

**SOLIDARITY ATTACKED BY EXCLUSION:
RESPECTING EQUALITY AND DIVERSITY**

**Human Rights in the Twenty - First Century
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Affiliation with the human rights movement attracts easier adherence when the magnet is a simple one, when the human rights cry screams against the slaughter of religions, the disenfranchisement of races, or the outright exclusion of genders. When the injustices are palpable and easily articulated.

But, we have by now in many countries, entered a sophisticated era of competitive anxieties when many injustices seem to have been sufficiently cauterized so as to appear cured, when the obvious has been replaced by the subtle, and when the patience of the majority appears to have surrendered both to a complacent status quo and to a temperamental economy. The magnet is now prismatic. Human rights has achieved political maturity of expression, but its implementation remains in adolescence.

There is no doubt that in our lifetime and certainly in Canada, an enormous amount of progress has earned our gratitude. This generation has produced many more human and legislative instruments than we could have imagined either possible or necessary - The Charter , Human Rights Codes, Employment and Pay Equity Legislation being just a few - and under their auspices we have successfully eradicated innumerable barriers. But while the successes are obvious, they are far from complete visibility. Human rights is a process, an ideal not an ideology, and it demands flexible vigilance because its gains are never irreversible.

Human Rights is about fairness, a commodity much valued in the cultures of civilized countries, but more easily embraced than implemented. As a concept, it inspires platitudinous articulation, but one person's platitude may be another person's dignity. No one objects to fairness. Its charisma lies, in fact, in its objective simplicity, a perceived simplicity whose rhetoric is all too often so self-serving made-to-measure that it appears to be "one size fits all."

It is an undisputed synonym to "humane", and humane is what we all want to be. But however seductive its objective appeal may be, it can never be properly applied unless it is understood that it is anything but objective. What is fair to an Anglophone may not be to a Francophone; what is fair to a white male may not be a black female; what is fair to an atheist may not be to a 7th Day Adventist; and what is fair to any of them may not be fair to someone who is disabled or aboriginal. Each clamours for tolerance, each represents thousands more, each invokes the rhetoric of human rights, and each grows increasingly frustrated. The social contract comes under magnified scrutiny and the lens grow opaque, clouded by the terpsichordian movement of other issues competing for global policy attention, leaving human rights too often as a perpetual runner up in a race it should be umpiring.

How then to find solidarity in the tangled web of remedial pleas? How then to so define the issue that the web weaves a whole cloth rather than the tatters of good intentions.

The common ground is empathy. As more and more of us approach, and even achieve respectable levels of security, more and more of us should be looking over our shoulders to see whom we have left behind and why. And we should be looking through their eyes, because discrimination, whose eradication is the object of human rights, is in the eyes of the disadvantaged beholder.

While it's true that the plateaus are getting crowded, and that there will always appear to be less room than comfort suggests, we must all be reminded that our own comfort is fragile if the levels below us are at least as crowded. I am one of those who believe that absolute fairness, or equality, or peace, or absolute anything, is likely unattainable. But that does not mean that they are not worth pursuing. The fewer we have in our midst who feel a sense of arbitrary exclusion, the closer we are to civility. The quest is in the reduction of unfairness, and the way to achieve it is to strive towards the seemingly unattainable absolute of fairness, to make room for others, and even to facilitate their ascension to levels above our own. If the footpaths are strewn with victims of insensitivity, they will repay us. If on the other hand the path is clear, and heterogeneous, and optimistically travelled, those we promote will lead us in turn with enlightened nobility.

It's called generosity. There are thousands lined up around the block who have paid their admission and cannot understand why they are not being allowed into the theatre. It is trite to observe that indifference breeds indifference, but it is less trite to experience its

is trite to observe that indifference breeds indifference, but it is less trite to experience its costs.

"We cannot afford it" is only one side of a ledger, and it melts before the undisputable morality on the other side of the ledger that says "we cannot afford not to". Cost/benefit analyses suffer, as do many people, from being more easily amenable to demonstrating dispassionate costs than ineffable benefits. We are, I fear, at a social crossroads in our efforts to retain the fairness we prize ourselves on espousing, and without aggressive attention, we could easily allow the gains and goals to atrophy, overwhelmed by confusion and overtaken by false confidence.

