

Universal Foundations or Universal Rights?

Rights and Social Agency in Contemporary Latin America

By Kurt Shaw*

Abstract

Arguing from his experience as an educator of homeless and working children in Colombia, Mexico, and Brazil, Shaw contends that when human rights are based on a universal foundation, people become the passive objects of rights, not active subjects. Since the basic premise of rights is an increase of the autonomy of individuals, groups, and social movements, this “universal basis” – manifested in the protagonism of the state – in fact undermines the very rights it proposes to promote.

Shaw contends that the experiences of certain marginalized groups struggling for justice – in this case, street children and Tsotsil Mayas – offer another way to think about the universalization of human rights. Instead of basing human rights in the universal (God, reason, consensus...), these social movements base rights on the particular, on the dignity and desire and resistance.

These rights, however, do not remain in the particular; because of the desire for mutual recognition and social solidarity, people strive to assure the good of the other. In this way, though the drive for a universal foundation for human rights leads us astray, many particular foundations provide the basis for universalizing human rights.

The night before, there had been a massacre in Cazuca, the refugee shantytown on a desiccated mountain south of Bogotá where I had been working for weeks; the paramilitaries killed sixteen teenagers and left their bodies on the main street, lined up between the bus stop and the park. That day, I had planned to work with a new group of children, teaching them cinematography so that they could make a documentary about their lives, but first the kids needed to talk about the violence.

A nine year old boy began his explanation patiently, as if talking to someone he knew would never understand. “Here, there is a group called the AUC, that’s the United Self-Defenses of Colombia...”

“Or ‘the cleaners’ [*la limpieza*],” chimed in a friend.

* Director Ejecutivo of Shine a Light: la red internacional pro niños de la calle.

“The cleaners. Right. They’re the ones who kill kids who hang out on the street. So you can be playing outside, just a game of football, but if they see you, they put you on a list, and then a week later, they kill you.”

“Twenty kids have been killed up here, just for walking around,” said another boy.

“And yesterday, at least this is what they tell me at school,” added an adolescent girl, “They caught a girl and whacked her with a machete 20 times...”

“Down there,” said another, pointing to a neighborhood lower on the mountain, “they killed 60. One of them, they drew and quartered.”

A note of fear echoed in the kids voices, but mostly they spoke with the same tone they might use to tell their mothers what happened at school that day. The average, every-day tone chilled me much more than the terrible descriptions, words I had already heard too many times during my months in Bogotá.

The Ministerio Público of Colombia offers workshops in human rights, and that day a young man had braved the trip into Cazuca to teach the kids something about their rights. He was charismatic, excited, and happy to help the kids develop skits that taught the basic concepts of the Convention on the Rights of the Child.

In the play that the kids developed with the young teacher, a sick child calls out with the pathos of a girl who suffers real hunger. Her face is painted yellow with a mixture of water and play-dough, simulating jaundice, and her motions are weak. Brother, mother, and grandfather pass through the room, lamenting her pending death from some unknown disease. Suddenly, as is the way of children’s plays, a new character enters, explaining the right to health care. “The government has a responsibility!” he declares portentously, and the family begins to write letters to the Health Department, to the President, to the Ministerio Público.

As is required in the genre, the story ends happily, with the government paying for the sick girl to travel to a hospital in the United States for a miracle cure; in the last scene, she returns to Bogotá with the yellow washed from her face, and her family rejoices. After the closing “curtain”, the young teacher left warily, but with the knowledge that the children of Cazuca now understood that the State has a responsibility to guarantee their rights.

Over the last five years, as Shine a Light has developed relationships with almost 300 small NGOs that work with marginalized children, trying to create an international network for street and working kids, I have seen dozens of skits, hundreds of classes, and countless lectures on human and children’s rights. They have varied in quality and content, intellectual rigor and political militancy, but at the end, at that moment when the teacher asks the kids, “So what did you learn today?” I have almost always heard the same lessons. “The government has to protect our rights!” “Someone has to give us better health care and education!” “The state is responsible for our well-being!” In places like Cazuca, this often sounds like a cry of relief, a chance to escape from the horrible oppression of police, gangs, paramilitaries, guerrillas. Even if

we feel queasy about a United States hospital offering a miracle cure, such lessons in human rights seem essential to making the world a more just place.

The grammar of these lessons points to something very disturbing, however. The *subject* of the sentence is almost always the state,¹ while the *object* is “us”. “The government owes us...” rings out as the most basic message, leaving the state as the (active) subject and the child as the (passive) object.²

At the most basic level, we defend human rights because they open the possibility of autonomy. When someone has food to survive, culture to think critically, protection from the repressions of the government or of the powerful, he or she can create h/er own life. The point is not merely that people “have” material and social goods, but that individuals and social groups be active, autonomous agents. For this reason, a philosophy of human rights that places the child (or any human being) as the “object of rights” – as some Latin American social movements phrase it – will always do the opposite of its own intentions, encouraging passivity and thus undermining the basic purpose of rights.

