

HUMAN RIGHTS AND DIFFERENCE

Human Rights



HUMAN RIGHTS AND DIFFERENCE

Human Rights after Nuremberg

A human “right” can be defined as an entitlement to treatment a person has simply by virtue of being “human” (applicable irrespective of time and place)

HUMAN RIGHTS AND DIFFERENCE

The Universal Declaration of Human Rights (UDHR)

THE RIGHT TO...

LIFE

MARRIAGE

PROPERTY

NO TORTURE

SLAVERY

DISCRIMINATION

DEATH PENALTY

FREE EXPRESSION

FAIR TRIAL

LIBERTY AND SECURITY

EDUCATION

FREE ELECTIONS


PRIVACY AND FAMILY LIFE

ASSEMBLY AND ASSOCIATION

THOUGHT, CONSCIENCE AND RELIGION

WHICH ARE YOU WILLING TO LOSE?

DO THE HUMAN RIGHT THING
KEEP THE HUMAN RIGHTS ACT

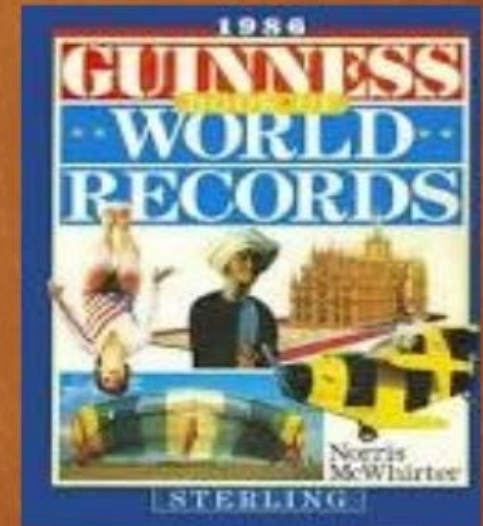

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HUMAN RIGHTS AND DIFFERENCE

Adopted in 1948
(against the
backdrop of the
Nuremberg War
Crimes Trials),
the UDHR became
a significant
consideration in
domestic and
international politics.

SIGNIFICANCE


- The *Guinness Book of Records* describes the UDHR as the "**Most Translated Document**" in the world.
- It has also served as the foundation for a growing number of national laws, international laws, and treaties, as well as regional, national, and sub-national institutions protecting and promoting human rights.



HUMAN RIGHTS AND DIFFERENCE



In addition to changing the philosophical discourse and political rhetoric, it also accelerated the development of international law and institutions, such as the International Criminal Court (ICC) in the Hague.



There is a movement to get an international criminal court in the world, voted for by hundreds of states-but with the noticeable absence of the United States of America.

(Harold Pinter)

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But Nuremberg posed some complicated problems:

1. *Post hoc*, or retroactive laws;

Principle of Legality and Ex Post Facto



- The principle of legality is articulated in Article I, Section 9 of the U.S. Constitution
- **Ex Post Facto** clause bans Congress from retroactive criminal law making
- States have similar constitutional provisions

HUMAN RIGHTS AND DIFFERENCE

2. The “Compulsion defense” and *tu quoque* defense were removed (you committed the same crimes... You cannot judge me);



tu quoque

- You avoided having to engage with criticism by turning it back on the accuser - you answered criticism with criticism.
- Pronounced too-kwo-kwee. Literally translating as 'you too' this fallacy is also known as the appeal to hypocrisy. It is commonly employed as an effective red herring because it takes the heat off someone having to defend their argument, and instead shifts the focus back on to the person making the criticism.

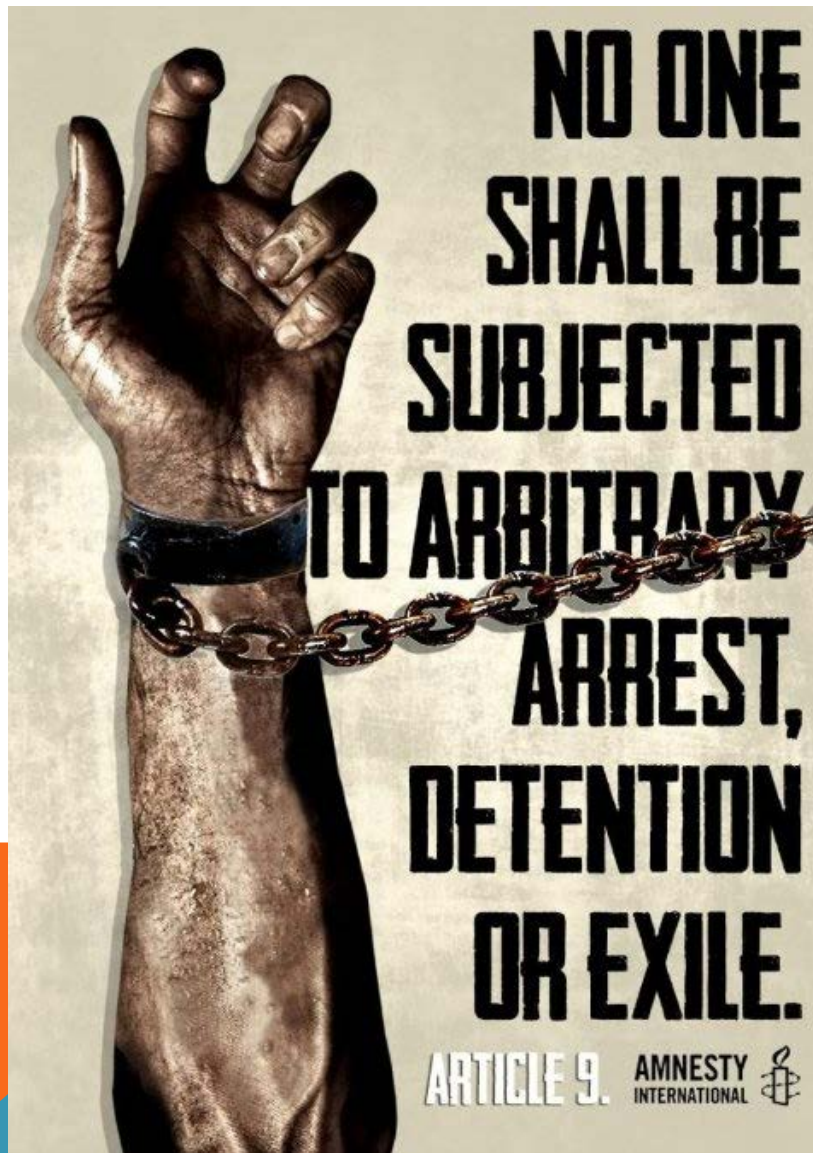
HUMAN RIGHTS AND DIFFERENCE

**3. Are non-signers
of the convention
obliged to
respect
human
rights?**

Problems with the UDHR

- It's a document which is **not enforceable**, has no binding power but merely a moral value.
- It is deliberately politically neutral but that also means that it doesn't occupy a clearly defined position on the scale of political values.
- It is imbalanced in its reference to economic, social and cultural rights.

