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Author

Holston, James

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Chapter 3

The Civility of Inegalitarian Citizenships

James Holston

If this book considers the relation between cities and fundamentalism from a number of perspectives, my concern is that of citizenship. My interest is with the civility of inegalitarian regimes of citizenship, of which fundamentalist regimes are an extreme. I begin from the premise that all citizenships have their civility, including inegalitarian ones. Indeed, all perduring citizenships must if they are to maintain themselves without a continuous and costly application of violence against their own citizens. From this point of view, I consider civility to mean conformity to standards of citizen identity and behaviour deemed necessary to create a sense of civic belonging, of commensurability among citizens for that purpose. Thus, civility constitutes a consensus, and in that sense a 'good', that a regime of citizenship must claim the right to enforce. It does so preferably through social and cultural means of disciplining citizens, using non-violent methods to develop their capacity to participate in civic life according to its standards through education, institutional design, politeness codes, body language, and so forth. However, ultimately, its right to enforce civility is based on intolerance, exclusion, and violence.

One of my objectives is thus to erode the idealization of civility, common in Western social theory, that associates its consensus with such values as civilization, liberty, trust, generosity, inclusion, secularism, and democracy; and opposes it to barbarism, dogma, fundamentalism, exclusion, violence, and religion. I do so by examining the concept of civility in light of various examples of urban civilities that generate consensus on the basis of a denial of rights. If all citizenships have their particular civilities, which share an underlying basis in exclusion, then I ask what characterizes fundamentalist regimes of citizenship and the civility that imposes their 'good'? Some fundamentalist regimes, especially of

small scale, may be composed entirely of believers in a comprehensive doctrine that supplies it with pervasive values. But contemporary fundamentalist states typically include different kinds of people as citizens, many of whom are not true believers. They may therefore be described as extremes of the all-too-common type of inegalitarian national citizenship that denies some of its own citizens full citizenship.

Thus, the question I ask is what conditions sustain regimes of national citizenship that deny some of their own citizens an existence worthy of a full citizen? They are the same conditions, I would add, that maintain the nation-state as a convention of territorial borders and membership rules within a system of states that renders many people stateless, relegates them to the status of 'persons without rights', and therefore excludes them from citizenship altogether. Thus, the internally excluded and the externally excluded – the marginal national citizen and the stateless non-citizen – issue from the same font of exclusionary citizenship. This common sort of inegalitarian citizenship has the following characteristic: it incorporates vast numbers of different kinds of people as citizens and uses differences among them that are *not* the basis of national membership (differences, for example, of race, religion, class, and gender) to distribute rights, powers, and privileges differentially.

Such regimes of differentiated citizenships, as I call them, are thus mechanisms to incorporate, distribute, and manage inequality among a population. They legalize some attributes for special treatment – some religious membership, racial trait, or principle of descent – and enforce certain kinds of public practices that identify those attributes as markers of categories of people that deserve a privileged distribution of rights and powers. They are, both historically and currently, the most common type of national citizenship. Fundamentalist citizenships are a subset of these inegalitarian regimes. They give absolute value to certain differences in their management of the public and its space, assuming both the right and the duty to impose this good as the transcendental referent of civility for all citizens. In what follows, I investigate the discriminations of citizen and non-citizen that depend on these modes of incorporation and distribution to enforce the consensus of civility.

Civility and Exclusion

Rules of incorporation create various kinds of non-citizens not only as the outside limit that establishes the inside, but also as the included excluded, that is, the excluded (e.g., 'the barbarous') which indicates to the included

('the civilized') the qualities of inclusion ('civilization'). In turn, rules of distribution commonly create various kinds of internally marginalized citizens on the basis of social differences that the citizenship regime deems legitimate grounds for discrimination. On the basis of that legitimization, some citizens deny other citizens rights: they feel justified in treating other citizens as if they were not citizens because they are the wrong sort of person or exhibit the wrong sort of behaviour or belief. Such judgments of civility establish a consensus – even among the marginalized – about what is morally good and socially correct and of sufficient worth to deserve the full distribution of citizen rights. Thus, these regimes of differentiated citizenships distribute inequality among citizens and non-citizens alike by referencing assumptions about the fundamental worth of certain social differences. They equate some differences for purposes of national inclusion, creating a national society of citizens who identify with the nation, and they legalize other differences as the basis for different treatment and both internal and external exclusion.

Such regimes of citizenship depend as much on institutions of government, law, and education as on violence and repression. Yet they also rely on the cultural conventions, everyday performances, aesthetic codes, and foundation narratives which are typically understood to constitute a citizen-ship's civility. Admittedly a complex and ambiguous term, civility refers to the standards of behaviour and common measure – to the 'etiquettes, manners, and virtues' – that make public life coherent and hence possible under a particular regime of citizenship. Thus, Western political theory overwhelmingly presents civility as an essential good for political life and incivility as a detriment, contrasting it both to violence and to religious intransigence (the latter is often seen as inciting the former) and construing it as a means of communication rather than coercion.

