On Making Dehumanization Possible

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Contemporary liberal assertions equate illegal oppression and practices of expulsion from the juridical order with exclusion from humanity. It is often argued that violence ensuing from the abandonment of persons beyond the pale of the law not only violates their humanity but also, and perhaps more crucially, dehumanizes them or constitutes them as less than human.[1] While the objective of these critical assertions is to expose the radical evil that illegal violence can institute, they also establish an equation between the protection of the law and the constitution of humanity, effectively granting the former a magical power to endow the latter. Moreover, these critical assertions reproduce a particular conviction that humanity is a status to be recognized and conferred, or seized and taken away. Rather than leave this relation between humanity and the law intact, by pointing to its political instrumentality in contemporary human rights campaigns, this paper examines what this relation does to politics and to subjects of violence beyond its instrumental use directed at highlighting the suffering of subjects (by employing a dehumanization rhetoric) and at insisting on human-rights-based remedies to combat it. The paper asks the following questions. First, what conceptual and theoretical assumptions about humanity and the law, as well as about the relation between them, make possible the dehumanization argument? Second, to what degree has the law's conception of humanity as a status moved beyond the juridical field, leading many humanist practitioners to assert, albeit critically, that certain groups and individuals are dehumanized? And, finally, what other ways of being human are foreclosed by the conceptual assumptions grounding the law-based humanity argument?

In answering these questions, I argue first that there exists an association between modern law, specifically international human rights law, and the human. This association, contrary to the claims of liberal theories of human rights, is not a simple relation of protection, whereby human rights law protects an already given human—a human who with the advance of modernity began to constitute the grounds of the law to the exclusion of other forces such as nature and God (Howard; Howard and Donnelly 270). Rather, this relation carries with it a force of constitution. Human rights law, like modern law more generally, aspires to name, define, call into being, redeem the human (Asad). While there is considerable discussion of the characteristics of the human summoned by human rights law (Marx; Fitzpatrick), I am concerned with law's ambition to transform humanity into a juridical status, which precedes, rather than follows and describes, all humans. I call the conflation of the human and its assigned legal status an instance of juridicalization and the resulting humanity a "juridical humanity."

Second, the transformation of humanity into a status conferred by the protective work of the law enables the renaming of human rights violations as practices of dehumanization. An analysis that articulates violent subjection and oppression in terms of dehumanization is more readily accepted when the declaration of a person's humanity is a matter of (juridical) status, which is conferred and recognized, and no longer a condition gained at birth. Put differently, it is difficult to con-

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ceive of the dehumanization of an oppressed person unless we first accept the idea that humanity can be taken away or given back. In our time the law, and human rights law more specifically, claims jurisdiction over the declaration of this status.

Third, the association between the human and the law, which contemporary human rights law facilitates, has affinities with colonial rationalities. Late-nineteenth-century colonial law also gave itself the power to engender humanity, to inscribe the human as law's teleology, and to include the colonized in the realm of law's engendered humanity. Anticipating contemporary human rights logics, colonial jurists argued that lacking a law-based regime, the precolonial state left its subjects dehumanized. Modern legal reform, on the other hand, with its emphasis on rights and judicial protections, humanized the colonized.

Fourth, some practices in the humanities give rise to two figures: the humanist practitioner (the critic, the philosopher, the artist) and the suffering, dehumanized other. It is through the other that the logic of humanity as a status may have infiltrated the humanities, thereby allowing the humanist practitioner to claim a subject position.

To develop these arguments, I begin by identifying the subjects of the United Nations (UN) human rights campaigns. I argue that these campaigns effectively transform humanity into a legal status to be granted to citizens of the global south. I then expand on my notion of juridical humanity and suggest that it is based on a rationality that collapses the human in its legal status. Next I draw on my research on colonial Egypt to examine the resemblance between colonial legal reform and present-day operations of juridical humanity carried out in human rights campaigns. I turn after to contemporary critical, nonjuridical arguments about dehumanization and assess their resemblance to the rationality of juridical humanity. I then discuss the expansion of juridical humanity not only in the so-called Third World but also in the north, in places such as the United States. I conclude by suggesting that the task is not to recognize the other's humanity, for, like dehumanization, that task risks repeating colonial juridical logics. What is needed is the forging of concrete alliances with human beings who await not our recognition but our participation in their struggles.