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4. Selectivity in application of human rights.

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For **Hoffman** and **Graham** this points to the ambiguity at the heart of human rights discourse: When we say “human rights” do we mean a set of legal rights, moral rights, or some form of political rhetoric that is based neither on legal or moral grounds?



HUMAN RIGHTS AND DIFFERENCE

Which points to a further question and problem:

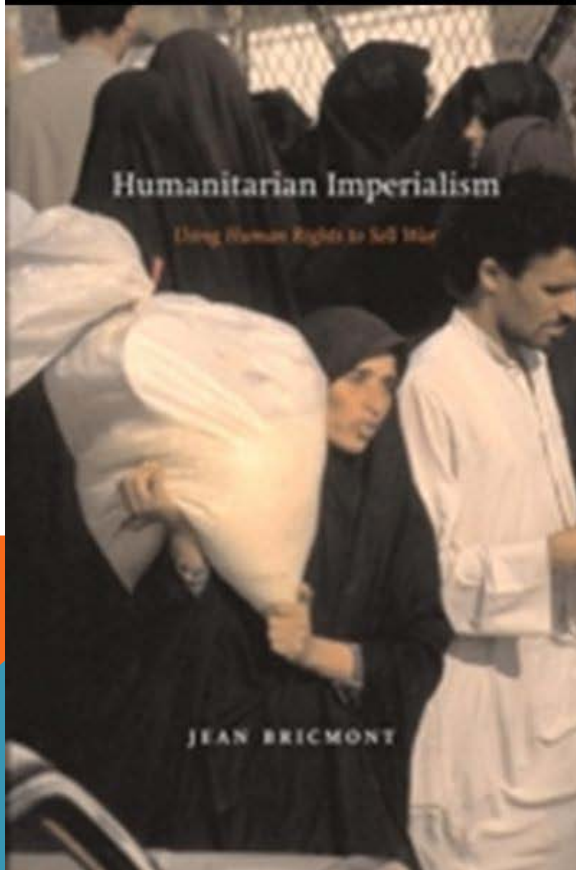
Are human rights culturally specific? (i.e. the product of a particular time [the modern period] and a particular place [Western Europe]). Is the alleged universalism of human rights simply a mask for cultural imperialism? (Bricmont's "humanitarian imperialism" thesis).



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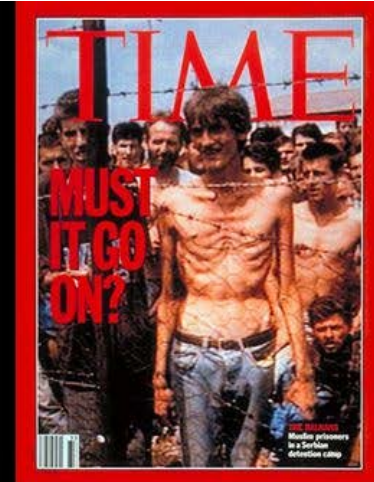
2 Important Human Rights Conventions

Humanitarian War?



*Humanitarian
Imperialism:
Using Human Rights
to Sell War*

Jean Bricmont asserts that "to call on an army to wage a war for human rights implies a naive belief of what armies are and do, as well as a magical belief in the myth of short, clean, 'surgical' wars."



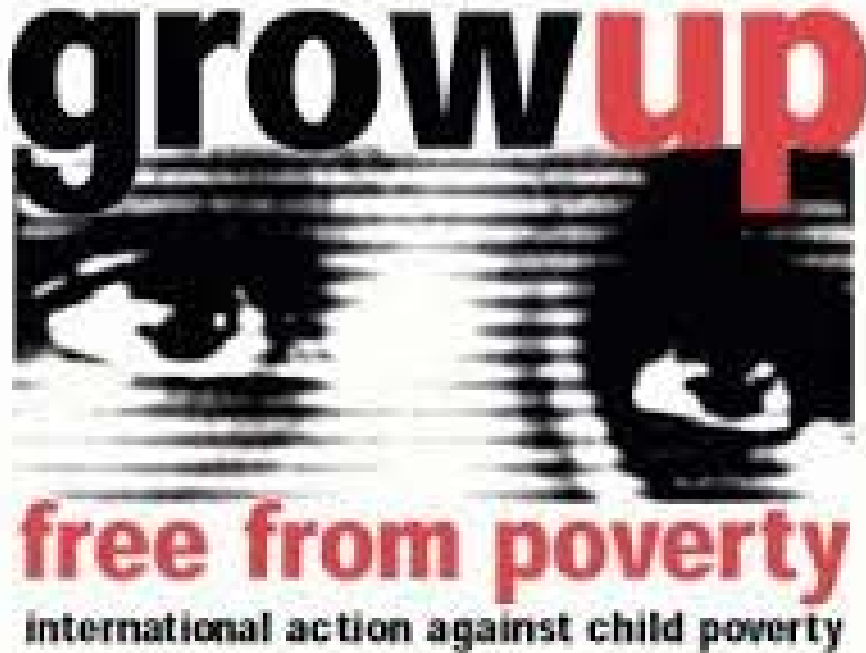
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The UDHR (1948) consists of a Preamble (“the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”) and 30 articles

1. People are born free with equal rights	2. Everyone should have these rights even if they are: A boy or girl, another color, speaking another language, practice another religion, rich or poor.	3. You have the right to live in freedom and safety	4. Nobody should treat you like a slave and neither should you treat anyone like a slave.	5. Nobody has the right to hurt you.
6. Everyone has the RIGHT to BE TREATED by the law the same way.	7. <i>The law protects everyone the same.</i>	8. Everyone should be able to get legal help when their rights are not respected.	9. Nobody should be sent to JAIL or SENT AWAY from their country without a good reason.	10. All TRIALS should be PUBLIC .
11. Everyone should be considered innocent, until proven guilty	12. Everyone should have the right to ask for protection if attacked by anyone.	13. Everyone should be free to travel within their country and visit other countries and return to their own.	14. EVERYONE HAS THE RIGHT TO ASK FOR PROTECTION IN ANOTHER COUNTRY IF YOU ARE HURT IN YOURS.	15. Everyone has the right to belong to a country.
16. Everyone has the right to get married.	17. Everyone has the right to own things and nobody should take them without a good reason.	18. Everyone should be able to practice their RELIGION freely.	19. Everyone has the right to think and say what they want	20. Everyone should be able to have peaceful meetings.
21. Everyone has the right to vote in secret.	22. We should all help each other to succeed in life.	23. EVERYONE GETS TO DECIDE WHAT THEY WANT TO BE WHEN THEY GROW UP.	24. People should <i>not work long hours</i> and should have time off.	25. Everyone has the right to health, food, clothing and housing.
26. EVERYONE HAS THE RIGHT TO EDUCATION.	27. You have the right to love art and science.	28. So that your rights will be respected, there must be an order , which can protect them.	29. You have the right to respect others and be respected.	30. Nobody in the world should try to take away your RIGHTS