But what if the regime of citizenship is fundamentally inegalitarian, foundationally intolerant of claims that would lead to redistributions of citizen powers? In such regimes, as I show with a Brazilian example, civility's idioms of inclusion and consensus create habits of the public which entrench citizenship's inequalities. Moreover, from the perspective of stateless non-citizens, all national civilities are exclusionary, if not intolerant and violent. No one calls Brazilian citizenship fundamentalist, and yet its intransigence is remarkable. Its regime of legalized privileges and legitimated inequalities has persisted for centuries under colonial, imperial, and republican rule, thriving under monarchy, dictatorship, and democracy. Indeed, its foundations have only begun to change in the last few decades. Given such persistence, incivility may in fact be an effective strategy of

public interaction to puncture the civility that perpetuates the fundamentals of discrimination. The problem of the idealization of civility is compounded in the tradition of civic humanism which inspires so much Western political theory. It is descended from the Athenian formulation of citizenship and refracted in lamentations for the lost civility of the *polis*, which has infused political theory from Rousseau's transformation of the *subject* into *citoyen* to the current communitarian assault on liberalism. In this paradigm, civility is conceived and measured by the standard of the active participation of citizens in making the (re)public. It is understood as the *praxis* of citizens 'ruling and being ruled', as Aristotle defines the core characteristic of membership in the *polis*. Moreover, this ideal of civility refers not only to the capacities of citizens to be active participants in constructing the political community – in administering justice and holding office, specifically – but also to their capacities to find their honour, self-fulfilment, and mutual respect in the life of participation. This commitment to the primacy of the public, connecting active membership with personal virtue, is the conception of civility that the Western canon of political theory lionizes.

Never mind that this commitment requires specific social conditions: structures of government, scales of urban life, regimes of labour, types of families, conceptions of person, and so on. As Walzer (1989, p. 217) perceptively diagnoses, political theory has for centuries, and in the most diverse socio-historical contexts, consistently valorized this republican paradigm of civility over others. For example, Walzer contrasts the participatory with a jural paradigm which developed to accommodate the mass societies of empires and nation-states. The jural citizen is the recipient of rights and entitlements merely for having the status of citizen, without any need to participate directly in the business of rule. It is 'a status, an entitlement, a right or set of rights passively enjoyed'. In this paradigm, 'private interests' replace 'public virtues' as the primary focus of the citizens' lives. Furthermore, protecting the liberties of those private affairs becomes the primary objective of political citizenship itself. Thus, Marx (1967, p. 227) observed that 'the political liberators [in the French Revolution] reduce citizenship, the *political community*, to a mere means for preserving these so-called rights of man and the citizen is thus proclaimed to be the servant of the egoistic man'. In the same vein, the current communitarian critique claims that the welfare state and modern liberalism reduce the civility of citizenship, if it may be called that at all, to empty politeness, condemn private citizens to isolation and atomization, and doom their public interactions to oscillations of passivity, egoism, and legalism.

The argument that some citizenships foster civility and some do not is precarious. It can only be based on an idealized construction of citizen behaviour that assumes what it wants to prove. To avoid the fallacy of this *petitio principii*, it makes sense to argue instead that all regimes of citizenship reproduce themselves through citizen performances fostering standards of behaviour that confirm their specific modes of incorporation and distribution. In this sense, all regimes have their active practice, which includes a vast range of possibilities of constituting public affairs. In this sense as well, civility is not inherently incompatible with coercion, violence, or religious intolerance. All citizenships of the most diverse political types, cultural conditions, and religious persuasions construct and maintain public spheres. The questions are what kind and how.

To investigate this constitution without idealization, I propose the following conceptualization of civility, inspired by Bourdieu's (1977) work on symbolic capital and *habitus*. Civility is as a set of dispositions inscribed in routines of bodily actions and verbal expressions – and therefore in routines of perception, expectation, and thought – that permit citizens to produce the practices that confirm the categories that govern the distribution of powers consistent with a specific regime of citizenship. Such dispositions are sometimes regulated by force, and often by institutions that sometimes apply force (e.g., the police). Indeed, the threat of violence secures them. Mostly, however, civility entails practices that are regulated without explicit force. An enduring regime of citizenship must be able to produce generations of citizens from all walks of life who exhibit a practical mastery of the dispositions of civic interaction – 'tact, dexterity, or savoir-faire – presupposed by the most everyday games of sociability and accompanied by the application of a spontaneous semiology, i.e., a mass of precepts, formulae, and codified cues' (Bourdieu, 1977, p. 10).

Certainly, not all everyday sociability involves issues of citizenship. But everyday trafficking in and about public space – crossing a street, making a left-hand turn, standing in line at the post office, as well as exercising one's profession and working with neighbours on a common residential problem – is indeed the realm of modern society in which people most frequently and predictably experience the state of their citizenship. The quality of such mundane interactions may in fact be more significant to people's sense of themselves as citizens and non-citizens than the occasional heroic experience of soldiering or demonstrating, or more ordinary ones like voting or serving on a jury. Everyday citizenship entails the practical mastery of performances that turn people, however else related, into fellow citizens related by measures specific to citizenship. These may be empowering or

debilitating, equalizing or differentiating; but, in that manner, they become evident.

For example, the same generalized expectation of impunity among citizens in Brazil motivates an enormous range of probabilities: that motorists will run a red light when in a hurry, and especially at night, and will probably not stop after hitting a pedestrian; that a contractor will substitute inferior materials for those required in building a public school; that a rich landowner will order the killing of a labour organizer trying to mobilize workers; that a logging company will cut down mahogany trees in an ecological preserve to sell on the black market; that a private banker will launder money for wealthy clients and supply under-the-table funds to politicians; and that Congress will institute a special committee to investigate the corruption of its own members composed in the majority of allies of one or several of the accused. These examples come from one week's worth of newspapers and conversations in Brazil during August 2008. Brazilians will agree when asked directly that impunity is 'bad'. But they will also say that they cannot get anything done without 'bending the rules', and that only 'fools' obey the letter of the law. As a result, their 'acts of exception' have become the norm, perpetuating the expectation of impunity as an essential disposition in the distributions of power that constitute Brazilian citizenship.