Awaiting Humanity

Created shortly after the Second World War, the 1948 Universal Declaration of Human Rights was an attempt to shield the world from future horrors and atrocities like those of the first half of the twentieth century by recognizing all humans as such. And yet not all persons are subjects of the declaration as it has been deployed in the institutional program of the UN. The "Map of Field Presences" of the Office of the High Commissioner for Human Rights (OHCHR), which reveals the subjects of human rights campaigns encouraged by the high commissioner, shows field offices in Africa, the "Arab Region," the "Asia-Pacific Region," Europe, central Asia and the Caucasus, and Latin America and the Caribbean ("Map"). The only reference to Europe is to the subregion "Southeast Europe." North America and Australia are absent from the map.

While the United States promotes human rights in the world, it waited twenty-six years to ratify the Convenant for Civil and Political Rights, forty years to ratify the Genocide Convention, and twenty-eight years to ratify the Convention on the Elimination of All Forms of Racial Discrimination. To date, Congress has not ratified the Covenant for Economic, Social and Cultural Rights or the Convention on the Elimination of All Forms of Discrimination against Women (Douzinas 124–25). In 1999 Amnesty International spearheaded an appeal to the high commissioner for a UN intervention in what Amnesty defined as human rights violations in the United States,

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including abuse of asylum seekers, police brutality, substandard prison conditions, and the death penalty.[2] Nor was Amnesty's campaign the first to articulate human rights violations in the United States. More than three decades earlier, Malcolm X had urged African Americans to resort to the UN's human rights forum as a way of transcending the obstructionism of the American state. Amnesty's attempt, like Malcolm X's before it, failed.

Up until the last decade, the subjects of international human rights law were almost exclusively specific groups thought to be dehumanized by their regimes and awaiting the promise of humanization by international human rights campaigns and legal reforms.[3] The constructed civil and political failure of Third World states renders the people of the south the humans-to-be of international law. On the other hand, the same geopolitical order casts Western societies as having successfully generated civil governments and institutions that safeguard the humanity of their citizens.

This logic of failed and developed states frames and is framed by the project of "good governance," a subproject of the UN's Right to Development project in the Third World. According to the OHCHR, governance "is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights." "Good governance," therefore, is governance "essentially free of abuse and corruption, and with due regard for the rule of law. The true test of 'good' governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights" ("Development"). Here again the Third World becomes the site for human rights campaigns, albeit as part of development schemes.

This distinction between failed states and developed states is facilitated by the principle of sovereignty enacted in the 1945 Charter of the United Nations. Whereas the 1948 declaration of human rights asserted the principle of universal humanity, the UN charter was grounded on the principle of national sovereignty.[4] Sovereignty, like humanity, is not an abstract, universal principle but a concrete principle. Just as the UN's humans-to-be can be empirically traced to specific figures and sites, so the principle of sovereignty can be linked to concrete states recognized as sovereign. For example, the United States, western European countries, and Israel are considered fully sovereign, whereas Iran, Iraq, and Afghanistan are not.[5] The first group is said to have developed internal democratic and legal mechanisms capable of protecting the rights of citizens, whereas the second group is said to have failed to guarantee the rights conducive and necessary to full, effective citizenship.

A quick look at the quarterly reports published by the OHCHR reveals the states wherein international human rights work has been largely conducted. Eight reports from March 2003 through June 2005 are listed under the rubric "Europe, North America, and Central Asia Region." None of these reports refers to the United States or western European countries. Instead, they refer to countries such as Azerbaijan, Bosnia and Herzegovina, Croatia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Montenegro, Serbia, Tajikistan, and Uzbekistan. These quarterly reports leave the impression that supersovereign states are capable of producing strong citizens and that in their domain the humans-to-be of international human rights evaporate.

A Matter of Status

The subjects of international human rights are simultaneously the world's yet-to-be humans (the citizens of the global south). Becoming subjects of human rights ensures recognition of their (temporary) humanity and its (possible) suspension. A person is, therefore, at once a human and a yet-to-be human, a member of universal humankind and its dehumanized figure. This contradiction does not constitute a failure in logic but is related to the law's as-

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piration to call into existence, and by so doing to constitute, a human who would otherwise remain nonhuman. The law must first identify dehumanized subjects to necessitate the resort to its humanizing redemptive power. Take, for example, the assertion that Iraqis have been dehumanized by the regime of Saddam Hussein or by the American-led war and occupation of Iraq. This assertion is often followed by an invitation to institute a regime of human rights in Iraq. As such, the assertion carries with it the assumption that the Iraqis' humanity can be redeemed by the work of legal reform and human rights. The problem is that the law's power of constituting humanity carries the risk of erasing all other humanities, not only in imposing its particular vision of humanity but also, and more crucially, in erasing their past existence before the law's intervention. The law's power of constitution, when it takes over (and it does not always take over), can result not only in a new birth but also in past absence; indeed, it must define a prior absence, for otherwise there will be no occasion for the operation of the law.