Discuss articles on page 407 in your text

HUMAN RIGHTS AND DIFFERENCE



The European Convention on Human Rights (1950) had as its aim the “collective enforcement of certain rights stated in the Universal Declaration”

Interestingly, ECHR omits Articles 22 – 26 (social rights) of the UDHR. Why?

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Why the UDHR and the ECHR Are
Significant

YES WE CAN



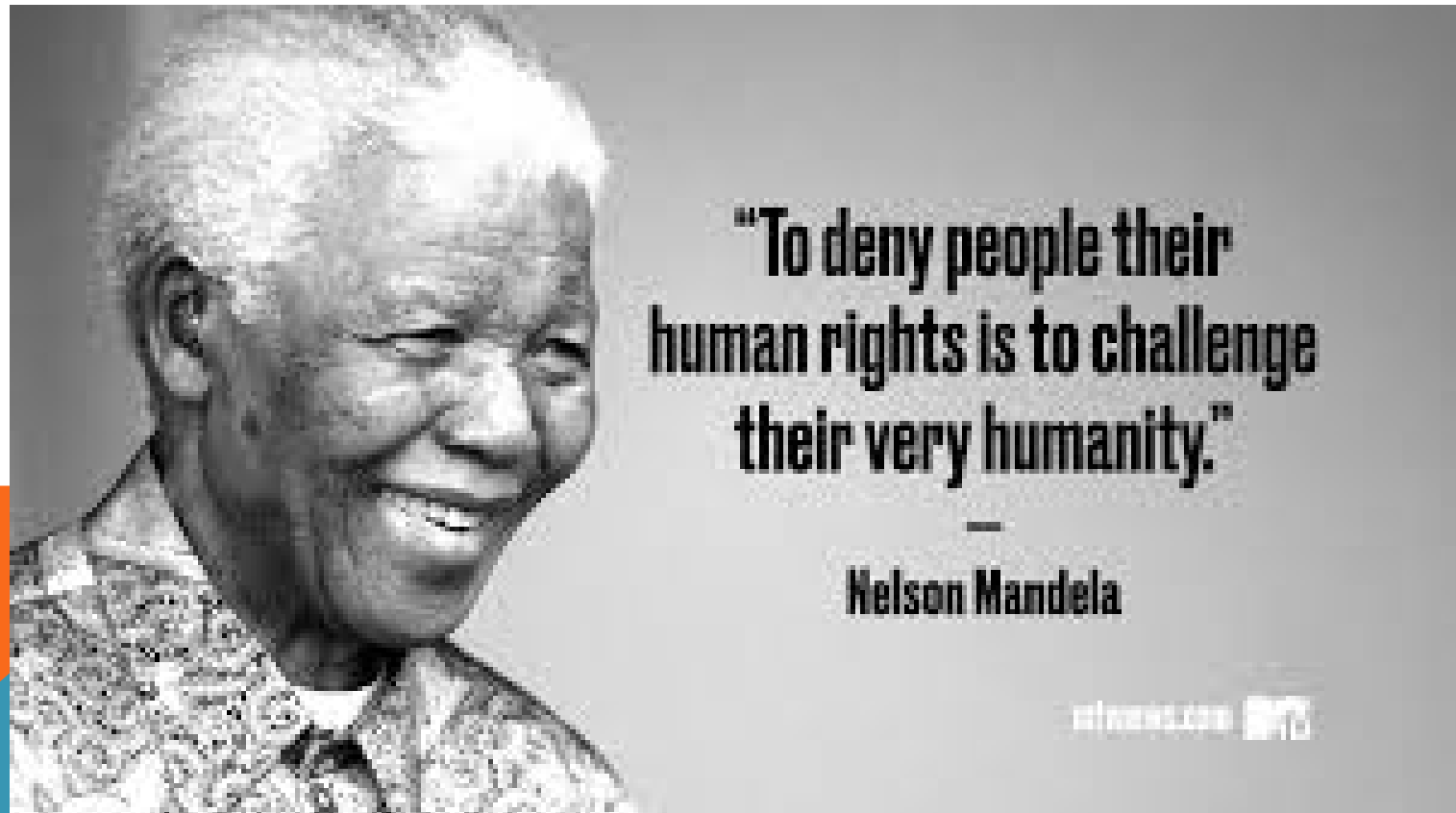
HUMAN RIGHTS AND DIFFERENCE

1. Human rights privilege certain values over others (i.e. the individual over the collective).



HUMAN RIGHTS AND DIFFERENCE

2. They raise the issue of application in a real-world legal-political situation (must a human right be a legal right?)



HUMAN RIGHTS AND DIFFERENCE

3. The question of *compossibility* (mutually possible rights) and *actionality* (fulfilment of a right cannot require impossible actions)

Compossibility – hate speech? (Right to speak vs. right to be protected against discrimination)



HUMAN RIGHTS AND DIFFERENCE

Relativism vs. Universalism and the Cultural Relativism Thesis



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Hoffman and **Graham** suggest that while there may be a role for culture in the justification, formulation and implementation of human rights, the radical “culturalism” that forms the basis of the cultural relativism thesis is incompatible with a defense of human rights.

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5 Arguments Against Cultural Relativism (and for Universalism)

Cultural relativists claim the following:

1. Different societies have different moral codes.
2. The moral code of a society determines what is right or wrong within that society.
3. There are no moral truths that hold for all people at all times.
4. The moral code of our own society has no special status; it is but one among many.
5. It is arrogant for us to judge other cultures. We should always be tolerant of them.

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1. *Intuition and Consensus* (Donnelly) – A strong sense of the rightness or wrongness of something, and the problem of “outliers”



Outliers would be cultures that do not accept a *particular* human right...can you think of any?