Leaving aside for a moment the argument that centres on the inherent justice of promoting a genuinely egalitarian society, there is a less metaphysical inspiration, and that is the cost of neglect. Not merely the economic cost, but the cost to democratic values themselves. History is full of countless examples of the social upheavals generated when the disadvantaged can no longer be placated or mollified. Not for long can any democracy suppress the legitimate aspirations of those who no longer tolerate or understand their exclusion. And so we can either scramble to keep the lid on, or we can spend the same energy to figure out what causes the pot to boil and what we can do to turn down the heat. The first approach suggests complacent impatience; the second suggests visionary realism. We can either reverse exclusion, or wait to be reversed. How then to protect the gains and promote the values? We could do worse than starting with education.

We are as wise as what we know. By that I do not mean to define knowledge as merely the accumulation of facts which can be regurgitated when appropriate. I mean by knowledge a compendium of sensibilities, informed by facts, by sensitivity, by curiosity, and by experience. We are not omniscient and cannot know or experience all things, but we can be taught what questions to ask. The answer to any question of human behaviour is probably "it depends". Understanding what it depends on, is a function of what variables we are prepared to consider determinative. The ultimate question in human rights is "is it fair". The answer may well be "it depends", but on what will we place reliance in deciding the solution? That depends on what we know.

Do people know that many have been arbitrarily excluded from the economic, social and political mainstream? Do they know why? Do they care? They can't care unless they are taught that there is a problem, that it has victims, and that they have a stake in its resolution. Have they been trained to probe, to challenge, and above all, to empathize? Do they see education as a lifetime pursuit, or is it the mere acquisition of documentary proof that a standard of qualification has been achieved? Do they appreciate the vulnerability of young minds to insidious nuance, or do they judge educators by their simple capacity to transfer facts?

Does the media ascribe to the public a thirst for intelligent analysis, or does it cater to a perceived lowest common denomination of intellect? In other words, is education an

exhortation to be our best selves, or is it just one in the taxonomy of public entitlements we wish to discharge with moderate competency. With all due respect to transportation, fiscal policy, the environment or any of the other indispensable amenities we have come to presume to be part of the House of Good Governance, the teaching of tolerance - the essence of a good education - is the foundation, whose solid structure is the best defence against the hurricane winds of regressive ideologies.

Without a thoughtful public, the House will be a hotel for transients, alternating members of the public welcomed from time to time by expediency, none of whom can claim ownership or even its possibility with any certainty. We must have a clear sense of who we are and where we want to go, and we cannot do it unless we are grounded in education, fortified by knowledge, and protected by wisdom. If we don't know who and what we are, how can we possibly make the changes fairness demands?

Human rights is after all about change. It is about new membership to old clubs and it is sometimes about changing the club.

I accept that change is difficult, that it is easier to enunciate the need to accommodate others than it is to do it. And when I try to rationalize to myself why it is that so many resist the expanded tolerance and access human rights preaches, I explain to myself that it is because we are all fearful of change and of the introduction of people or issues

whose claim may be meritorious, but whose impact is uncertain. And while I find it a legitimate explanation for tentative reluctance, I hasten to add that I do not find it a legitimate excuse for ultimate inaction or for the kind of fear that allocates entitlement or lays exclusive claim to pieces of the social pie.

We cannot forget that everyone is entitled to fair access to the whole pie. If the pie is not big enough, let us work towards expanding it. If it is not nourishing enough, let us change the recipe that has been handed down from generation to generation. Neither the merit principle, the economy, nor productivity are jeopardized by an opening of the minds and systems of any country to a pluralistic competition. All three, in fact are enhanced. We all lose by denying options to those who would contribute, a loss outrageous in principle, unforgivable in context, and cowardly in retrospect.

Unless the issue of human rights is defined as a social partnership, we risk the poignant spectacle of disadvantaged groups competing with one another for primacy, arguing the urgency of their disadvantage over and even within each other, when there need be no competition between them at all.

Here many issues converge and require explanation. The first is to understand that when one group is disadvantaged, all are in peril. A society, for example, that permits discrimination on the grounds of sexual orientation is a society that permits discrimination.