Conceptualizing the human in terms of a status allows for this double movement: dehumanizing and humanizing. By *status* I mean the legal standing or position of a person as determined by her or his membership in some class of persons who are entitled, under the law, to a set of rights and obligated to certain duties. Depending on the legal regime, the category of persons can include animals, corporations, and other nonhuman entities, as well as human beings. When human beings are defined in terms of a status, they are understood to be persons in law—that is, juridical persons enjoying a certain legal standing. Thinking in terms of a juridical human status entails the classification of all creatures into discrete classes of persons and results in a specific designated status for the human, as opposed to the nonhuman.

Classes of persons do not simply reflect other real classifications. The legal distinctions that produce a discrete human status risk becoming constitutive and may become the source of our understanding of what or who the human is. The definition of a specific status for human persons undermines the dominant narrative that there is always already a given group of human beings and that its members enjoy the rights guaranteed by the law. The status of a human person, defined by legal rights and duties, might begin to define the human. Classifications, while endowing human beings with rights to protect themselves, also bring about closures in thinking the parameters of the human.

The constitutive power of these classifications becomes obvious when human rights advocates assert that persons are treated as less than human when their rights as established by the law have been violated. This argument equates the deprivation of the human legal status, manifested in the violation of rights, with the denial of humanity, with dehumanization. Because any given government can violate one's legal status as a human person, one is always at risk of being dehumanized. Such a conception of the human, implicated in the logic of legal status, is fragile. For under the regime of statushood, the human can easily be subjected to technologies of government that lay claim to humanization—that is, to the renewal of the violated or suspended legal status of a human person.

Echoing Colonialism

The logic of juridical humanity echoes the rationalities of late-nineteenth-century colonialism, specifically the ones organizing the colonial project in Egypt (1882–1936). Generally, five projects can be said to have exemplified the nineteenth-century humanity mission: the abolishment of slavery, prison reform, labor reform (especially child-labor reform), prevention of cruelty to animals, and colonization. Slaves, convicts, children, animals, and the colonized were singled out

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for a new status of humanity.[6] This status would be guaranteed not by international human rights law, since that system was yet to come into being, but by local legal reform that would establish the rule of law, the independence of the judiciary, codified laws, and the protection of rights. Reform clubs in England, for example, engaged the British Colonial and Foreign Offices in these matters[7] and demanded that legal reforms establish the humanity of the colonized. The specific charge was that colonial authorities were not introducing sufficient legal measures to remedy the dehumanization resulting from the precolonial past and to elevate the colonized to the level of humans.[8] This narrative, common among colonial officials, was constitutive of their legal reform practices.

A circular that the Egyptian minister of the interior, appointed under British colonial rule, issued in 1883 called on all branches of the administration to treat the various classes of Egyptians with virtue, dignity, and equality without consideration to wealth or age: "There should be no violation of the rights of any human being, regardless of his race or nationality." The minister also specified that "insults and torture, especially whipping, [were] prohibited," for such actions were "barbarous and negated humanity." This circular, one of many available in the archives of the colonial era, instructed local authorities to use "humane measures" in governing Egyptians ("Manshur"; my trans.).

The colonial states singled out the peasantry, or the *fellahin*, together with criminals and animals, as particularly deserving of humane treatment. In *Egypt and the Egyptian Question* (1883), Donald Mackenzie Wallace discussed the national interests of Britain in Egypt, emphasized the colonial interest in the welfare of Egyptian peasants, and argued that failure to elevate the economic position of the *fellahin* was tantamount to the failure of Britain's "mission." No political or administrative reform, he added, could "ensure national welfare so long as the economic condition of the great masses of the people [was] lamentably unsatisfactory, as [was] the case in Egypt" (416). In the precolonial era, the *fellahin*, according to Wallace, "had to submit . . . to the habitual oppression and exactions of the native communal authorities," and it was in Britain's best interest to release them from that submission by reforming local authorities (229).