Fundamentally, the disposition that relies on impunity denies other citizens the fullness of their citizenship rights. Its success in structuring behaviour depends not only on assessing the likelihood of 'getting away with it', but also in knowing that those who demonstrate the capacity to break the rules, or only use them when rewarded. Doing so proves that they are 'big men', not bound by obligation to the rights of others. The civility of power and status in Brazil requires this normalization of exception and exclusion.

The Brazilian norm of impunity may appear to be a perverse case. But let me give two other historic examples of highly touted urban civilities that generate consensus on the basis of exclusion, intolerance, and special treatment. One is from fifth-century BCE Athens, and the other sixteenth-century Holland. These configurations of civility have been idealized as exemplars in the cultivation of civic life, though of different types. I choose them to reinforce the point that civility may well be based on treating some citizens as if they were not citizens.

The citizens of Athens enacted a series of constitutional reforms under the direction of Cleisthenes after their victory against a tyranny of elites backed by Sparta (510–508 BCE). These reforms created the most

democratic polis in Greek history. One reform refashioned the ancient institution of ostracism (Kagan, 1961; Ober, 1989, pp. 73–75). It gave the citizens of Athens the right to decide each year to convene an assembly with the power to banish fellow citizens. If a quorum of 6,000 voted to do so, each citizen in the assembly would submit the name, scratched on a potsherd, of another he wished to expel from the city. No justification whatsoever needed to be given. The ballots were duly counted and the 'winner' was ostracized for ten years. The exiled were by no means necessarily misfits, conspirators, and renegades. Ober (1989, p. 75) cites the story of an ostracism, recounted in Plutarch, during which the famous politician Aristides was 'asked by an illiterate citizen to inscribe his own name on a shard; when queried, the citizen stated he was tired of hearing Aristides called "The Just" all the time'. Thus, the decision to ostracize could be irrational, arbitrary, and unjust and nevertheless be reached in the most democratic and 'civilized' manner.

The second example comes from the civic conduct book, *Vita Politica* (translated as *Civic Life*), first published in 1590 by the Dutch engineer and scientist Simon Stevin – a discussion of which may be found in Turner (1992), with subsequent comments by Burchell (1995). Like other civility books (manuals instructing citizens on the appropriate conduct of civic life) of the era, Stevin explains that the primary objectives of civility are good government, civil and religious peace, and the disciplined self-restraint of all 'errant passions' necessary to ensure both. With regard to dissent, both political and religious, Stevin's primer is clear. It is the duty of citizens to obey the legitimate authorities of the city where they reside. If they consider these authorities unjust, they have the right to rebel, but only after first having left the city (Stevin, 1966, pp. 493–500). Similarly, he (*Ibid.*, p. 477) instructs that peace requires citizens to subordinate individual religious conscience to the doctrines of the state religion established by the sovereign and upheld by the civic and ecclesiastical authorities. Different religious beliefs and practices cannot, therefore, be tolerated. Those who hold such religious views are free to do so, but they must leave the city for another where they are accepted.

These examples demonstrate that the oppositions often drawn between practices of civility and those of exclusion, intolerance, and fundamentalism are false. Both the ancient and the early modern practices of excluding citizens from their city of residence served to enforce the binding nature of proper behaviour on all citizens by compelling them individually to conform to collective decisions. In these civic performances of exclusion and intolerance, the generally implicit rules of civility – which in the

interactions of daily life are spontaneous performatives – are made palpable. The Greek case is especially revealing because the Athenians explicitly recognized that the decision to expel might be arbitrary and unjustified. Yet the ostracized citizen was morally and legally bound to accept the democratic will of the majority. He became the included excluded who makes publicly explicit the usually implicit force securing the everyday practices of civility that produce consensus. As Ober (1989, p. 75) suggests, ostracism in democratic Athens indicated that no member of the elite was above the law, or powerful enough to be immune to the rule of the masses. The arbitrary expulsion of any citizen for standing out in any way also demonstrated the sovereign power of the *polis* to impose conformity to popular conceptions of proper citizen behaviour.

That this practice of expulsion was a pedagogic performance of citizenship's civility is, moreover, clear from its conclusion: after ten years in exile, having obeyed the consensus of the Assembly, the ostracized citizen had the right to return to Athens with his full citizenship, status, and property intact. The collective judgment of ostracism had not turned him into a non-citizen. Rather, it had made him into an excluded and, in some sense, exemplary citizen, whose exclusion served as a disciplinary reminder of the binding nature of civility in everyday life.

