commodity-based economy for millenia, we can suggest that the closed *philotes* circle may well fall short of the dynamism inherent in an active gift economy. The gift economy is potentially an open, expansive system, and the role of the *philotes* in a gift economy, while crucial, is subtly different from the closed, cautious, and conservative *philotes* group that history shows us time and again. One area of investigation may be the effect early commodity-based economies had upon the character of the *philotes*.

Beyond Objects and Rights

The domain of the object may be eroding. In our current electronic, post-modern, post-relativity era, the object has become, as Gilles Deleuze (1993) notes, an "*objectile*", suitable to an age "where fluctuation of the norm replaces the permanence of a law; where the object assumes a place in a continuum by variationÉThe new status of the object no longer refers its condition to a spatial moldÉbut to a temporal modulation that implies as much the beginnings of a continuous variation of matter as a continuous development of form" (Deleuze, 19). This has an impact on the notion of subject as well as object, for the subject becomes, in Whitehead's term, a "super-ject", that is, a viewer defined by its possessing "the point of view" necessary to see the *objectile* as it travels along its path (Deleuze, 19-20). This role of *objectile* is precisely that held by the object in the gift economy. The subject in the gift economy, defined only in relation to his or her gift, performed the role of super-ject.

Deleuze's conceptual play reminds us that natural rights are at home in a Newtonian world of discrete objects in a logical clockwork universe. Newton's world is spatial, with well-defined relationships between subject and object, and object and object. In the post-Newtonian world, objects have no fixed relationship to us, nor do we have fixed relationships to anything beyond our point of view, beyond the *objectiles* streaking across the screen-of-vision field. The notion is absurdist, yet suited to a world of global networks, cyber-realities, virtual organizations, non-goods-based economies, a universe of black holes and bent space, programmed uncertainty, and a quantum-based physical ground in which "nothingness" takes up the greater portion of the volume of the universe. As the corporate economy becomes ever more voracious, even the political entities that pretended to be guardians of our rights yield to conglomerates whose notion of rights is non-existent or irrelevant. We are beyond an obsession with ownership of objects, even beyond ownership of money. The goal now is to control the flow of symbols representing currency; currency and currents have become one. Like Deleuze's *objectiles*, we are streaking in a trajectory that arcs far beyond the conditions in which the Enlightenment notion of rights were formed or could be sustained.

The problem of expenditure of surplus energy, which Georges Bataille (1991) calls "the accursed share", bears directly on the nature of the gift. The gift, the sacrifice, and even frenzies of self-destruction can be seen as adaptive mechanisms to regulate the build-up of surplus energy, which presents a tremendous, perhaps overwhelming, psycho-social challenge. The matrix defined by rights and identity is the ultimate "accursed share", for it represents the ultimate surplus of all: self-awareness, a setting apart of the individual from the universal or collective.

In this era of voracious growth and proliferation of capital, the dilemma of surplus becomes life-threatening. One cannot produce without devouring, as contemporary ecocide attests. What Lorenz (1950, 1987) calls "the pleasure experienced through increase" depends for its sustenance, as Lorenz (139-140) points out, on the natural limits to organic growth. In contrast to organic forms, "a human enterprise . . . is potentially immortal; not only is no limit set to its growth, it is in fact that much less subject to disruption the larger it becomes" (Lorenz, 140). When the "accursed share" becomes the sole objective of the market system and its institutions, the goal, in fact, of each individual, a vital limit has been breached. It is precisely at this point that the self loses itself in the infinitude of "objective" reality.

And while self-hood becomes our most precious commodity, as a commodity it is constantly being devoured. Even now, the value of our identities to marketers, information brokers, insurance companies, and biogenetic researchers, is increasing. But this is only the market economy's reflection of a more essential process. Natural rights presume an infinite self. Bataille's "accursed share" is now the greater part of production; our economy exists to produce and feed an infinite self, a self of infinite possibilities whose value is sustained by the notion of irreducible, hence infinite, rights. It is a triumph over death, of sorts, and

when death ends, so does life, for no new forms can come into being. The surplus overflows all natural bounds as well as our ability to dispose of it. Our efforts become more frantic, and our systems move towards overload.