The *fellahin* also concerned Lord Cromer, the British agent in Egypt from 1883 to 1907. The present and future generations of *fellahin* would remember, Cromer wrote, that it was the "Anglo-Saxon race" who liberated them from the "thralldom of their oppressors, who taught them that they too had the right to be treated like human beings." Peasants would recognize that it was the Anglo-Saxon race that granted them the "material blessings which follow the train of Western civilization" (*Modern Egypt* 197).

From the perspective of the colonial state, only a law-based regime, which separated the executive and the judicial branches and laid down general rules applied equally to all members of the social body, could ensure that peasants became truly human. Independent judges sitting on the benches of the new native courts, armed with the new, comprehensive codes, should be the rulers of Egypt.[9] A law-based regime prevented the subjugation of peasants by sovereign despotism and the cruelty of officials and thereby promoted humanity. The effect of this colonial innovation was to integrate peasants into the juridical order and to assume their humanization, thus remedying their supposed dehumanization in the precolonial past, which had lacked an autonomous juridical order. Through its juridical regime, the colonial state in Egypt generated a colonial governmental force that inscribed the human as the teleology of modern law.

It is tempting to dismiss this language and to argue that it was used for legitimating colonialism on humanitarian grounds. But this argument risks underestimating the

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universalized achievement: humanity became a product of the law, a juridical status. Modern colonial law empowered itself to engender universal humanity and to include the colonized in its realm. Universal humanity and the associated sensibilities of humanity directed at alleviating the suffering of the colonized thus became the creation of the modern colonial rule of law, the absence of which, the law asserted, indicated dehumanization, exclusion from humanity, a nonhuman status, violence, and cruelty.

Traces of Status

The understanding of humanity as a status that can be taken away or given back is not only operative in international human rights and in colonial legal reform. Humanist critics of violent subjection call for the recognition of the human in each person and share the assumption that some subjects in this world are no longer recognized as human. These calls do not necessarily reproduce the power of the law, but they accept the idea that humanity is a matter of endowment, declaration, or recognition. By writing against the dehumanization of subjects of violence, critics wish to expose and to challenge the power that inflicts suffering and death, but they accept the notion that humanity can be taken away. They grant violence the force that it wages war to achieve, without asking in what ways the subjects of violence may be dehumanized.

But aside from reproducing violence's power, these critical assertions also risk erasing subjects of violence, even while wishing to recognize the humanity of the dehumanized. To understand these erasures, I believe we need to separate, analytically, the concept of status from that of subject, at the risk of overlooking their relatedness. It is difficult to conceive of a dehumanized subject position and even more difficult to imagine how it can be meaningfully inhabited or addressed. For the critique of dehumanization becomes increasingly powerful the more the human is meaningful. But if the human is a meaningful subject position and if humanity is taken away from the other, what possibilities remain for the other to exist as a formed subject in our critique? Furthermore, when persons are declared dehumanized, what political possibilities exist for them, aside from being victims awaiting humanitarian interventions?

Future Past

The American Civil Liberties Union (ACLU) recently added international human rights to its legal concerns. As the Web site explains:

> [T]he ACLU created a new Human Rights Working Group in 2004 dedicated to holding the U.S. government accountable to human rights principles. The Group will incorporate international human rights strategies into ACLU advocacy on issues relating to national security, immigrants' rights, women's rights and racial justice. ("Int'l Human Rights")

The ACLU has adopted what Malcolm X called for some forty years ago. It has also expanded its activities into human rights violations that are carried out in the name of "the war on terror."

In addition to the ACLU's human rights work on behalf of non–American citizens, such as the detainees at Guantánamo Bay, there is a new attempt to expand juridical humanity to include American citizens by attempting to incorporate international human rights law in American law. This development in litigation, which is preceded by the European Human Rights Court, might bring about a change in the composition of the subjects of human rights but not the logic of humanization or dehumanization. Instrumentally important as it is, the new effort indicates the degree to which the notion of humanity as a juridically established status has gained political power. But the more we think of humanity as a juridical status, the more dehumanization becomes possible. The

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result may be that we are witnessing an era in which the human is becoming an apolitical category and in which the juridicalization of humanity coincides with its depoliticization. For if we can finally claim that we have all been dehumanized, then dehumanization can never be the measure of the other. Asking this question can show us the erasures we perform in our critique of dehumanization.