“Can there be a universal foundation for human rights?” This question betrays us. To understand why, we need a short detour into the metaphysics of the universal and the particular.³ When we look for a “universal foundation” for human rights – whether in God, the nature of reason, popular consensus, the general will, or anything else – we then suppose that particular human rights will *flow* from that universal foundation. The police may not beat me *because* all humans possess the right to liberty; the State owes health care to all people *because* we all have the basic right to life. Unfortunately, when rights flow from the universal to the particular, the universal – understood as the State⁴ – serves as the *subject* of the action. We “particulars” (social movements, individual people, ethnic groups, labor unions) can only be the *objects* of these rights, with our rights as emanations of the universal.⁵

As we move from the universal to the particular, something always gets lost, as Plato taught us long ago.⁶ The beauty or good of our world is but a pale reflection of the truth of the Ideas, after all. When it comes to human rights, we often see the same dynamic. A free press, free thought, and free expression are often dirty and ugly: Neo-Nazi protests, Anarchist riots, newspaper articles offering fair and unfair criticisms of the rich and powerful... In this climate, it is much more comforting to long for the beautiful absolute of Human Rights, ignoring each individual manifestation of the universal principle.

My field is children’s rights, where unfortunately, the concrete result of our work has often been the opposite of our intentions. This problem has something to do with pedagogy, but also something to do with the nature of these rights. When kids “have the right to play”, we provide “play coaches” and “play dates”; we organize what they can do and buy toys that have only one possible use. When kids just play – as they do naturally – they invent whole worlds, create new friends, teach themselves. In short, they become *subjects of rights*, instead of *objects of rights*.

The right to education, enshrined in the Convention on the Rights of the Child, also captures the paradox at the core of a universal foundation for human rights. The Tsotsil Mayas make a fundamental distinction between two types of education: *Bijum ta'sel* – “to come to be wise and

virtuous” – y *Cha'am ta'sel* – “things that the other gives you”. In the language we have been developing here, *Bijum ta'sel* is education where the child is the active subject – finding knowledge for himself – while *cha'am ta'sel* is education where the child is the passive object – being “given” knowledge by the teacher.⁷ Because of the universal premise behind human rights – which includes the idea that the representative of the universal, the teacher, is the subject of knowledge – contemporary Mexican education policy allows considers only *cha'am ta'sel* to be a right. *Bijum ta'sel* – often practiced in religious rites or in collective work in the fields with one’s parents – is either frowned upon or made illegal.

In this way, we see how the Human Rights that flow from the universal often undermine autonomy. In the educational example listed above, the teacher is the *subject* of the educational process, but only inasmuch as s/he comes to represent the universal. The child, whose “right to education” is guaranteed by the *cha'am ta'sel* of the public school, loses the real, active education s/he had lived as *bijum ta'sel*.⁸ In the end, *when rights flow from the universal, it appears that we lose the subjectivity of the individual or the social movement, thus subverting the very rights we were trying to defend.*

What if, however, we change the position of the adjective, asking not “Is there a *universal foundation* for human rights?” into “Is there a foundation for *universal human rights*?” Is there a way to argue for the universality of human rights, but without undermining the autonomy of individuals, groups, or social movements?

The story of the development of children’s rights in Brazil offers a different way to think about the universalization of human rights. In the late 1980s, as Brazil struggled its way out of the dictatorship, life for street children turned even more tragic: vigilantes roamed the streets of Rio and São Paulo, killing kids with impunity. Often, the murderers were the same as the police officers who should have been protecting the children. Riding the wave of enthusiasm that followed the fall of the dictatorship, street kids and some adult activists formed the “National Movement of Street Boys and Girls”, which at its apogee counted tens of thousands of members.

The children protested against police brutality on the streets; they took names of crooked cops and business owners; they publicized the problem in the international media; they marched on Brasília to demand justice. In 1990, under the Movement’s intense pressure, the Brazilian Congress passed the *Estatuto da Criança e do Adolescente*, probably the world’s most progressive law for children. Though the law is still often ignored, street children in Brazil today do enjoy more rights than they did twenty years ago, and they owe these rights to their own activism.⁹

What is the “foundation” for these rights? Asking individual kids during the marches on Brasília, one would have heard thousands of answers, from the abstract and the religious (“God gave rights to all of us”) to the political (“We deserve rights just like kids in Europe have”) to the personal (“Because I want the police to stop shooting at me”). However, *the force of the argument comes from the emotions and desires* of the kids themselves, their will to live in a different world. In this particular case, the children are indeed the subjects of rights: they decide, they act, they inspire. The state endorses and defends these rights, but only as a kind of mirror that helps the children defend the rights that they themselves established. We can say in this case

that the *foundation* for human rights is the *desire* the subject has for those rights.¹⁰ And the rights themselves are justified by the dignity, strength, and subjectivity the children show in the organization of the Movement. They have shown themselves to be subjects through their activism; rights merely codify this subjectivity.

