



Human Rights: Act of Idealism or Pragmatism? The Curious Case of Ramon Colon and the New York State Division of Human Rights

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When Ramon Colon arrived in Brooklyn on the morning of October 15th, 1918, the industrious shipyards and steel overpasses were a far cry from the palm trees and wooden carriages of his native Caguas. A stowaway, Colon was not the first, and would certainly not be the last Puerto Rican to arrive in New York searching for prosperity and stability. Yet among the immigrants of his time, and of later decades, Colon was a peculiarity – bilingually educated and politically affluent while possessing a strong sense of national pride.¹ He fundamentally shared many values synonymous with American culture; a dedication to work ethic and progress, an independent nature, and was a devout Catholic. As time went on, Colon became a long-time leader of the traditionally conservative Brooklyn County Republican Party branch, liaising with fellow Latin American members. Where later generations of Puerto Rican nationals, largely uneducated, sought nothing more than to identify as quintessentially ‘American’, it was perhaps Colon’s intrinsic connection to both his past and present that inspired his seemingly puzzling action against the New York State Division of Human Rights (‘State Division’), claiming damages for a *breach* of human rights.

In the early 1970s, Colon charged his former employer, the State Division, with unlawful discriminatory practice relating to equal terms of employment. His case was initially rejected based on a policy decision; the State Division had decided they need not take jurisdiction in cases involving discrimination against their own employees. Held by the United States Court of the Southern District of New York (‘District Court’) to be “reasonable and rationally-based”, the case highlights one of the earliest examples of a workplace discrimination claim in the United States on the basis of a human rights appeal, an action far more typical of the latter half of the decade.² Indeed, the foundations of the modern American approach to rights were firmly established by the past Wilsonian and Roosevelt administrations, who indicated that domestic policy was not

¹ Pedro Rivera, Tomas Rivera and Elba Correa, ‘Ramon Colon: Oral History Interview’, April 30, 1973, *Brooklyn Historical Society*, Accessed March 29, 2019.

² Colon (Ramon) v New York Div. of Human Rights, 417 U.S. 946 (1974), April 8, 1974, U.S. Supreme Court Records and Briefs, 1832 - 1978, <http://tinyurl.galegroup.com/tinyurl/9LwSk7>, Accessed March 4, 2019, p. 22.

intended to be outwardly prejudiced.³ Therefore, Colon's appeal is particularly significant as it occurs at an unexpected time in history; it seeks to establish the basic existence of rights following their supposed 'codification' post-Second World War, and prior to the characterisation of various rights movements as unilaterally concerned with a single idea of 'human rights' in the later 1970s.⁴

The decision of the District Court - to dismiss Colon's case based on policy directives alone - highlighted a discord in the American perception of human rights. The concept of human rights emerged as a morally based Christian rhetoric, embedded in medieval traditions of the rights of man.⁵ However, the decades closely following the creation of the Universal Declaration of Human Rights ('UDHR') adopted an approach more compatible with establishing the sanctity of nationhood. Many historians have written about this period with fervour, praising anticolonial movements, for example, as inspiring the later notions of individual and collective rights, especially those for racial minorities in the United States.⁶ Scholars such as Roland Burke argue self-determination constituted "the nexus between decolonisation and human rights... (that) self-determination and political freedom were mutually dependent".⁷ Jean Quataert has similarly endorsed action for territorial sovereignty as the 'normative cornerstone' for later rights movements, claiming that these were the basis for present-day international relations policies.⁸ In both these cases, the right to self-determination, in Article One of the UDHR, is perceived to establish a permanent link between the rights of states and individual civil and political rights, a natural and logical pairing pivotal to the revolutionary democratisation occurring globally at the end of the Cold War. While the right to self-determination was a constant theme in the rights rhetoric of the time, its content was not fixed, and was subject to radical re-interpretation over the following decades.⁹

The work of scholars such as Samuel Moyn is significant here, noting the "Declaration was not really about rights; it had above all been intended to announce postcolonial sovereignty to the other nations of the world."¹⁰ In other words, if the UDHR had appealed to international law, it was in terms of the recognition of states, not for the protection of individuals. During the early 1970s, neither the phrase 'human rights' nor specific references to the UDHR were commonplace, proponents of rights instead advocating for self-determination on their own terms.¹¹ Insofar that these movements went beyond the rights of states, self-determination focused on subaltern national

³ Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights*, (Cambridge: Harvard University Press, 2005), p. 3.