Civility and Violence

If the sanction of exclusion ultimately secures the obligations of civility, it also raises the problem of the moral imperative it assumes: that the city (or the state) has the right and the duty to impose the good on others in managing its public. A host of questions immediately appear. What are the limits of this imposition – the city, the nation, the world; citizens, all residents, humankind? What are its means – legal due process, repression, violence? What are its institutions – the courts, the police, the church, vigilantes, the 'moral majority'? What is 'the good' – a certain aesthetic code for interpersonal relations, heterosexuality, a particular religious doctrine, reason, democracy? Merely raising these questions begins to erode contrasts typically drawn between civility and barbarism, citizenship and fundamentalism, and consensus and dogma, because it becomes clear that all of these options have legitimated the imposition of civility. Let me discuss one to investigate this legitimation: what is the foundation of right and duty in this imperative? I do so by way of a debate about an extreme version: the justification of waging war, in this case a 'just war' against the Indians of the New World by a fundamentalist regime of empire.

The debate was engaged in 1550 at Valladolid before the Spanish court by two exemplary opponents: Ginés de Sepúlveda, renowned Aristotelian scholar and Renaissance courtier, and Bartolomé de Las Casas, the Dominican bishop of Chiapas, Mexico. Before a jury of philosophers, jurists, and theologians, Sepúlveda advanced the arguments of a treatise he had written on the just causes of the Conquest, while Las Casas defended the contrary position. The debate had the form of a legal conflict as much as a theological one. After long presentations by each side (Las Casas's is reported to have lasted five days), the jurors retired to consider their verdict but could not reach a final decision. The debate dragged on in various incarnations for years without resolution, though it appears that the weight of the court leaned to Las Casas, as Sepúlveda never received authorization to publish his treatise. By then, however, the case was moot: more than 90 per cent of the Indians of Mexico had already been decimated.

Sepúlveda based his justification on two sorts of argument. He took the first from Aristotle's so-called natural theory of slavery, developed in the *Politics* (which he had translated into Latin): some people are born masters and others born slaves. 'He is by nature slave who ... shares in reason to the extent of apprehending it without possessing it' (Aristotle 1978, p. 1254b). After setting out the logical extensions and implications of this natural hierarchy of inequality (e.g., the subordination of women to men, body to soul, emotion to reason, and evil to good), Sepúlveda marshalled a great deal of what can only be called ethnographic evidence about Indian beliefs and practices to prove that the Indians were inherently inferior to the Spanish. He based this evidence on descriptive accounts of the Conquest written by the scribes and priests who participated in it, which he took to be verified on the basis of observation and experience. He focused in particular on Aztec cannibalism, human sacrifice, and polytheism; and on the Indians' apparent lack of private property, clothing, writing, legal courts, and domesticated animals.

However, at one point in his argumentation, he advanced a key premise of a different sort – one that could not be subject to empirical verification. This was to posit a transcendental truth, an absolute which admitted no debate, but only acceptance or rejection. Sepúlveda cited an epistle of Saint Augustine to argue that 'the loss of a single soul dead without baptism exceeds in gravity the death of countless victims, even were they innocent' (cited in Todorov, 1984, p. 162). Here he shifted from Aristotle's genetic and analytic mode of reasoning to the authority of the Church to propose that the supreme value of baptism as a means of salvation justified the most extreme violence. His last clause suggested that although this kind of

premise is often considered an 'article of faith' and attributed to religious fundamentalism, it can in fact supply the foundation of right for the imposition of any 'good' because it does not depend on the condition (belief, practice, life) of its object, its other. Like Aristides in Athens, the other may be entirely innocent. Indeed, the other's point of view is irrelevant to the certitude of this projection of the value of the good. In this case, the absolute value was the Christian religion, instituted in each individual soul through the sacrament of baptism. By comparison, the value of the biological life that temporarily bears this soul is of only incidental worth. If it does not submit to baptism, even if unaware of its truth, it may legitimately be sacrificed. This truth is so distant from the worth of an individual life, that the salvation of one soul justifies the termination of countless lives.

The core logic of this fundamentalist Christian civility is that the consensus of accepting the transcendental truth of baptism self-constitutes the right of imposition – that is, the right of those who accept its validity to impose its truth on those who reject it. Thus, the right of Sepúlveda's imperative to proselytize was not constituted in a social relation with other people who had a duty to it. It was irrelevant to the Spaniard whether or not the Indians believed in the Christian god and baptism, or believed that they had a duty to be baptized or to accept Spanish rule as inherently superior. This kind of self-constituting right engenders no correlative duty or other kind of social relation in the other. If it did, its legitimacy could be debated from *that* point of view. Moreover, as duties themselves engender reciprocal rights when constituted in social relations, the Indians would then have had rights with regard to the Spaniard. But no such reciprocity was entailed in Sepúlveda's premise. Rather, the only duty constituted in this claim of right was upon the Spaniard himself, who already knew its transcendental worth – namely, the duty to impose it. The value assigned the right and the duty to the same person. Imposing it was therefore justified; not doing so was a dereliction of duty. With regard to the Indians as living people, it may be more accurate to say that Sepúlveda claimed to have neither rights nor duties. Their fate was irrelevant to him – as it was to all the Spaniards who applied this imperative.

This irrelevance may help us grasp, although with difficulty, the extraordinary nature of the violence that the Spanish inflicted upon the Indians. The application of Sepúlveda's imperative to compel the salvation of the New World natives resulted, paradoxically, not merely in their death. It also produced (or at least allowed to pass as 'uncriminal') an extreme cruelty with which the Spanish marked their civility on the bodies of the 'saved'.