HUMAN RIGHTS AND DIFFERENCE

2. *Contractualism* (**Rawls's** 4 types of societies and the agreement on human rights between them) –
- a. Liberal societies
 - b. Decent non-liberal societies
 - c. Outlaw states
 - d. Burdened societies

So the idea of human rights sets a necessary [individual] standard for decency of domestic political and social institutions

HUMAN RIGHTS AND DIFFERENCE

3. *Rational Entailment* (**Habermas**) – Human rights are grounded in human autonomy, but, contrary to Rawls, human autonomy itself has a collective dimension which must take into account *cultural* interpretations of human rights.

“FROM A MORAL POINT OF VIEW, THERE IS NO EXCUSE FOR TERRORIST ACTS, REGARDLESS OF THE MOTIVE OR THE SITUATION UNDER WHICH THEY ARE CARRIED OUT.”

JURGEN HABERMAS

© Lifehack Quotes

HUMAN RIGHTS AND DIFFERENCE

4. *Natural Rights* (Finnis) – What are the “goods” that all cultures value?
 - a. Life (self-preservation and procreation)
 - b. Knowledge (valuable in itself)
 - c. Play (activities enjoyed for their own sake)
 - d. Aesthetic Experience (appreciation of beauty)
 - e. Sociability (friendship – which is a non-instrumental relationship)
 - f. Practical Reasonableness
 - g. Religion

Human rights are grounded in the protection of these goods

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5. Cruelty and Solidarity (Shklar and Rorty)

a. **Shklar** – considerations of cruelty take priority in the articulation of our sense of justice and injustice.

b. **Rorty** – recognizing the limitations of one's own beliefs (irony), and sensitivity to cruelty, expand the circle of *solidarity*.

In this way, we do not *reason* our way to human rights from an abstract standpoint of “duty”, but from *imaginative identification* with the victims of abuse.



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Human Rights Conclusion

On page 402 of your text, the authors asked whether Article 18 of the UDHR was compatible with respect for cultural diversity. After discussing this chapter, what do you believe?

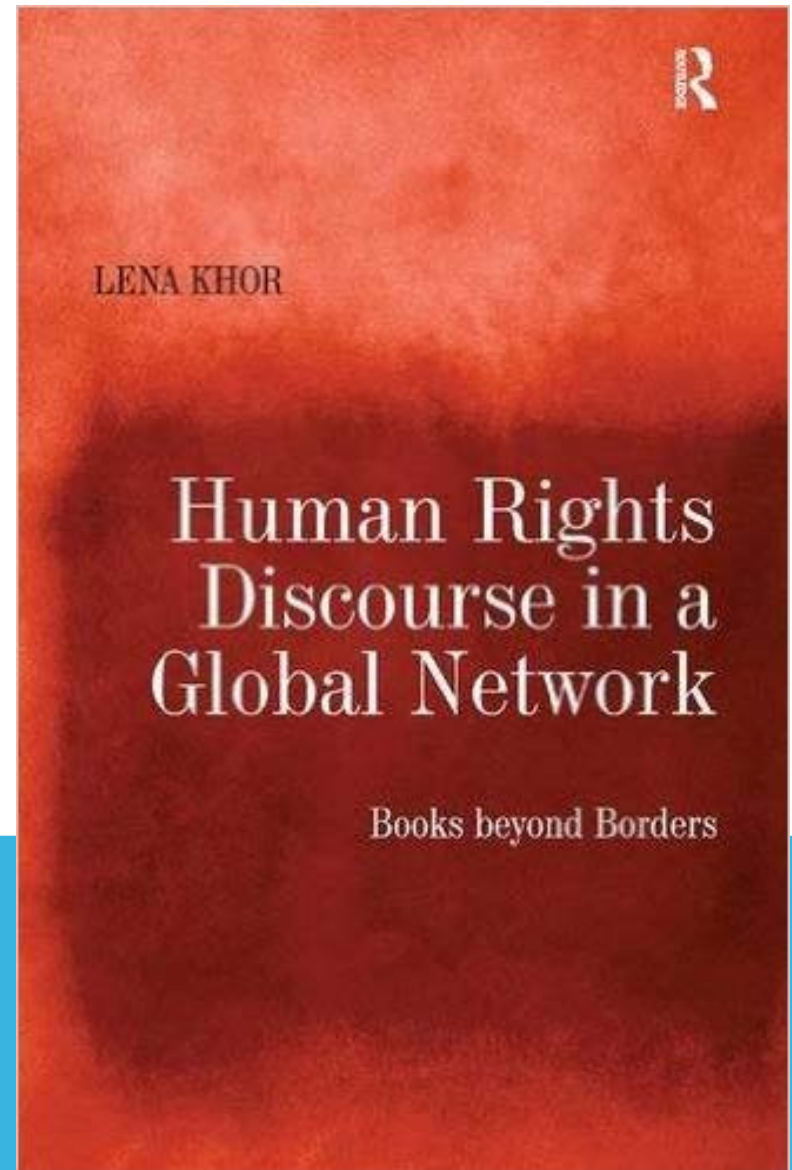
UDHR

ARTICLE 18

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, alone or in community with others, and, in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

HUMAN RIGHTS AND DIFFERENCE

For people who believe in human rights, the increasing spread of human rights discourse indicates a welcome development in humanitarian moral consciousness...



HUMAN RIGHTS AND DIFFERENCE

THE WESTERN DOUBLE STANDARD

The Western people and the Western civilization regimes leaders are busy criticizing, hating and banning Muslimah (Muslim woman) dress in their countries. But They keep silent on the Nun's dress!!

Devoted

Oppressed



Respected

S2
PHOTOGRAPHY



Terrorized

...but for those critical of the concept of human rights, the concept goes hand in hand with the growing power of [unwelcome] Western liberalism.

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Difference



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Some points to consider, and my position before the discussion:

As I mentioned at the end of the first lecture, this is a class on *political* theory.