⁴ See: Samuel Moyn, *Human Rights and the Uses of History*, (Brooklyn: Verso Books, 2014).

⁵ Marco Duranti, 'Human Rights and Conservative Politics', in *The Conservative Human Rights Revolution*, (London: Oxford University Press, 2017), p. 363.

⁶ See also: Paul G. Lauren, *The Evolution of International Human Rights: Visions Seen*, (Philadelphia: University of Pennsylvania Press, 1998).

⁷ Roland Burke, 'Transforming the End into the Means: The Third World and the Right to Self-Determination', in *Decolonisation and the Evolution of International Human Rights*, (Philadelphia: University of Pennsylvania Press), 2012), p. 39.

⁸ Jean H. Quataert, 'The New Moral Order: Between Human Dignity and Territorial Sovereignty', in *Advocating Dignity: Human Rights Mobilisations in Global Politics*, (Philadelphia: University of Pennsylvania Press, 2009), p. 4.

⁹ Burke, 'Transforming the End into the Means', p. 36.

¹⁰ Samuel Moyn, *The Last Utopia: Human Rights in History*, (Cambridge: Harvard University Press, 2012), p. 84.

¹¹ Bradley R. Simpson, 'Self-Determination, Human Rights, and the End of Empire in the 1970s', *Humanity: An International Journal on Human Rights, Humanitarianism and Development*, vol. 4, no. 2 (2003), p. 247.

liberation and collective economic development, rather than social rights.¹² Simply put, self-determination brought about certain ideological conditions associated with human rights, but cannot be construed as a direct causative factor for their later significance. As an example, Moyn's analysis of Du Bois' 'Appeal to the World' for African Americans showcases rhetoric that subordinates specific human rights in exchange for calls for colonial liberation. Greater ambitions for the collective continued to permeate throughout the Cold War era, which "concluded that the best way to advance the interests of minorities was to align them with America's Cold War interests", a shift away from the idealistic individualism of earlier decades, however not a strict precursor to the later success of civil rights movements.¹³

Using insights derived from the American court record such as Colon's case against the State Division, two main issues are worth discussion: one regarding the American popular interpretation of human rights, the other considering their legal construction. In the first case, Colon's appeal was seemingly imbued with a sense of discrimination as a breach of individual rights, yet given the lack of similar activism, alludes to a discrepancy regarding how, if at all, human rights existed on a socio-political level in the early 1970s. On the other hand, the legitimacy of the District Court's decision hinges on the legal application of rights at the time, and whether they provided for individual cases or were solely concerned with state-level issues. While Colon's case encapsulates aspects of a developing civil rights movement, it will be suggested that his appeal was ill-equipped to deal with the prevailing discourse, and that the position of the State Division was justifiably explicable with reference to broader American interests and intentions vis-à-vis human rights in the early 1970s.

Rights in the Mind of an American

It is worth thinking carefully about the socio-political positions that everyday Americans subscribed to, as they principally inform the extent that we can understand human rights in the early 1970s as being self-evident. Indeed, the UDHR itself seems to promote the idea of self-evidence: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."¹⁴ The claim for self-evidence lies within the use of the terms 'inherent' and 'inalienable'; the words together meaning not transferrable and not capable of being taken away or denied. Colon embodies this idea of rights as being for one, palpable, and perhaps more importantly, universally engrained within the human consciousness. The initial complaint he filed with the State Division citing "the denial of equal terms, conditions and privileges of employment" sees that the test for self-evidence must be twofold: unlawful discriminatory practice can not only be evident in the governing laws, it must also be explicitly recognised by all Americans as something fundamentally immoral.¹⁵ While the former is true and measurable during the early 1970s as per the United States' Constitution (a point later discussed), the policy decision of the State Division and its verification in the District Court sees one of the first instances in the American court record where a decision appears outwardly opposed to the idea of human rights as inherent and inalienable.

¹² Moyn, *The Last Utopia*, p. 85.

¹³ *Ibid*, p. 103.

¹⁴ United Nations General Assembly, 'Universal Declaration of Human Rights', 217 (III) A. Paris, 1948, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, Accessed May 8, 2019.

¹⁵ Colon (Ramon) v. New York Div. of Human Rights, p. 20.