Thus, among the many abuses against the natives which Todorov (1984, pp. 137–142) describes, we learn that the Spanish tested the sharpness of their swords by slicing off noses and breasts; roasted Indians alive; fed them to ravenous dogs; and branded their faces so often with the initials of their masters that they were turned into paper, yet paper so over-marked that it was illegible for all signs other than cruelty itself. For whatever happened to the lives of the Indians as a result of Sepúlveda's civilizing imperative, he and his company were immune from personal responsibility. Their responsibility was to the glory (the truth) of the imperative.

It was precisely this premise that Las Casas rejected. In doing so, he condemned its transcendental value. Yet he did not abandon religion. He was, and remained, a Christian bishop throughout his long life. Rather, his life among the Indians led him to shift the moral basis of the ecclesiastical mission from the problem of the hierarchical inequalities of natural superiority and inferiority to the acquisition of faith. Las Casas argued that because all human beings can acquire faith, they share equally an inherent capacity for being human. This premise of a universally inherent equality led him to counter Sepúlveda with the assertion of the immanent value of human life over transcendental absolutes of reason or nature: 'It would be a great disorder and a mortal sin', he replied, 'to toss a child into a well in order to baptize it and save its soul, if thereby it died' (cited in Todorov, 1984). Las Casas's premise was not only that the death of thousands of people was not justified by the salvation of one. It was more radical. The death of just one child was not worth its salvation – which is to say that the life of a single human being, however foreign, has greater worth than all the doctrines of salvation. Las Casas appears at this moment in the debate to have introduced a strikingly modern argument for the sanctity of individual human rights; indeed, his premise was that there are no persons without rights, even the most radically different.

Todorov (1984, pp. 162–167) develops an insightful assessment of this argument. On the one hand, Las Casas seemed to posit a radical equality among human beings, regardless of all other differences, not only for the capacity to acquire faith but also to possess natural rights. Hence, he argued that 'the natural laws and rules and rights of men are common to all nations, Christian and gentle, and whatever their sect, law, state, color and condition, without any difference' (cited in Todorov, 1984, p. 162). Las Casas further emphasized this equality between self and other by switching subject positions. He applied to the Indians the very same standards that he held for himself: 'All the Indians to be found here are to be held as free: for in truth so they are, by the same right as I myself am free' (*Ibid.*). Note his

use of 'right' as a universal human attribute exercised individually. Also note that Las Casas's premise about universal human rights is no more verifiable than Sepúlveda's imperative. They are both theoretical postulates, though the application of Las Casas's appears to have far more just and sane consequences for the world of the living.

At the same time that Las Casas advanced this universalizing premise about human rights, he also made a set of 'ethnographic' arguments about the practices of the Indians based on his claim that they were 'innocents'. He did so to counter Sepúlveda's assessment of these same practices as barbarous, damned, and inferior. It is with these arguments that we encounter a major problem. Las Casas always interpreted native practices in terms of supposed psychologies and intentions that indicated the pre-Fall state of innocence of the Indians, and therefore their original capacity to acquire the true Christian faith. They were exemplary in being gentle, kind, humble, obedient, frugal, and so forth; in fact, he implied that the Indians exhibited the attributes (civilities) of 'good Christians' far more than the rapacious Spaniards. The very traits Sepúlveda cited as evidence of their inferiority, Las Casas consistently interpreted as evidence of their capacity to become model Christians. Their lack of private property indicated, for example, that they desired only what was necessary; their most shocking practices – human sacrifice and cannibalism – indicated their extraordinary capacity for love, for they gave what was most precious – life – to their gods.

Thus, in all examples, Las Casas never really saw the Indians as different – that is, as having different cultural and social configurations that might account for these features. Rather, he identified the Indians not only with himself but also with his own ideal. He did not realize or accept that to be equal, the Indians did not have to be identical to the Spanish. As Todorov argues, he was in this way just like Sepúlveda. Neither accepted that the Indians might be equal but different. They both observed differences but prejudged them according to their own criteria as either barbarously evil (Sepúlveda) or barbarously good (Las Casas). Neither view was one of the equal coexistence of different worlds.

Las Casas's originality in the debate over the imposition of the good through just warfare was to advance an argument for immanent individual worth and rights. However, he only disputed the means (coercion) but not the end of the Conquest. This end was the assimilation of the Indians into Christendom and with it their submission to the Spanish colonial order. As assimilation is ultimately the elimination of difference, it surely constitutes a kind of annihilation. Moreover, as Todorov (1984, p. 166) notes, Las Casas did not hesitate to condemn 'Turks and Moors, the veritable barbarian

outcasts of the nations' because, obviously, he could not identify them as proto-Christians. Thus it was not that Las Casas refused to denigrate others just because they were different. He loved the Indians only because he assimilated them to himself. Like Sepúlveda, he despised those whom he perceived as truly different.

The world citizenship of natural and individual human rights that Las Casas advocated and that seems initially generous and promising thus relies on a civility not much different from those of more exclusive citizenships. It prejudices members and non-members alike by its own standards, including those it identifies as similar and excluding the rest. Its equality is one of sameness, and its norm one of a certain kind of correct status and behaviour to be acknowledged by those who define the regime of citizenship (the Church). Therefore, although Las Casas maintained that human rights are naturally immanent in each individual, the actual realization of these rights depends on the identification of people with pre-approved categories. In other words, incorporation into the world citizenship of Christendom is universally inclusive – anyone can be a Christian – but distribution is inequalitarian: Las Casas's church differentially distributes its benefits to presorted categories of people. In this differentiated citizenship, actual access to rights is the privilege of those assimilated to these categories.

