Rights as Friendship

Bal Sokhi-Bulley

Can we be friends? This is an unusual question with which to begin talking about rights. You might start with more obvious questions, like ‘what are human rights’ and ‘do rights work’? I am starting from a critical position that rights are technologies of governmentality. ‘Governmentality’ is a term and mode of thinking I take from the poststructural philosopher Michel Foucault and means the ‘conduct of conducts’. In other words, the regulation of behaviour. Applied to rights, governmentality reveals rights as a governing discourse, not only an emancipatory one. Once we know this, the question of whether they work or not is not the interesting or important question. Instead, we should ask: how might we perform critique to imagine possibilities for freedom after rights? The value of this question is in prompting resistance to the regulatory dimension of rights so that we might find ways to be governed less and to live better together in friendship rather than in rights. I illustrate the value of a critique of rights as friendship, or what unfolds below as a relational ethics for rights, by looking at the denial of citizenship in the UK’s hostile environment. I concentrate on two examples: the Windrush Scandal and, in particular, the case of Shamima Begum.

Rights as Governmentality

Suggesting that rights are technologies of governmentality is to say that rights, at the same time as they emancipate, regulate identities, and produce the dominant narrative of events. Governmentality, as a way to interpret the functioning of power relations within modern society, applies to pretty much everything; we are governed, and govern ourselves, for instance through the institution of the university to become employable, model students of law and reputable academics who produce good, highly-rated research. In terms of rights, a governmentality lens magnifies the power relations that operate to produce good, virtuous, and humanitarian actors (e.g. INGOs like Human Rights Watch) and good, desirable, and active citizens (e.g. the active citizen of Britain’s Community and Society policy). The point is not to show that this is good or bad. A governmentality lens is useful in highlighting how this might be problematic. How does Human Rights Watch regulate what rights are, how we ought to protect them and where resources should be focused? Whilst it is not bad that 15
You may not remember the riots. But you will remember the hostile environment. Or environments, plural. In 2020, universities became hostile environments. Academic staff and students went on strike for an unprecedented fourteen days to counter the neoliberal governmentality of an institution that was turning us into businesses and consumers. Did we have a right to do so? The strike was not illegal but in contrast to exercising our right to strike we were instead, I’d suggest, making a claim to relating to each other differently (the picket lines saw no hierarchies), to doing education differently (the teach outs were interdisciplinary and without structure) and practicing a right not to work. This right, as I have argued in the context of migrant rights for non-economically active migrants and in the context of persons with disabilities, does not exist as a juridical right. It is, I suggest, a relational right.

I take the idea of relational right also from Foucault. Relational rights are not juridical rights. They are not justiciable. A relational right has to exist in a culture that invents ways of relating, types of values, and exchanges between individuals that are new and not recognized by the institution. Such rights are based in our relations, not associations, with each other and are a way in which we can respond, with responsibility (or what Haraway calls ‘response-ability’), to hostile environments.

In 2020 we also experience a different kind of hostility we have not known before; a virus that threatens our lives, our practices of living, our social behaviour. Can we respond to COVID-19 with rights? The state has obligations to protect; there are arguments for dying with loved ones by your side being a fundamental part of the right to private and family life (Article 8 of the European Convention on Human Rights, ECHR). But will the response to the coronavirus be in enacting more rights? Should it be about understanding the importance of how we relate to each other? About how our lives are interdependent, how we should care despite being estranged
from each other (we cannot all feel each other’s pain or circumstance). These are ethical and not juridical questions.

**After Governmentality/ After Rights**

Ethics is that ‘missing something that can help cure what ails democratic life’ and the practice of freedom. In my current work, I come at this from my Foucauldian intellectual position to interpret ethics as a care of the self. Typically, ethics is about care for others; yet Foucault suggests that the care of oneself, conducted as practices of freedom that do not necessarily adhere to the processes of freedom articulated in a moral code (e.g. rights), can create a new culture. This culture, or mode of life, is *friendship*. Now, Foucault argues for friendship as a way of life for the subject he was interested in, the homosexual, and making gay practices of living desirable. I think we can stretch our critical imaginations and apply this concept to how we treat the abandoned ‘other’ of the hostile environment, who has been abandoned by rights.

‘The hostile environment’, announced in 2012 by Theresa May as Home Secretary, was intended to ‘create a really hostile environment for illegal immigrants’. Yet this hostility has come to erode citizenship. Two examples illustrate this. The first is the Windrush Scandal, where Commonwealth citizens (the Windrush generation) were forcibly removed, detained, denied healthcare, dismissed from work, and even lost their lives under the justification that they do not have ‘leave to remain’. What if this were a ‘right to remain’? Would it make a difference? Of course, it would create an institutional framework to appeal wrongful removal. But would it recognise belonging – the fact that people like Paulette Wilson, Anthony Bryan, and Sylvester Marshall lived fulfilled lives and practiced being with others here, in this country that they knew as home? My second example is even more stark and the example I want to concentrate on for a moment: a case of revoking citizenship in the interests of ‘public good’ and national security (British Nationality Act 1981, section 40(2)); the case of Shamima Begum.