Some might criticize this argument as insufficiently grounded in reason, but I see two more significant limitations. First, children marching on Brasília might serve as a basis for the rights of these children, but can they serve as the foundation for *universal* human rights? I think not. The activism of the National Movement of Street Boys and Girls had a very specific purpose, and in that purpose, it dignified a very specific group of children: activist street kids. Their subjectivity says nothing about girls and cliterodectomy in Africa, let alone the rights of elderly Turks in Germany or the Uighur minority in China. If we generalize from their experience and “give” rights to others based on the subjectivity of Brazilian street kids, we just fall into the same trap into which the “universal foundation” led us.

Second, and perhaps more important, the National Movement of Street Boys and Girls was lucky. It crested on the wave of enthusiasm created by overcoming the dictatorship. Several of the adults involved were media and politically savvy, knowing how to use international opprobrium and parliamentary procedure. Other movements of street children, based on the experience in Brazil, have not been so fortunate.¹¹ Are we to base the argument for rights on the good fortune of success? This seems wrong.

Since I am trying to base my argument in the particular, and on the social agency of the children who must become *subjects* of human rights, let me tell another story, this one set along Avenida Insurgentes in Mexico City, at midnight on a Saturday night. A Brazilian anthropologist and I were visiting the ramshackle hut where some homeless teenagers had set up a squat, and they were passing the night as street kids often do: drugging themselves with booze and inhalants. We managed an interesting conversation with some of the kids, comparing life on Mexican streets to the experience of street kids in Rio or São Paulo. One kid talked about his experience as an extra on the set of a famous movie about street life; another sang in a sweet voice, crying perhaps from the pain his foot, recently run over by a bus, or perhaps from the intensity of the lyrics he had composed.

One of the boys, a quiet kid who’d been hanging back most of the time, just looking at us, gave my Brazilian friend a shy smile. “Are you hungry?” he asked. Though we hadn’t eaten since noon, there was no way we were as hungry as the kids were, so we told him not to worry. “No, no, I’ll make you something,” he insisted, and began to cut a potato into thin strips, then to heat a pan on an improvised stove. With each step in the cooking process, he showed us how careful he was with hygiene, washing utensils, plates, cups.... We couldn’t possibly refuse such a gift, so when the rest of the kids ate, we did too. The french fries were delicious.

Few people in the world suffer from such violations of human rights as a street child, whether we talk about health and education, freedom of expression and conscience, or the impunity of vigilantes who kill street kids from Medellín to Mexico City. Yet this boy, himself hungry, offered us some of the scarce food he and his friends had bought. We can, of course, contend that he was looking for some kind of recognition or hoping for an exchange of favors, but this

does not change the basic fact that he *cared* about our hunger. If we want to use a legalistic vocabulary, we can say that the homeless boy was deeply concerned for our human rights.¹²

When exposed to the face of the other, the boy wanted to do something to make our lives better.¹³ In spite of the conditions of his life or the values he might have embraced in a confrontation with the police, at his most noble, his most human, what mattered to him was not so much the way that the authorities violated his human rights, but how he could help someone else.

When human rights begin with the Universal, they turn the state into the active social agent. The state, not the individual or the social group, is the subject.¹⁴ In contrast, when we begin with the particular, a boy's desire to guarantee the rights of the other, a stranger whom he only knows by his smile, people remain as subjects. This allows people not only to "have" human rights, but to *exercise* them as autonomous agents – as subjects, and not objects, of rights.

In addition, this argument based on the particularity of one's desire for the good of the other overcomes the basic problems we saw in the argument based on the success of the National Movement of Street Boys and Girls in Brazil. First, when a child (or anyone) acts on behalf of another, s/he tends toward the universal, wanting something good for all. However, we must be careful to insist that this activism must be based on authentic, human relations, the personal empathy for the other as hungry, oppressed, brutalized. When activism is based not on this personal solidarity,¹⁵ but on some abstract morality, it turns again into a universal foundation, where the supposed "subject" only embodies the universal ideal. Second, this argument does not depend on the success or good fortune of any particular group advocating for its own rights. Other, more successful social movements will enlist in the same struggle, based on the solidarity they feel, and their desire to help the other find justice and human rights.