Thus, we have returned to the initial question with which we began: what conditions sustain regimes of citizenship that deny some of their own citizens an existence worthy of a citizen? If we are all citizens of world Christendom, how can some of its citizens deny other citizens ('Turks and Moors') rights?

Rights as Privilege

The conceptualization of rights as special treatment for certain kinds of citizens grounds the civilities of all the systems of differentiated citizenship I have examined thus far. Surely, some measures of special treatment are necessary in every citizenship, including those that seek fairness. Hence, exceptional rights for seniors, veterans, and the disabled are widely seen as promoting fairness. In differentiated citizenships, however, such exceptions become the norm. As long as special treatment prevails as the general conception of rights, citizenship remains overwhelmingly a means for distributing and legitimating inequality and therefore for creating both marginal (national) citizens and (stateless) non-citizens. Let me return to the case of the urban peripheries of contemporary Brazil to consider the conditions of impunity that perpetuate special treatment citizenship.¹ For it

is Sepúlveda's sense of impunity in the absence of any reciprocity with the Indians that secured his assumption of the right to impose a civilizing good. In the peripheries of São Paulo where I have done fieldwork for many years, a resident described to me the regime of citizenship against which he has struggled his whole life:

In the time of my parents, a citizen was a guy loaded with money. It's true. The citizen was the chic, the rich, the owner of a business... The worker was not a citizen, no. That didn't exist. The worker was a peon (*peão*). Peon, peon, peon, his whole life. My father came to São Paulo a simple share cropper and died a simple construction worker. But he met all his obligations, all his duties. And when he went somewhere and needed some right, no one treated him as a citizen. They made him into a marginal, as if he were trash. I saw that, and I experienced that too. The injustice made me furious.

The paradigm of citizenship this man describes produces the paradox he denounces: Brazilians can consider some Brazilians as 'citizens' who have rights, and other Brazilians as 'marginals' who lack rights. This distinction only makes sense from within the system of differentiated citizenship that treats some Brazilians as if they were not citizens because, for reasons that have nothing to do with their national membership, they are denied rights.

In the urban peripheries where this man lives, residents use the word 'right' in three modalities.² In the singular, it denotes a specific right (*direito de*), usually a political or civil right, like the right to vote or strike. In the plural, it means a condition of having rights (*ter direitos*). The scope of these rights has expanded considerably over the last forty years with the successes of urban citizenship movements. If the plural tended in the past to refer only to labour and welfare rights, today it is just as likely to include political and civil rights and a host of rights to the city all grounded in the 1988 Citizen Constitution. Much has changed in this regard. Nevertheless, in both the singular and the plural, residents continue to think that having rights depends on a third modality of right – namely, that of being right (*ser direito*) or walking right (*andar direito*). This mode refers to a moral condition of correctness. Having rights depends on being right and being right is a matter of achieving certain statuses, basically those of 'a good worker, family provider, and honest person', as residents say. Those who have citizen rights deserve them because they are morally good and socially correct in these publicly recognized terms. Similarly, those who fail to be morally right – criminals, squatters, deviants ... an expandable category – deserve to be denied rights. By extension, the logic of this special-treatment citizenship

also produces the *a priori* judgment that those who lack rights – the poor, for example – must be assumed – even by the poor themselves – to have failed morally. Both negative judgments allow Brazilians to assume that other Brazilians lack rights in relation to themselves, and therefore that they have no duty to them if they consider them marginals in one way or another.³

Access to rights in this conceptualization of special treatment depends on two conditions. On the one hand, people think they have rights because they hold statuses recognized and legalized by the state. On the other, the state only bestows these rights on the right people. Laws establish both conditions. For example, the 1937 Constitution created a perduring construct of social marginality and exclusion with regard to unemployment and informal work. However, having or not having rights is not only a determination of law. Rather, legal rights may be available to all citizens in theory (as populism proposes), but they can only be acquired and realized by those who deserve them in terms of specific personal attributes (e.g., whether they are good workers or literate or registered in a profession). For most Brazilians, therefore, the exclusions of differentiated citizenship often appear to result less from legal and political causes than from personal failings. This depoliticization perpetuates the legitimacy of exclusionary citizenship rights by blaming the excluded for not having them, and it establishes a consensus about who has rights and according to what standards – a civility, in short.

It is significant to note that because these rights can only be acquired by the right citizens, people who need to use them 'have to chase after their rights'. In the context of special-treatment citizenship, the ubiquitous phrase 'look for your rights' means not only knowing what rights adhere to a particular status. Above all, it means having to prove to the proper authorities that you possess the right status and deserve its rights. This proof is not only a matter of having the right paperwork to show that the petitioner is an 'honest person' with a clean record, and not a marginal of any sort. To be rewarded with a right, the correct status and behaviour of the petitioner must be acknowledged by the provider, typically a bureaucrat, official, or employer. This personal acknowledgment is required not only because special-treatment rights always depend on the identification of subsets of statuses within the general status of citizen. More significantly, it is necessary because the application of law in Brazil is rarely routine or certain. Rather, it must be made to apply through the personal intervention of someone in a position to acknowledge the good standing and just deserve of the petitioner. The need for such special pleading exacerbates the struggle of the poor to run after their rights. It always puts them on the defensive, forces them to find the right person to intercede on their behalf, renders uncertain their

dignity and respect, and makes them acknowledge their inferiority. Consequently, proving one's worth to find one's rights is always frustrating and often impossible. It is therefore not surprising that being 'treated like trash' is a reason I frequently hear to explain why people desist from pursuing their rights.