The claim of self-evidence gives rise to a paradox in human rights history: if equality of rights is so inherent and inalienable, then why is the assertion made only in specific times and places, or simply, why do people feel the need to declare rights at all? Recalling that the UDHR operated pragmatically as a guarantee of territorial sovereignty rather than of individual rights - and that surrounding activism was largely a reverberation of that sentiment - it appears that there was no universal consensus that human rights were, in fact, universal. According to scholars such as Lynn Hunt, “the claim for self-evidence ultimately relies on an emotional appeal” which, to become politically meaningful, sees that rights once identified must be defined, promulgated and defended.¹⁶ Simply put, human rights require three interlocking qualities to function tangibly; they must be natural and inherent, equal and universal in application. While it is historically evident that the natural quality of rights has been easier to accept than their equality or universality, they only become materially meaningful when they gain political content. This is because human rights are “not rights of humans in a state of nature”, but the rights of humans guaranteed in the secular world, and accordingly they require active participation from anyone claiming possession of them.¹⁷ Therefore, the way in which Americans in the early 1970s characterised human rights politically is indicative of their social legitimacy, and indeed, the result of Colon’s appeal against the State Division.

Human rights in the years leading up to Colon’s case were implicitly framed as an antidote to shame and guilt.¹⁸ The popularity of rights in the United States during the early 1970s was largely a function of their capacity to shift attention away from the trauma of the Vietnam War, emerging civil rights movements, and the Watergate scandal. For American conservatives, who felt the war was for a just cause, human rights constituted a medium for reasserting the immorality of communist governments and positioning the United States “once again on the side of both right and might.”¹⁹ For liberals who saw the war as fundamentally groundless, promoting human rights (especially to America’s right-wing allies) was essentially a strategy to distance themselves from rights transgressions generally, alleviating their sense of responsibility.²⁰

While the two sides had divergent views regarding their interest in human rights, both felt a need to reclaim the moral high ground.²¹ Conservatives were the first to politically charge human rights with a moral underpinning, in this case for American foreign policy; they directed their understanding of rights against the Soviet Bloc, particularly criticising the repression of dissidents. On the other side were proponents of a liberal vision of rights who sought a new morality to replace Cold War ideology; they found that promoting international human rights offered a path to ending the United States’ entanglement with their repressive Asian and Latin American allies. Repeatedly accused of giving materiality to notions of guilt and a feeling of culpability for the immoral actions

¹⁶ Lynn Hunt, “‘We Hold These Truths to be Self-Evident’”, in *Inventing Human Rights: A History*, (New York: W. W. Norton & Company, 2007), p. 26.

¹⁷ *Ibid*, p. 21.

¹⁸ Barbara Keys, ‘The Postwar Marginality of Universal Human Rights’, in *Reclaiming American Virtue*, (Cambridge: Harvard University Press, 2014), p. 2.

¹⁹ *Ibid*, p. 3. A similar consensus was felt by European fundamental conservatives vis-à-vis the promulgation of human rights in the early 1970s. See: Duranti, *The Conservative Human Rights Revolution*, p. 362.

²⁰ *Ibid*.

²¹ Elizabeth Borgwardt, ‘Charting a New Course for Human Rights’, in *A New Deal for the World: America’s Vision for Human Rights*, (Cambridge: Harvard University Press, 2005), p. 5.

of their allies (a highly divisive subject in the wake of the war), the liberal attraction to human rights was much more about ‘feeling good’ rather than enunciating a sense of guilt.²² Yet, neither conception implies an understanding of the intention nor the functionality of human rights required to give cogency to Colon’s claims. These concerns for rights struck a chord with a large part of the American public for the restoration of values and morality to their proper place in policy, rather than in the true idealism of humanitarian action.

The institutionalisation of rights in the early 1970s was in essence an example of the United States using the language as a kind of derivative discourse to achieve stability. This is not an exceptional occurrence: the expansion of the New Deal in the 1940s constituting the first instance where the traditional moralistic intention of rights was subverted to include both domestic isolationist sentiments and international economic concerns in debates over ‘national security’.²³ The actions of American politicians, as representatives of civil society, highlight at least in part that ideas of equality and universality were not inherent or inalienable at the time. In fact, it was not until 1977 that academic proponents of human rights raised concerns regarding the double-standards of self-determination movements, arguing that “states may meet all the criteria... and still be blots on the planet. Human rights [was] the way of reaching the deeper principle, which is individual self-determination.”²⁴ The lack of self-evidence and individual rights claims leading up to the early 1970s is exemplified by minority groups and associated rights activism. For example, women approached issues of sex-discrimination in the workplace with litigation primarily guided by Title VII of the Civil Rights Act of 1964, which prohibited gender-based discrimination and expanded protections of equal pay first offered by the Equal Pay Act of 1963.²⁵ However, in almost every complaint, the focus was on unequal pay, and the fact that the majority of cases were settled outside of the courtroom indicates that the result was pragmatic with compensation, rather than an assertion of a woman’s right to freedom from sex-discrimination. Although Marama Whyte argues that the intention of litigation herein was to establish affirmative action plans to “ensure women in subsequent generations did not face the same barriers”, the negative outcomes for participants, such as reported blacklisting by future employers, indicate that neither the idea of human rights as inherent or inalienable was self-evident at the time.²⁶