Can we put the humanity of the other to the side? Can we take it for granted, not question it, so that we avoid reproducing the logic of "statushood"? Can we rid ourselves of the notion of dehumanization, so that we do not reproduce colonial and neocolonial practices that insist dehumanization can occur and that humanity can be given back? Is it possible to begin to see the governmental force of the claims of dehumanization and humanization? We may wish to oppose the idea of humanization and its complement, dehumanization, by refusing to use a language that, in its insistence on human statushood, leaves little space for a troubled subject formation. The broader challenge is to understand struggles of citizens and subjects who go about being human in radically different ways that neither await our recognition nor aspire for law's recognition. The task is to think humanity and politics in nonjuridical terms, so that struggles that are not waged under the sign of human rights can invite our participation. And when we begin to refuse invitations to recognize, and therefore endow, a fixed juridicalized humanity, we might also begin to participate in struggles in which there are more possibilities for the emergence of political subjectivities—fluid, flexible, full of contradictions and problems. This means thinking more modestly (less instrumentally) and thus more politically and strategically about what we can do (endow humanity or declare its loss).

Notes

1. This equation is most prominent in the work of human rights organizations, such as Amnesty International (www.amnesty.org) and Human Rights Watch (www.hrw.org). For a nonliberal account of humanity and the law, see Saidiya Hartman's argument that the subjection of slaves was carried out not by their exclusion from humanity but by the law's recognition of a slave humanity. This humanity, Hartman argues, should not be dismissed as ineffectual and as the volte-face of an imperiled institution. Rather, she argues that the promise of humanity had no meaning other than intensifying the suffering of the slave.

2. For an example of an international-human-rights-based campaign that Amnesty initiated with respect to the death penalty in the United States, see web.amnesty.org/library/Index/ENGACT500131998.

3. Anthony Anghie's work on the colonial origins of international law identifies the concrete ways in which Third World states have become the subjects of international law. Nineteenth-century jurists were preoccupied with questions of the limits of international law and with the issue of whether international law was capable of encompassing, governing, and accommodating peoples who belonged to very different societies. Race was the most central marker enabling distinctions based on civilization, culture, economic backwardness, and legal inefficiency. Whereas exclusionary international law seems to have become most prominent for its cosmopolitan and open nature, Anghie argues that there is an "ongoing dynamics of racialized power" in contemporary international law. He locates the continuities between the colonial past and the postcolonial present in the project of "good governance," which is largely developed in relation to Third World states. Human rights campaigns are part of this project.

4. The 1789 French Declaration of the Rights of Man and of the Citizen, after which the 1948 Universal Declaration of Human Rights was modeled, combined the principle of national sovereignty and that of universal humanity.

5. In 2002 the United Nations Human Rights Commission (UNHRC) issued a resolution concerning Israel's violation of Palestinians' rights in 1967 occupied territories. A special session of the commission was held after the eruption of the second intifada, which during its first weeks spread both in Israel and in the occupied Palestinian territories. The commission was asked to include in its resolution a reference to the rights violations of Palestinian citizens of Israel. In November 2002 the UNHRC released its list of issues, which focused primarily on Israel's obligations under the International Covenant on Civil and Political Rights regarding Palestinians in the 1967 occupied territories. The commission, in other words, refused to interfere in the internal affairs of Israel with respect to

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its citizens. For more information about the commission's resolution, see adalah.org/eng/intladvocacy2002.php.

6. Whereas the abolishment of slavery, legal reforms in the criminal-justice system, child-labor reforms, and prevention of cruelty to animals are conventionally understood to be part of the broader humanitarian movement that started in the late eighteenth century, projects of colonization are not as often defined in terms of humanitarianism. For a discussion of the humanitarian rhetoric of colonialism, see Robert Young, who argues that the British expansion into Fiji in 1874 was legitimized by the desire to protect Fijians from the unsavory practices of the British settlers (77).

7. See, for example, the correspondence between Ms. Adlam of the British Reform Club and Lord Cromer, the British consul-general in Egypt, who governed Egypt from 1883 until 1907, concerning the work of the Societies for Prevention of Cruelty to Animals in Egypt (Cromer, Letter).

8. The Women's Labour League expressed concern over child labor and the failure of the British authorities in Egypt to regulate it. The league wrote to Edward Grey, England's foreign secretary, expressing sorrow over the fact that "little native children in Egypt should be subjected to such dreadful conditions of life."

9. A number of law textbooks written by Egyptian jurists in the late nineteenth and early twentieth centuries express these ideas. See, for example, ʿAbdullah (1, 12, 24–25).

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