The personalization of rights means that their exercise depends on the discretion, not the duty, of someone in a position of power to recognize the personal merit of the petitioner and grant access to the right. This discretionary power converts rights into privileges, in the sense that it becomes a privilege to obtain what is by law a right. A right creates a duty when it makes someone vulnerable to a claimant's legal powers. In that sense it empowers the claimant. When these relations depend on personal intervention, discretion, and mediation, they become legally subverted. In Hohfeldian terms, the acknowledged now has the power to decide when rights apply, and yet no duty to make them available. He is not liable to the claimant's legal power and has thus gained an immunity. In turn, the claimant is vulnerable to the exercise of that power, having no right to determine its course. He therefore suffers a disability that can only be overcome by personal intercession. When the latter occurs, the claimant exercises his right only as the favour of the person who grants it. In a system of citizenship rights thus based on the immunity/impunity of some and the disability of others, rights become relations of privilege between some who act with an absence of duty to others who, in turn, have no power to enforce claims. The privileged lack rights and are vulnerable to the power of others. The privileged experience citizenship as a power that frees them from the claims of others, leaving them unconstrained by legal duty and exempt from legal responsibility. These relations of privilege and disprivilege are the central features of the civility that characterizes citizenships in which special treatment dominates.

The 'search for rights' in such citizenships therefore engages the poor in a perverse exercise which those with immunity and privilege bypass: it not only perpetuates but also legitimates the distribution of inequality, because it gets the disadvantaged to seek and defend special treatment for themselves and disqualification for others as the means to confirm their particular worthiness and attain their hard-won recognition, respect, and recompense. In this exchange, it induces them to accept the legitimacy of citizenship's distribution of unequal treatment as a just means to compensate for, if not reward, pre-existing inequalities. In this way, the lived experience of differentiated citizenship – its civility – gets the disadvantaged to approve compensating inequalities of privilege by legalizing more privilege.

Brazilian civility thus turns the poor into advocates of the maxim of justice that the republican Rui Barbosa is credited with coining at the end of the nineteenth century, and that has become a fixture of legal education in Brazil ever since: 'Justice consists in treating the equal equally and the unequal unequally according to the measure of their inequality'. Barbosa was in fact reiterating a view usually traced to Aristotle's *Nicomachean Ethics*: a just distribution, Aristotle argued, allocates the right share to the right person, such that 'the ratio between the shares will be the same as that between the persons. If the persons are not equal, their just shares will not be equal' (1962, p. 118).

When I have asked residents of the peripheries to explain Barbosa's maxim, those who do not get twisted up in its play of words often give the very same example that lawyers and judges I have asked also give: the law permits women to retire five years earlier than men. This discrimination is just because over the course of a normal life, working women 'have more service' than working men; in addition to work outside the home, they have to do the housework and childcare in which they are little aided by their husbands. 'Thus', one renowned law professor and scholar concluded, 'she has an overload of services that is just to compensate by allowing her to retire with less time of service and less age'. This is the same reasoning that a textile worker in the urban peripheries gave me:

I think it is just. Because if you think about it, a housewife who has a job outside works double. When I arrive home from work, what do I do? I take a shower, watch television, sit on the sofa doing whatever, or I go to the bar and have a beer. What does the woman do? When she arrives from work, she makes dinner, takes care of the children, cleans the house, arranges the kitchen, washes and irons clothes. She works about double my work, if you analyze the question. Therefore, I think that she should have even more time [than five years] to retire before a man, because there still exists a lot of discrimination in the work of women.

In both explanations, the solution for the social facts of inequality – that working women are unequal because they work more – is not to propose to change the social relations of gender and work. Rather, it is to produce more inequality, in the form of the compensatory legal privilege of earlier retirement.

We have thus come full circle to find Aristotle in the urban peripheries of Brazil. Most Brazilians, including the urban poor, understand this justice to mean that unequal treatment is a just way to offset pre-existing inequalities, especially among the poor. It may be a means, therefore, to compensate an

inequality of disprivilege by legalizing privilege. However, it may also compensate an inequality of privilege by legalizing more privilege. In either case, the civility of Brazilian citizenship lets few grasp that it reproduces privilege – and therefore impunity – throughout the social and legal system. It is, moreover, a static concept of justice. It does not contest inequality. Rather, it accepts that social inequalities exist as prior conditions of either disprivilege or privilege and treats them differently by distributing resources accordingly. Thus the civility in which Barbosa's maxim is a taken-for-granted standard produces consensus for a justice system that perpetuates differentiated citizenship. Through countless dispositions of everyday social relations, it maintains a society of social differences organized according to legalized privileges, disprivileges, and impunities.

Conclusion

My arguments here have focused on the foundations of civility that establish its conformity to standards of citizen behaviour. I have been concerned to show that even inegalitarian citizenships have their civility, as a means to erode its idealization. Hence, I analyzed examples in which civility is based explicitly on exclusion, denial of rights, and impunity. If it is the case, as I suggest, that all citizenships have their civility, that all claim the right and the duty to impose their conceptions of the good on citizens, and that they do so ultimately and often explicitly on the basis of exclusion, then what distinguishes a fundamentalist civility from other kinds?