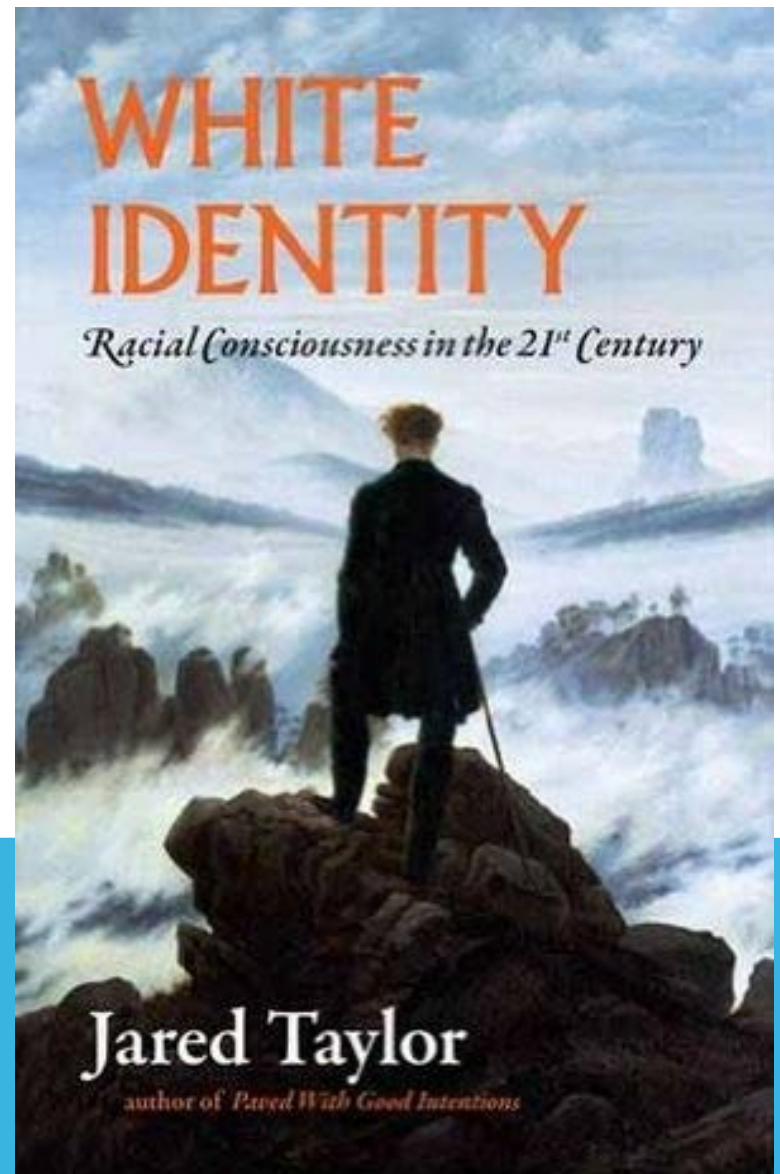
The textbook authors (on page 465) suggest that there has been a decline of *class analysis* in politics.

The impression is that people today see themselves in non-class related terms (i.e. ethnic, national, gender, religion, sexual orientation, etc.).

How do you see yourself? If we all have multiple identities, which identity would you say stands out most for you (how you're most comfortable describing yourself)?

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**Difference
implies
identity: to
know who you
are, you must
also know who
you are not.**

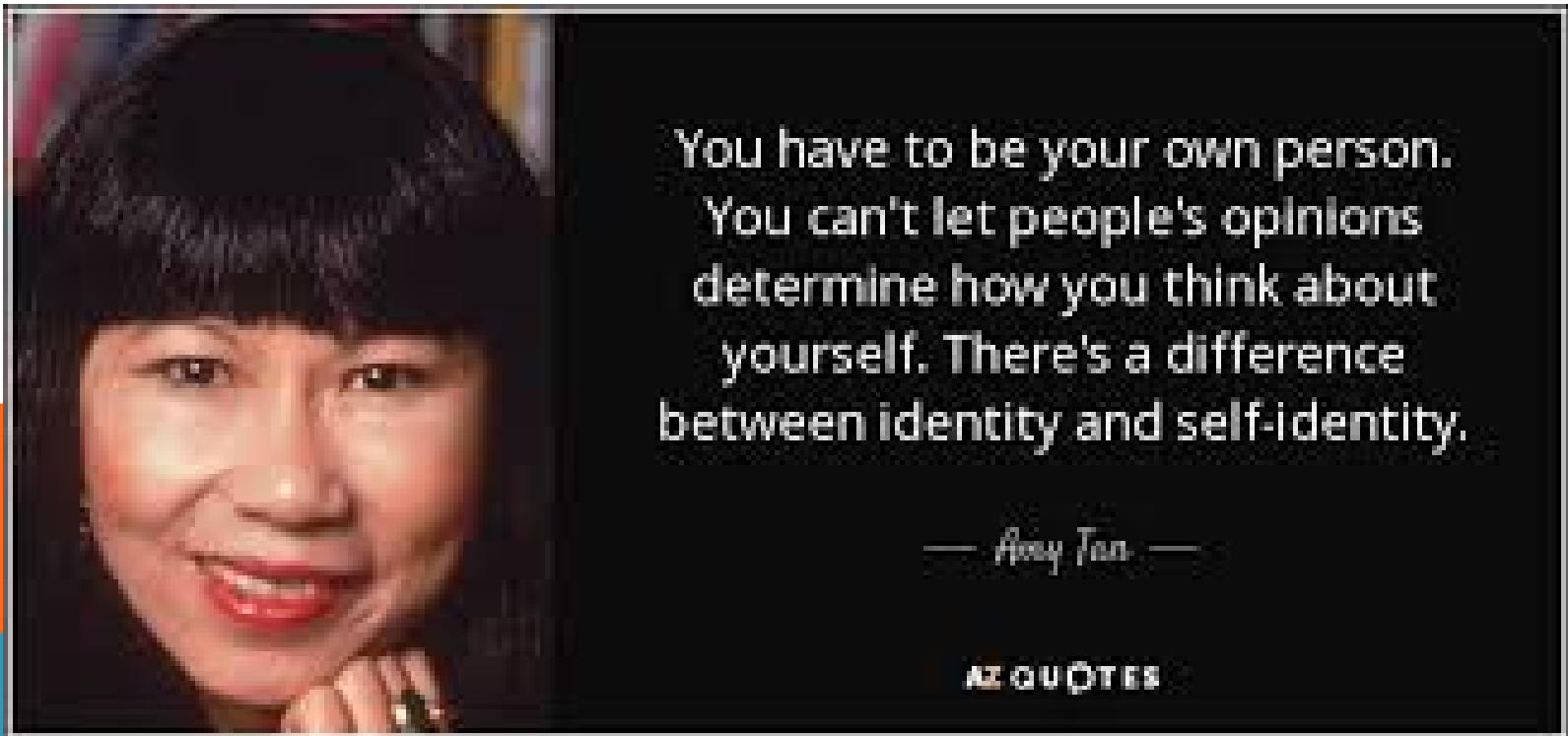


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Defining Difference

Crucial questions:

1. Are some of our identities more important than others, or does it simply depend upon context?



You have to be your own person.
You can't let people's opinions
determine how you think about
yourself. There's a difference
between identity and self-identity.