So if we ask the question, "is there a *universal basis* for human rights," we find ourselves in the paradox that began this essay, a logic of human rights that *steals* autonomy from people. However, if we ask the question, "Is there a basis for *universal human rights*?" we find the answer in a boy's desire to make life better for another person. In this process, the boy in Mexico City became the *subject* of human rights – on behalf of the other and, in the process, on his own behalf. With the boy's help, we can see a way to justifying human rights for all people, but without the force of the Universal robbing us of our autonomy.

ENDNOTES

¹ Though sometimes it can also be parents or schools.

² Since I want this essay to be open to as wide an audience as possible, I will place academic references in these footnotes. The (active) subject – (passive) object dichotomy is central to all Latin American social thought. Though based at its root in a left-Hegelian tradition, it was popularized in Latin America through liberation theology, particularly the work of base communities and the *lectura popular de la Biblia*. Some of the first Latin American intellectuals also seem to have an influence on the development of this line of thought. The *Carta Atenagórica* of Sor Juana Inés de la Cruz (published around 1680) offers a theological argument similar to the one I present here, and Bartolomé de las Casas' work has been read in a similar light.

³ Here, I am using these terms in a Kantian, not a Hegelian sense; I believe that Hegel's emphasis on the "transcendence" of the universal Idea is largely what has led us into this human rights dead end, while the Kantian idea of the "transcendental" as the plurality of the particular offers some kind of an escape.

⁴ Here, of course, I am referring to Hegel, for whom the State is the manifestation of the Universal.

⁵ One could also read this distinction between subject and object of rights in terms of Isaiah Berlin's famous distinction between "negative" and "positive" liberty ("Two concepts of Liberty" in *The Proper Study of Mankind* (NY: Farrar, Strauss, Giroux, 1997)), but contemporary Latin American political thought uses the subject-object opposition as its basis, largely growing out of Gramsci and the Frankfurt School, so I have chosen to use that language.

⁶ Here, the argument is the *Phaedrus* is clearest, I think, where the contemplation of the Idea forces the philosopher to depreciate their earthly "emanations", in the terminology of Plotinus.

⁷ For more details on Maya educational practices, see the CD-ROM "Statel Stuk: Proyecto para la autonomía" (Shine and Light and Melel Xojobal, 2005).

⁸ Here I rely on the work of Kojin Karatani and, of course, Michel Foucault. Karatani makes a very similar argument to mine, with the exception that for him, money occupies the space of the Universal. "In this domain, individuals cannot be the subjects as they are, except that, if they can be subjective (active), it is only as an agent of the category of money." Kojin Karatani. *Transcritique*. Cambridge, MA: MIT, 2004. p. 205

⁹ I tell this story largely based on the narratives of Bené dos Santos and Jussara de Goiás, two past National Coordinators of the Movement.

¹⁰ A much more academic, but similar, argument, comes from the Slovenian philosopher Renata Salecl. Basing her "foundation" for human rights on Lacanian psychoanalysis, she declares that the citizen's relation with the state, like the child's with its mother, is mediated by desire, and by the way that the fulfillment of that desire serves as a kind of recognition. Just as the child does not "need" the toy he sees in the shop window, but rather desires the desire of the mother (only *manifested* in the gift of the toy), a citizen does not "need" the right to culture, but rather sees this right as being recognized by the state. Because rights are driven by desire, Salecl insists, they will always expand.

"It appears that rights are linked not so much to demand as to desire. They are akin to that surplus of demand over need because of which demand always remains unfulfilled.... And the subject enters the domain of rights when it is possessed by the intersubjectivity of desire: The subject as the bearer of human rights can thus identify with another subject only as a subject of desire." (Renata Salecl. *The Spoils of Freedom: psychoanalysis and feminism after the fall of socialism*. London: Routledge, 1994. p. 127)

¹¹ At one point or another, people have tried to form similar movements in Guatemala, Colombia, Perú, and Paraguay. None have had the impact of the Movement in Brazil.

¹² For a better analysis of how this posture is not only ethical, but also epistemological, see my “Vil, despreciable, y valiente”, paper presented at the Conference, “Niños de la calle: Por una nueva historia” (Mexico City, April 26, 2005). Paper available in the “Ensayos para entender la calle” section of www.shinealight.org.

¹³ Though I don’t think the boy’s kindness needs any kind of philosophical justification, he embodies the kind of ethics endorsed by Emmanuel Levinas (see especially *Totality and Infinity*. Pittsburg: Dusquesne, 1969)

¹⁴ Hegel loved to remark that the “substance is subject”, but this makes sense only, as in his philosophy, the State embodies the universal-as-actor. For an excellent reflection on these issues, see Slavoj Zizek, *For they know not what they do*. London: Verso, 1991)

¹⁵ The way that liberation theology has developed the Christian concept of *agape* as the intersection of love and justice is fundamental to understanding what “*solidaridad*” means in Spanish.