Civilities do not exist without a point of reference which establishes the standards of conformity. This reference may be considered a good that legitimates the consensus of conformity and justifies the sacrifices, judgments, and exclusions required to achieve it. Such goods are of different sorts – for example, a notion of honour or merit that infuses a hierarchical structure of classes, of purity and pollution in a system of racial categories, or of the immanent worth of an individual life. Citizenships use such goods to justify their modes of incorporating members and distributing rights among them. What distinguishes the civility of a fundamentalist citizenship is that it is based on a comprehensive doctrine rather than a political conception of the good. The former constitutes itself as a transcendental truth whose validity admits of no rational debate and whose value, as the case of Sepúlveda illustrates, assigns both the right and the duty of realization to the believer regardless of the interests of non-believers. The latter are irrelevant to this right and have no recourse other than capitulation or resistance to its exercise. A political conceptualization of

goods also legitimates imposition and, more often than not in the history of citizenships, inegalitarian distributions of resources. But it can be challenged, debated, undermined, overthrown, and displaced by political contestation, however difficult that process turns out to be in particular cases. Political contestation can dismantle privilege, establish responsibility, and end impunity.

A judgment in favour of political over comprehensive and transcendental conceptions of the goods that legitimate civility may seem obvious to many readers – as easy as the condemnation of Sepúlveda for inciting crimes against humanity. Yet a lauded book on civility by a prominent contemporary American jurist and declared Christian suggests that transcendental conceptions endure. Stephen L. Carter (1998, p. 23) defines civility as 'the set of sacrifices we make for the sake of our common journey with others, and out of love and respect for the very idea that there are others'. The apparent generosity of this conceptualization turns out to be grounded in two religious precepts. Carter derives the sacrifices we have to make to ensure civility from 'the duty to love our neighbours', even if we despise them, which 'is a precept of both the Christian and Jewish traditions' (*Ibid.*, p. 23). He bases the commonality civility aims to create and the respect for the other on which it is grounded on an ultimate transcendent: faith in God, 'for there is no truer and more profound vision of equality than equality before God... In the absence of that language of loving sacrifice, that connection to the transcendent, civility, like any other moral principle, has no firm rock on which to stand' (*Ibid.*, 31).

Carter's distrust of 'the shifting sands of secular morality' and 'political wind' (*Ibid.*, 31) to provide firm foundations for civility hinges on what he means by firm. Surely religious conflicts are no less frequent or deadly than secular ones. But the transcendental truths that collide in religious conflict are to each side of believers as unimpeachable and immovable as secular politics appears mutable. To be firm for Carter, therefore, the foundation of civility must be transcendental. The problem of such an unimpeachable basis is the one we encountered in Sepúlveda's justification of a just war against the Indians: it assumes a right of imposition that is self-constituting and irrefutable (and always pre-emptively any Las Casaian claim to 'love the other'). Hence, in a discussion of civility and religious proselytizing, Carter argues:

But once you [who?] decide that it is time to get the message out ... you must preach to those you want to reach. The process is the same whether you are electioneering, collecting for charity, or gathering signatures on a petition ... or

trying to persuade others that you possess a religious truth that they lack... [For those] who believe that the Gospel message is universal in the sense that nobody who does not accept it will be saved, it would plainly be unloving – uncivil – not to propagate it. Integrity would permit nothing less. (*Ibid.*, pp. 255–257)

The problem with this argument is that it is a mistake to think that gathering signatures on a petition and trying to convert others to a religious truth they lack are 'the same'. They are not. The civilities entailed are entirely different. The one involves a political conception of goods that is subject to debate and that focuses on a specific issue, about which agreement or disagreement to lend support entails no other commitments or at least none of a comprehensive and pervasive nature. The other involves precisely that kind of comprehensive commitment beyond the reach of reason. For believers, proselytizing entails nothing less than salvation or damnation, a transcendental dilemma for fundamentalist civility that can, as with Sepúlveda, be used to justify 'the death of countless victims, even were they innocent'. Political conceptions of the goods that legitimate civility are also used to justify its imposition, often with the denial of rights, the assumption of impunity, and the loss of life. However, the political is both imposable and impeachable by rational means. Its values can be defined and delimited by deliberation among citizens and between citizens and non-citizens. These are, perhaps, small differences given the barbarisms that have been committed in the name of civility, both secular and religious. But for human life, they seem to me rather more than less significant.

Notes

- 1 A full discussion of this case may be found in Holston, 2008.
- 2 In the late 1970s, Teresa Caldeira (1984, pp. 224–235) identified these modalities in her study of one neighbourhood in these peripheries. My own fieldwork in the same neighbourhood beginning a decade later confirmed that these modalities persisted, albeit with additional meanings and different foundations.
- 3 The social and citizenship movements of the urban peripheries created two new foundations for rights based on the condition of being a stake holder in the city (derived from the autoconstruction of houses and neighbourhoods) and on the 1988 Citizen Constitution. I analyze the former as contributor rights, and the later as text-based rights, in Holston, 2008. Nevertheless, the moral basis for having rights continues to be prominent as well. Now, however, it is evoked with the other two, often mixed in the same discussion, creating a hybrid and at times contradictory foundation for rights.

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