— Amy Tan —

AZ QUOTES

HUMAN RIGHTS AND DIFFERENCE

2. How do we resolve differences?



Differences make
life interesting
.....accept it and work **on** it.

HUMAN RIGHTS AND DIFFERENCE

3. Are “others”
enemies to
repel or
partners to
negotiate
with?

The goal of resolving
conflict in a
relationship is not
victory or **defeat**.
It's reaching
understanding &
letting go of our
need to be right.

www.TheBestStatusMessages.com

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CONFLICT ESCALATION

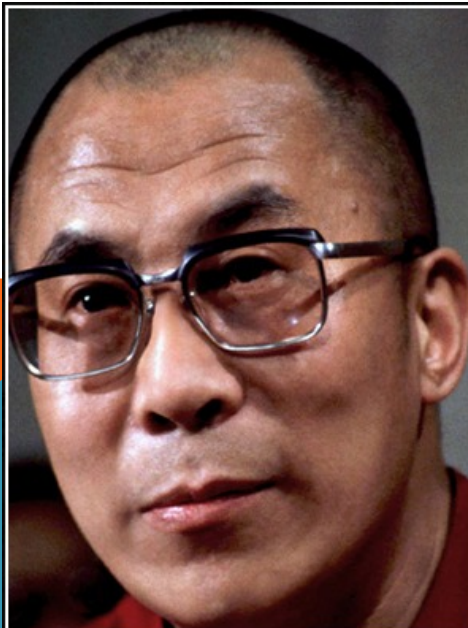


4. Under what circumstances do differences become an occasion for violence and war?

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The Problem of the Dominant Identity

Hoffman and **Graham** argue that if you have a dominant identity, then it is more difficult to put yourself in the position of another, in some cases making toleration of others more difficult.



The reality today is that we are all interdependent and have to co-exist on this small planet. Therefore, the only sensible and intelligent way of resolving differences and clashes of interests, whether between individuals or nations, is through dialogue.

— Dalai Lama —

HUMAN RIGHTS AND DIFFERENCE

They also suggest that the assumption of a dominant identity threatens democracy, since democracy requires that *all* seek to govern their own life.



Noah Webster



A pure democracy is generally a very bad government, It is often the most tyrannical government on earth; for a multitude is often rash, and will not hear reason.



AZ QUOTES



HUMAN RIGHTS AND DIFFERENCE

Postmodernism / Poststructuralism and Difference

Ideas and Perspectives:
Sex – natural and biological
Gender – historical and social



SEX vs GENDER

SEX

- Biological and physiological category/characteristics that define men and women.
- Objective/scientific criteria
- Male and female

GENDER

- Social and cultural category refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.
- Social criteria
- Feminine and masculine

HUMAN RIGHTS AND DIFFERENCE

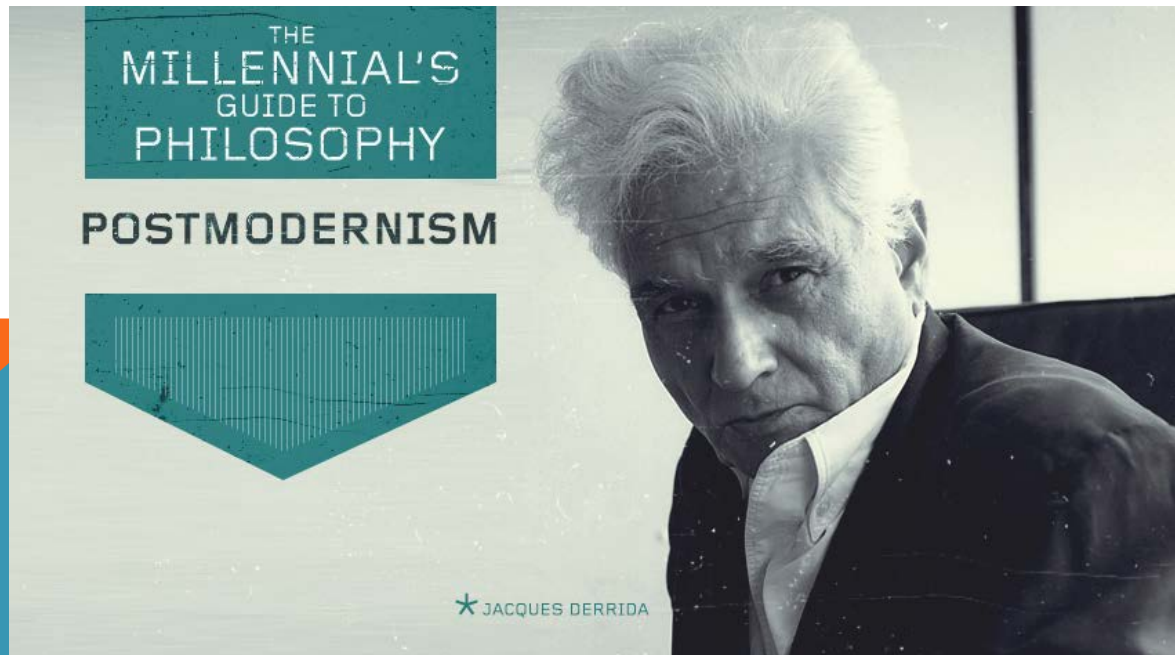
Postmodernists have written a good deal about difference, but what they have written is contentious because they often are seen to promote an argument that suggests we can never discover “truth” [Truth?], experience progress, or realize emancipation.

PREMODERNISM	MODERNISM	POSTMODERNISM
Objective Ultimate Truth	Objective Ultimate Truth	Objective Ultimate Truth is Unknowable
Supernatural	Anti-Supernatural	Mystical
Authority from God (or gods)	Authority from Science & Human Reason	No Ultimate Authority

HUMAN RIGHTS AND DIFFERENCE

Derrida's "differance"