British-born Begum left her home in Bethnal Green in 2015 to join ISIS in Syria. In February 2019, then Home Secretary Sajid Javid revoked Begum’s citizenship, defending his order as ‘stripping dangerous dual nationals of their British citizenship’ under the new laws provided for by the 2019 Counter-Terrorism and Border Security
Act. Begum’s family appealed the decision under Articles 2, 3, and 8 ECHR (right to life, freedom from torture, and right to private and family life). Begum, meanwhile, has remained in a refugee camp in Northern Syria, and has repeatedly stated she ‘made a mistake’ and wants to come home. On 26 February 2021, the Supreme Court unanimously ruled that Begum did not have leave to enter the UK, upholding ‘respect’ for the Home Secretary’s assessment (Begum v Home Secretary [2021] UKSC 7, para 134). In this institutional narrative, it would appear that rights are not a consideration - Begum’s case was, rather, always about the scope and exercise of the Home Secretary’s powers; moreover, Begum is not at ‘real risk’ of her breach of her Article 2 & 3 rights, and she effectively has no Article 6 right to fair trial; and, finally, a challenge to this could only have been made on the ground of ‘unreasonableness’ (see further at para 129, 130 and 134 of the judgment). Read with a critical attitude, the Supreme Court’s ruling produces abandonment and the language of rights does not remedy but only distracts from this abandonment. What if we narrated the story differently, focusing on Begum as an ethical subject with relational bonds with her community, who deserves right treatment by virtue of citizenship?

In an alternative version of the story, Begum is a child who was groomed online to join a cult. She has two friends with her and maybe the idea of three teenage girls setting off together is what motivates her desire for adventure, or escape. She makes a mistake and wants to come home. She marries and has three children – perhaps forcibly and certainly alarmingly for a teenage girl and what’s more heart-breaking is that they all die of preventable malnutrition and disease. Does she deserve mercy, generosity, forgiveness? There is no ‘right’ to these things – just as there is no right to make mistakes, no right to come home, and no right to right treatment. These are not juridical rights but they are relational rights – rights that can be performed even though they do not exist in a legal document; rights that rely on one’s coexistence within a community.

The Begum case illustrates both the reality that rights do not work and the possibility of imagining something else, after rights. A culture in which we respond to Begum with friendship. That means, to practice a mode of behaviour that employs generosity – featured as examining our conscience, engaging in silence, and listening to others. It means understanding that rights can be more than juridical concepts; that they need
to acknowledge an ethical dimension where we care for ourselves by caring about how we exist in a community with others. The feminist ethics of care is instructive here. The ‘feminist critique of liberal autonomy’, writes Hunter, favours ‘a more plausible account of individuals as relational, always connected and dependent upon others’. In feminist ethics, care is therefore necessarily relational and, moreover, is the practice of what we actually do rather than simple adherence to (legal) norms; it is ‘a range of doings needed to create, hold together and sustain life and continue its diverseness’.\textsuperscript{xxi} But to the feminist ethics of care I would add that we need to acknowledge estrangement and betrayal.\textsuperscript{xxii} We cannot know Begum or see her in ourselves. Her so-called betrayal is the reason we should extend care, generosity, and right treatment to her – indeed, we have betrayed her by not protecting her from being groomed online, by our unproblematic and acceptable form of citizenship that makes us desirable and so able to claim rights. To see Begum, we must adopt an intersectional lens that highlights and respects the key features of her subjectivity – she is brown, female, and Muslim.\textsuperscript{xxiii} She is the abandoned racialized citizen of the hostile environment, where whiteness equates to desirability and it is the black and brown ‘other’ who must do the labour of proving they are desirable.

This is perhaps a lot to take in for the student of human rights. We know that rights are that which we ‘cannot not want’;\textsuperscript{xxiv} ‘the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power’.\textsuperscript{xxv} But what happens when they don't work? I’m not saying that we must become friends with the abandoned; that a critique of rights as a relational ethics of friendship makes us the friend of our striking lecturers,\textsuperscript{xxvi} of Paulette Wilson, of Shamima Begum. What I am saying is that to respect the practice of freedom we need to invent modes of behaviour that surpass the code of rights. We need to do friendship – as a practice of care and shared estrangement that not only sees our complex identities but magnifies them, so we are no longer disadvantaged because we resist, or we made a mistake and/or because we are brown, female, and Muslim.

here on 26 February 2021, Fionnuala Ní Aoláin, has spoken of Begum’s right to ‘redemption and to compassion’, see her comments in ‘Communities: Resisting Precarity with Friendship’ and Tahzeen Kazi (Palgrave, forthcoming 2020).