Period. And if it exists for any, it is capable of existing for many. The groups who find themselves disadvantaged by discrimination are inter-dependent in their mutual needs for tolerance. The idea of a pecking order among or within the disadvantaged is neither productive nor acceptable when each shares the burden of arbitrary economic, social and political disadvantage. The emphasis must be on policy strategies that seek to eliminate discrimination wholesale, not one group at a time. Different groups require different approaches, I agree, but all of them must be designated beneficiaries of the assault on intolerance.

This does not mean, however, that all disadvantage is a human rights issue. I think it is time to acknowledge boldly that while the Charter of Rights and Freedoms has had the positive impact of constitutionalizing the rights we always thought we had, it has nonetheless also generated a "rights" frenzy that seeks to put every claim of right on the same moral plateau. The rights to smoke or to keep pets in an apartment are not human rights issues, and we need apologize to no one for asserting that not all rights are created equal. Some are more equal than others. The attempt to equate the needs of white able-bodied males, for example, to their female counterparts, misses the point of human rights. White able-bodied males have not suffered historic generic exclusion because of their gender. Their female counterparts have. There may be many among white able-bodied males who have been treated unfairly, but not, on the whole, because there have been assumptive barriers to their access. Those disadvantaged among an otherwise advantaged group are no more

the indicators of the presence of discrimination than are those exceptions in otherwise disadvantaged ones. Exceptions do not prove the point, history does. The arbitrarily disadvantaged must be seen to have a prior claim on remedial responses. The elimination of discrimination is the pursuit of equality and the pursuit of equality is the reduction of the disadvantage that stems from discrimination. And the proof of the reduction is not the extent to which we endorse all claims with equal righteous vigour, it is the extent to which, over time, those who were inappropriately under - represented take their representative place throughout the systems and institutions of a country, through good times and bad. It would go no small way to satisfying the concerns of the disadvantaged to give them the same opportunities to experience equitably the slings and arrows of outrageous economic fortune as those who are currently advantaged. They are ready to assume the burdens, but first they must be accorded the benefits.

And this leads to the second issue, the extent to which we acknowledge that the only way to reduce disparities based on group differences is to acknowledge those differences. It is the fact of these differences that has historically inspired exclusionary systems, institutions and attitudes. Many of the differences are ascribed to the group and are as mythical as the excuses used to justify them. But other differences are genuine, immutable and worthy. These are the differences that should be respected and accommodated. Accidents of birth or heritage do not argue for the retention of a hegemonic vision. They argue for an expanded one that breaks the exclusionary monopoly and permits all who are

willing, capable and entitled to compete fairly for access to and in the hierarchy of opportunities, in spite of and based on those differences.

Changing the rules of the competition may change who gets the rewards, but if the new victors are people who ought to have been among the old ones, we are not being unfair, we are catching up. However benignly intentioned the former competition many have been, its impact was far from benign. And it is the impact, not the motive, that indicates whether the game was fairly played.

And this leads to the third and final issue, the issue of assimilation versus integration. Because not all people are, should be, or can be the same, it is hard to see how the objective measure of equality can be assimilation. What is easy to see, however, is the seductive appeal that assimilation offers. Its carrot is the mainstream, and membership is premised on homogenization. If this means conformity to values of civility and tolerance, assimilation is devoutly to be wished. But if it means, as it usually does, obliterating racial, cultural, linguistic, religious or gender differences, let alone pride in any of them then it is neither realistic nor equitable. Access to the mainstream must be based on those differences, and integration, not assimilation, must be seen as the social goal. An integrated community is one whose members feel that their unique participation is both desired and desirable; an assimilated one denies participation to those who seek to assert the relevance of their differences. Descartes may have said, "I melt, therefore I am". But a melting pot

denies the validity of how differences may impede equality. To be the same is not to be equal. To be equal is to be treated as an equal based on relevant differences. And to be treated as an equal is to be free from discrimination, from those traditional and erroneous assumptions that ascribe merit rather than acknowledging it.