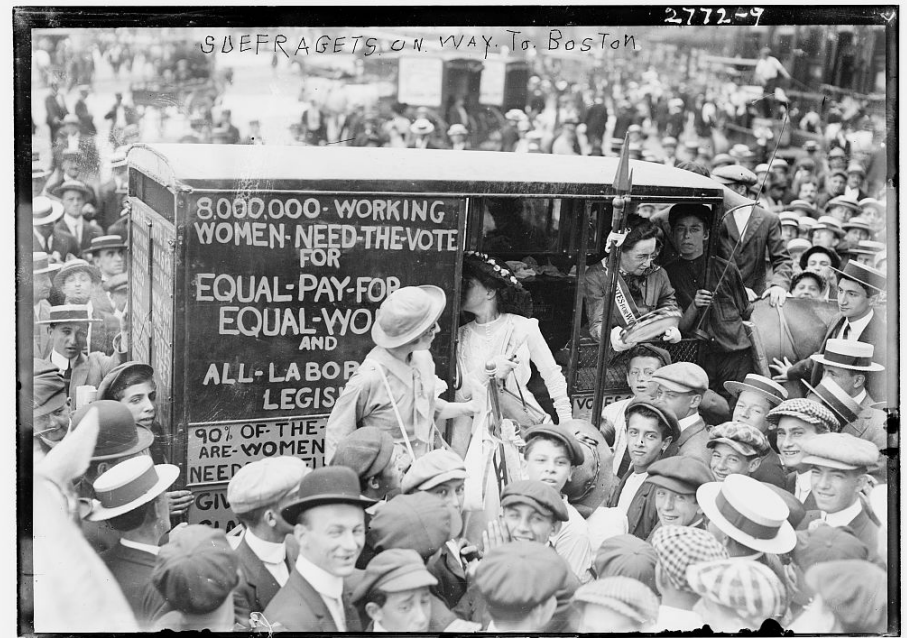
To be different *and* to defer (linking dissimilarity with the need to defer meaning) – In other words, we can never understand and empathize with a person's particular attributes, since all meanings are subject to infinite regress.



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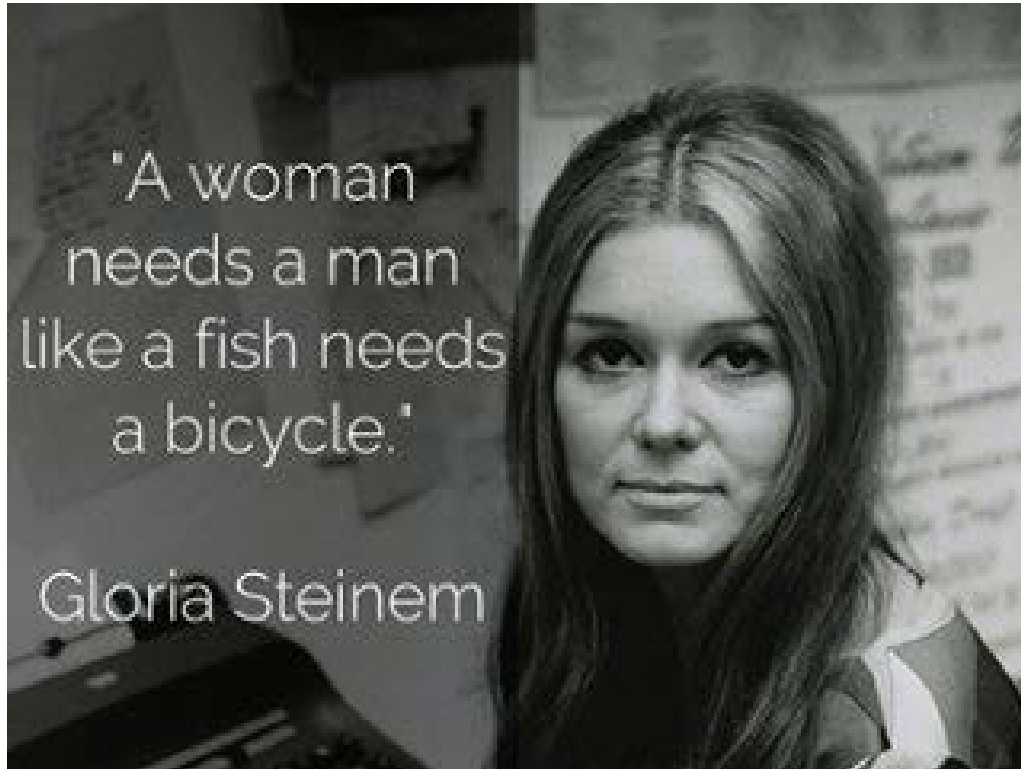
Feminist Theory and Difference

“First wave” feminists saw difference as something negative, because it was used to justify discrimination.



Women were suited to the private sphere but not the public one.

HUMAN RIGHTS AND DIFFERENCE



“Second wave” feminists (radical feminists in the 1960s) began to *value* difference over equality (i.e. women’s ways of doing are to be revered, rather than demeaned).

HUMAN RIGHTS AND DIFFERENCE

Third wave feminism – feminism influenced by postmodernism – argues for a notion of difference that extends from differences between women and men, to differences *among* women themselves (i.e. black/white, rich/poor, gay/straight, etc.).



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Liberalism and Difference

Hoffman's "Subversive Abstractions"



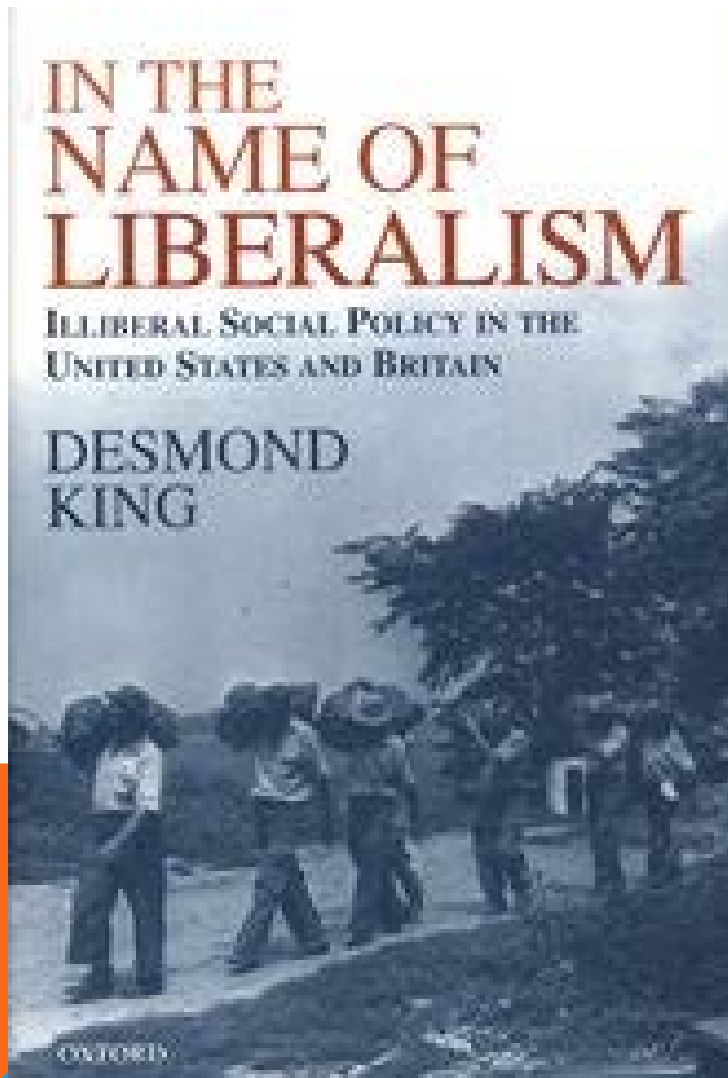
HUMAN RIGHTS AND DIFFERENCE

Liberalism is *subversive* because it rejects medieval and authoritarian notions of a natural hierarchy that identifies people as inherently unequal, meaning some are explicitly entitled to dominate others.