Rights, like Lewis Hyde's notion of creativity, require some measure of a gift economy; they are the most profound of gifts, so primeval as to pre-date the human. They are coeval with the gift of identity and individuality, the gift offered in rites of passage, which are marked by the bestowal of keepsake gifts by the initiators. And just as the movement of the gift is identified with the movement of life energy throughout society, the circulation of the gift of rights strengthens both their legitimacy and the resilience and power of the self. Such power invites energy into its system, and the invitation is accepted because it is a more efficient, attractive, and satisfying system to belong to: political power achieved on that basis will have enduring effects.

Such a view offers escape from the aridity of rights activism that views rights almost as palpable objects that have somehow been taken from their deserving owners. This activism cannot be abandoned, of course; it is responsible for saving too many lives. But its victories will be defensive and local because it is a concept no longer adequate to the challenge of deep systemic change, as it was in the 18th and 19th centuries and in the anti-colonial movements of the mid- 20th century. In a sense, the notion of human rights is still resting on these laurels. If the contemporary object is *objectile*, and often unrecognized as such, then our presumptions of our relationship to wealth, property, and objects are becoming largely delusional, and our notions of rights increasingly irrelevant.

Freire's work seems especially powerful in this regard, because turns the self back on itself and offers the self the chance to negate the assumptions about itself that it holds most dear. The pedagogy of the oppressed is a gift in which the pedagogue gives up power but not due to abnegation of, or embarrassment over, ownership, but as part of a rigorous process in which a great obligation is incurred by the receiver of this power, the obligation of self-liberation, perhaps self-creation. It is essentialist and connective in the archaic sense of the *philotes* circle and the gift economy, but existential and contemporary in that it fixes the drama of self squarely on self-reflexive processes whose purpose is renewal and reassertion of connection.

Conclusion

We are in the latter stages of a world system that no longer respects the sources of its own wealth, including the wealth represented by rights. Our economy can only devour, as if its own hollowness can only be filled by every resource the earth has collected for literally billions of years. The problem of rights is intrinsically linked to this, the essential problem of our time. The degree to which formulations derived from a gift economy can help resolve this dilemma depends upon our ability to acknowledge that everyone is gifted, at least in the possession of life and consciousness. That this has been interpreted as legitimizing the

notion of inalienable, natural rights should not dissuade us from the basic idea that we receive a gift of some sort at birth. Cosmology, if nothing else, speaks to the miraculous odds against life and consciousness appearing at all, and whether or not one believes in miracles, there ought to be no objection to the premise of a gift. But as we have seen, once received, the gift must be given again and again in order for it to multiply. Freire's pedagogy of the oppressed is one way our verbal and gestural languages can be transformed according to the logic of the gift economy. Our challenge in liberating the future from the graven templates of the past lies in establishing models whose logic reflects the counter-intuitive logic of giftedness.

The gift, however, is always fraught with danger: the danger of exchange, highly charged numinosity, deception, passion, hostility, and even connection. Any new notion of rights will have to be ecological as well as liberationist. It will integrate the shadow side of human nature in its fullest sense, as it was recognized in myth, and not simply as a function of difficult or oppressive economic and political conditions. Somehow, the recognition that self is illusory and that thus rights are illusory, must be met in a way that sustains both self and rights. The gift economy points the way in this, for in it neither rights nor self can become fixed. The illusion of self is sustained by continual giving and renunciation followed by the celebratory, festival spirit of renewal.

Paradoxically, both self and rights perhaps become ultimate *objectives*, objects of our attention that define the conditions of our attention. In some way, our task is to confront our brutality as a species and our inability to cope with the accursed share, the part of ourself that is both blessed and that has committed extraordinary crimes to achieve its state of blessedness. Can we do this in a way that fosters connection among individuals and between individuals and things, while giving us the navigational skills to survive in a highly technologized, capitalized world?

Naturally, one may shy away from - or flat out avoid - suggesting programs to achieve this end. I would suggest, however, that we begin to consider our own roles as agents of change and supporters of rights in light of the contradictions embedded in our very peculiar and dangerous world moment. In any such consideration, the notion of rights must be primary, but how we grasp the idea, how we objectify it, will determine whether we continue down a path of delusion or achieve a useful and sustaining approach to social change.

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