Colon’s case against the State Division, despite similarly claiming workplace discrimination, primarily diverges from these women’s movements as it represents an endorsement of the universal quality of rights. Where human rights in part owe their emergence to the “new visions of social change” prevailing throughout the 1960s, these civil rights movements stood for undefined and unqualified idealism at best.²⁷ The Kissinger-inspired approach of realism adopted in American politics in the early 1970s was also equally ineffectual, sweeping aside legitimate humanitarian concerns in exchange for a façade of stability in response to criticism of political

²² Barbara Keys, ‘Congress, Kissinger and the Origins of Human Rights Diplomacy’, *Diplomatic History*, vol. 34, no. 5 (2010), p. 826.

²³ Borgwardt, *A New Deal for the World*, p. 7.

²⁴ Moyn, *The Last Utopia*, p. 118.

²⁵ Marama Whyte, ‘How Women in Media Won Some Pay Equality in the 1970s, and Why They are Still Fighting Today’, *The Conversation*, January 15, 2018, <https://theconversation.com/how-women-in-media-won-some-pay-equality-in-the-1970s-and-why-theyre-still-fighting-today-89914>, Accessed June 1, 2019.

²⁶ *Ibid.*

²⁷ Moyn, *The Last Utopia*, p. 133.

containment strategies.²⁸ Colon's case sits in the space between the two, foreshadowing ideas and language more characteristic of later in the decade. The reasoning for his claim arises from his status as both a Puerto Rican migrant, and as a proud American. Puerto Ricans leading up to the early 1970s were domestically vilified, especially in New York, where their status as colonial citizens exacerbated concerns over their growing socio-political influence. In addition, the deindustrialisation of the labour market across the 1960s in the United States paved way for minority movements, including Puerto Rican activism resembling "a radical approach to community organisation that combined nationalism with anti-imperialism."²⁹ The result was some civil improvement; the implementation of the Voting Rights Act of 1965 abolished the English-only literacy test, while the 'community control' movements forced a reinvention of education institutions in several districts to mitigate racial discrimination.³⁰ Nevertheless, these changes at best constitute self-determination on a small scale, and although endorsing rights as natural, say little as to whether ideas of equality or universality were inherent or inalienable when it came to Puerto Rican migrants.

Therefore, the significance of Colon's case lies not simply in the relative peculiarity of his claim, but also in his paradoxical, self-proclaimed identity. Whereas reasons for its uniqueness will be further addressed in the following section, the latter constitutes a useful point of inquiry to quantify the nature of the case. Colon identified as a Puerto Rican, and did little throughout his career to suggest he was concerned about his ethnicity. Indeed, open interviews revealed that his bilingual education ensured employment was never strictly unattainable, notably working as a Latin American correspondent for insurance companies, and of course, as a Field Representative for the State Division.³¹

From the time he arrived in Brooklyn, especially during the Second Generation of Puerto Rican immigration in the 1950s, Colon viewed himself as a sort of 'model migrant', helping to gain recognition for Puerto Ricans as genuine American citizens but ensuring that connections to their native homeland were not superfluously disregarded.³² Disillusioned with the contentious situation of Puerto Rican politics, Colon openly aligned himself with the Republican Party of Brooklyn due to their endorsement of 'an independent status' for migrants.³³ While conservative politicians were more concerned with international stability and arguably "circumvented and ignored human rights", Colon acted on these sentiments with a different motivation, as the equal and universal nature of rights *appeared to him alone* as self-evident.³⁴ Yet he was portrayed in the courtroom in a different light, as merely "of Puerto Rican extraction... (and) passed over on the basis of ethnic politics".³⁵ The significance of Colon's case here becomes one of stark contrast: why was his understanding of rights informed by conservative politics, yet his appeal in the court

²⁸ Umberto Tulli, 'Whose Rights are Human Rights? The Ambiguous Emergence of Human Rights and the Demise of Kissingerism', *Cold War History*, vol. 12, no. 4 (2012), p. 575.