As you'll recall, liberalism rejects "differences" on the grounds that each of us is an individual who is the "same" as the other....

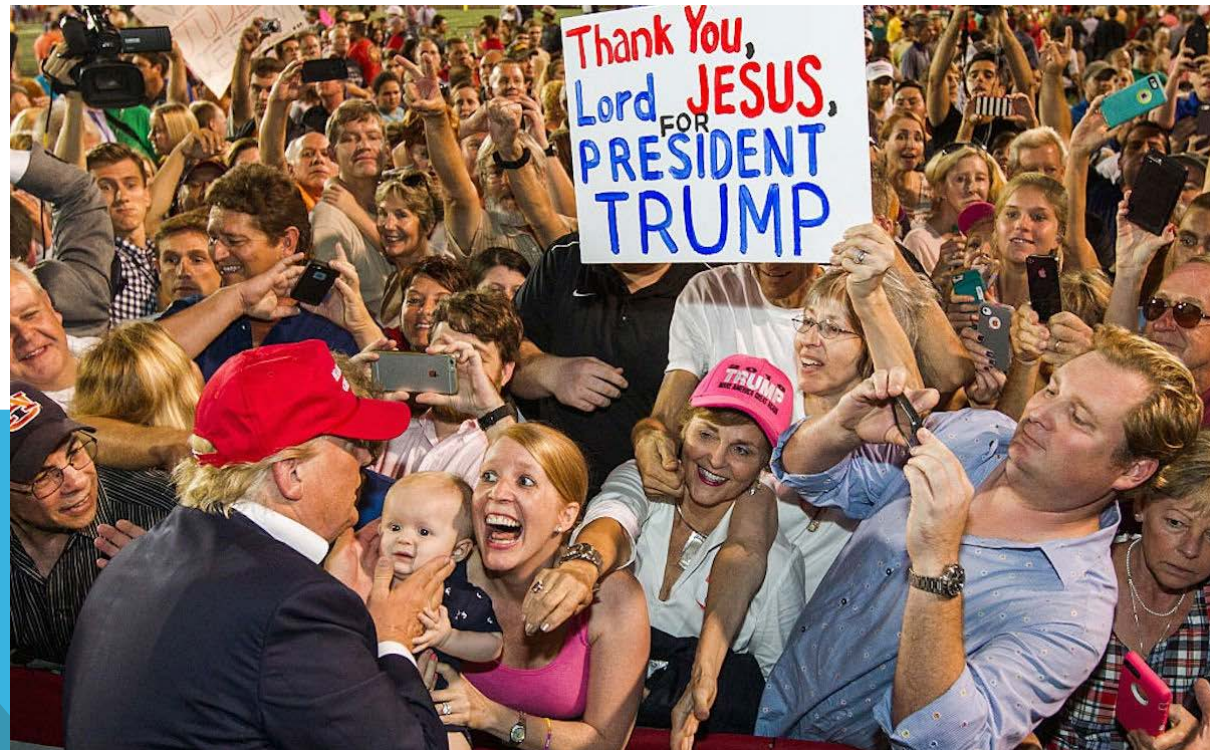
HUMAN RIGHTS AND DIFFERENCE



...But while liberalism's principles are of course subversive, they are also *abstract*, and as such, repressive hierarchies are able to “slither in.”

HUMAN RIGHTS AND DIFFERENCE

In other words, liberalism as a philosophy has a tendency to either suppress difference in the name of sameness (those who are not “like us” must be excluded), or it suppresses sameness in the name of difference (because we are different, we are superior and have nothing in common with “others”).



Hillary's
“deplorables”?

HUMAN RIGHTS AND DIFFERENCE

Democracy and the State

The analysis of identity and difference has important implications for democracy and the state. If people are to govern their lives, then the differences they have need to be respected, so that people feel comfortable with their identity and able to participate in government.

(i.e. Mill's "harm principle" – differences that harm another's interest cannot be regarded as legitimate, and need to be subject to social and legal sanctions)

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However, as we learned in Chapter One (The State), the state as an institution tackles conflicts of interest through force, which divides people...

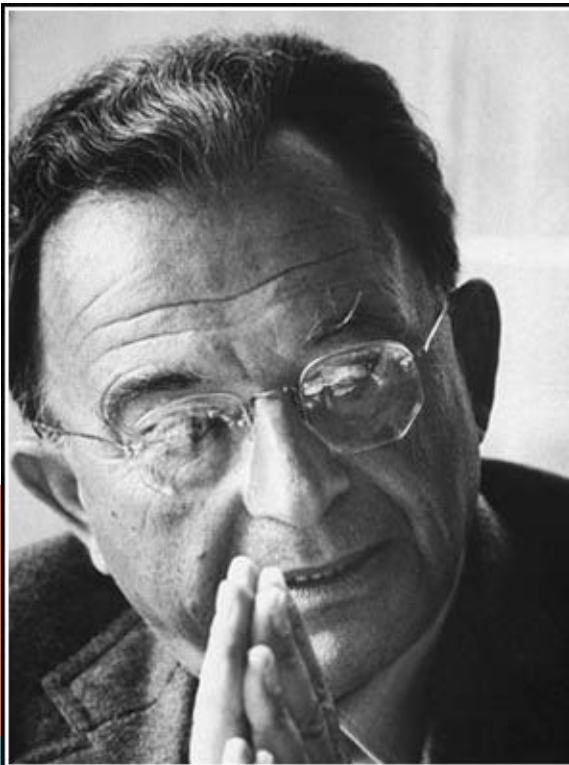
**Anthony
Giddens**

**THE
NATION-STATE
AND
VIOLENCE**

Volume Two of
A Contemporary Critique of
Historical Materialism

HUMAN RIGHTS AND DIFFERENCE

...it therefore demonizes difference and exalts sameness. Since it is unable to respect identity, it is thus *in tension* with democracy.



Equality today means 'sameness',
rather than 'oneness'.

— Erich Fromm —

AZ QUOTES