To really understand human rights in a democratic context we must examine the historic role of the individual in the democratic hierarchy and to understand that while civil liberties and human rights are theoretical siblings, they are different both in their objectives and what they are prepared to sacrifice in their pursuit. Our tradition of human rights grows from the civil libertarian roots watered by Locke, Hobbes and Mill and pruned by the nineteenth century. It was a tradition whose centre was the individual and whose crucible was the relationship between the individual and the state. It was a theoretical root whose soil was theoretical equality. Its branches were individualism and each person had the right to be treated like every other person; its gardener was a state whose functions were presumed to be restricted to those occasions when one person violated the rights of another; and its guardian was a legal system deemed to be neutral in its equal application of the law. It was, in short, a philosophy that respected the autonomy of individuals and their right to equal treatment. It was laissez-faire, and to an extent, lese majesty. In protecting the individual from unwarranted interventions from the state, it provided the illusion of fairness and the romantic rhetoric of access. In fact, it was neither fair nor accessible.

What it was, was a good beginning. Different countries are in different stages of rights development, and all must begin with a commitment to civil liberties, but they are just the beginning. Human rights start where civil liberties end. And by end I do not by any means consign civil liberties to historical oblivion. I merely point out a source of potential confusion. The issues in human rights are not only about the civil liberties' emphasis on individuals in their relationship to the state, they are more emphatically about individuals in their relationship to one another, relationships that invoke the state's intervention and assistance, and request different treatment to narrow the gap. While there are some freedoms we protect, in human rights we ask the state to promote.

What we have come to recognize is that treating likes alike, for all its facial neutrality, destroys the possibility of neutrality. Neutrality implies impartial application, but of what value is impartial application if it yields partiality. Process is only one side of the equation. The other is substance. And having accorded all individuals the same right to be free from the same state restrictions, we find that the impact of this universal standard is disparate treatment. Procedural sameness may lead to substantive inequality.

We find, at least, that equality is not a synonym for sameness, and that to presume that every individual is the same, is to create the greatest presumptive barrier to equality. If equality can be defined as the reduction of inequality, we must come to grips with how to narrow the gap.

The civil liberation emphasis on the individual is not a sufficiently broad framework in which to understand or analyse human rights. Human rights is no less about equal individuals but it is also about each individual's equal right to be free from discrimination. It is about individuals as members of a group, a group whose individuals experience disadvantage because they are members of that group. If we continue to focus on individuals, the claim of each individual is equal to the claim of every other individual. The claim of a non-white is equal to that of a white, the claim of someone who is blind is equal to the claim of someone with sight. This misses completely the issue of diversity and the hierarchy of historic disadvantage. If we want to include the widest possible number of individuals in the distribution of social amenities, we must appreciate that they were excluded not simply as individuals equally free to pursue legally sanctioned objectives, but as individuals whose group affiliation created physical and psychological prophylactics to access and outcome. Unless we come to terms with the sometime dichotomous relationship between civil liberties and human rights, we will be in policy rigermortics over remedy, If we allow ourselves to be chained to the pedestal of civil liberties we will keep other tough issues under house arrest. The other tough issues are of pluralism and diversity. Their benefit however is to individuals. And their benefactor is the state, the very state which is the civil libertarian's nemesis. The libertarian individual seeks freedom from association; the egalitarian group seeks freedom for association. Affirmative action may be a group remedy that impairs one individual's guaranteed access, but it is also a remedy that provides other individuals access they never had. Feminism may offend one individual's world view

but it is also a philosophy that helps explain why for a whole gender of individuals, their views were impaired . The requirement to retrofit a building may impose a financial burden on an individual landlord or employer, but for other individuals it means the elimination of a financial burden. If choices sometimes have to be made, and they do, human rights argues that the choices be on behalf of the arbitrarily disadvantaged group not the temporarily inconvenienced individual. To integrate individuals, we must integrate their groups, and integrating their groups may mean imposing on other individuals and restricting their autonomy.

Inclusion of those who were previously excluded may require and usually does require active interference with someone's right to decide who to hire, promote, fire or make way for, but as unfair as it may seem to the individual who seeks to preserve autonomous judgment on these issues, it is the only way to reduce inequality. Education is critical, a good economy helps, a stable political environment helps, but in the end, these factors are conducive only of the possibility of an improved attitude over time. They do too little to alter behaviours, and while attitudes may open doors, only behaviour lets people in.

In all aspects of societal membership, the rules should be so designed that membership is not only reflective of pluralism and diversity, but systems are so designed and changed that those results are induced. The issues are very different for different groups, but each should be presumed to have the same entitlement: to have their