²⁹ Thomas Lorrin, 'Puerto Ricans in the United States', in *Oxford Research Encyclopedia of American History*, (New York: Oxford University Press, 2015), p. 2.

³⁰ *Ibid*, p. 11.

³¹ Rivera, Rivera and Correa, 'Ramon Colon: Oral History Interview'; Colon (Ramon) v. New York Div. of Human Rights, p. 19.

³² *Ibid*.

³³ *Ibid*.

³⁴ Tulli, 'Whose Rights are Human Rights?', p. 574.

³⁵ Colon (Ramon) v. New York Div. of Human Rights, p. 6.

record predicated on his status as part of an ethnic minority, and not as a *bona fide* American? It is therefore inferable, even at this preliminary stage, that basis of Colon's case was somewhat short-sighted. While contending discrimination of a minority group was idealistically sound in the early 1970s, the makeup of American politics, and indeed the legal system, meant Colon was pleading to an audience that were scarcely familiar with nor visibly empathetic to the notion of human rights as inherent or inalienable.

'Human' Rights in the Courtroom

The development of American law is historically synonymous with the idea of protecting rights. Documents such as the Declaration of Independence and the Constitution of the United States ('Constitution') are part and parcel with the idea of what it means to be American, guaranteeing a series of 'unalienable' rights which have developed temporally since 1787. However, what I contend here is that the idea of human rights is dogmatically different from the American historic view of rights; where the freedoms and liberties contained in these documents are examples of natural rights, they do not specifically address the notions of equality and universality tantamount to human rights, and can therefore not be construed as inherent or inalienable.³⁶ Notably, the Declaration of Independence does make reference to the idea of self-evidence – "We hold these truths to be self-evident, that all men are created equal" – yet even at face value (although not an explicit intention of the drafters) the masculinisation of the language of 'equality', and indeed the inclusion of the term 'self-evident' serve to undermine the principles themselves.³⁷ Furthermore, the Constitution contains similar rhetorical discrepancies. Where ordained and established by 'We the People of the United States', the people are not the subject but rather the beneficiary of the limitations imposed on the government by the document. The individual is mentioned infrequently, and appears in constitutional law "not laden with duties, responsibilities, opportunities, or even 'inherent rights' ... but as a source of constitutional limitation on foreign policy and due process."³⁸

The challenges associated with interrogating court records in human rights history, particularly for the United States in the early 1970s, involve analysing both conflicting conceptions of rights themselves (as natural, equal and universal), as well as determining their legal application contextually. Colon's case is one such example, contesting whether sections of the New York Executive Law are constitutionally lawful in legitimising the policies of the State Division.³⁹ On the one hand, reference to the Constitution itself inherently disenfranchises Colon's claim for human rights as self-evident, the safeguards in the law far from absolute. While the protections are expressly qualified, there is "no explicit guarantee of *equal* protection of the law."⁴⁰ Simply put, equal protection requires the law to treat all persons alike and does not permit distinctions that have no reasonable grounds. Although, under the Constitution, equal protection does permit classifications resulting in different treatment for people because they are alternatively positioned with respect to the law, and the treatment would therefore correspond to the different

³⁶ Moyn, *The Last Utopia*, p. 7.

³⁷ Thomas Jefferson, 'Declaration of Independence', *Historic American Documents*, 1776, <http://www.ushistory.org/declaration/document/>, Accessed May 23, 2019.

³⁸ Louis Henkin, 'Individual Rights and Foreign Affairs', in *Foreign Affairs and the United States Constitution*, (Oxford: Oxford University Press, 1996), p. 283.

³⁹ Colon (Ramon) v. New York Div. of Human Rights, p. 2.

⁴⁰ Henkin, 'Individual Rights and Foreign Affairs', p. 292.

circumstances.⁴¹ While court records are necessarily silent on the socio-political allegiances and opinions of individual actors involved in Colon's case, it is likely that the District Court would be relatively bound by the prevailing jurisprudence regarding the Constitution. Furthermore, the way in which rights were legally applied in the early 1970s was influenced by their perceived nature outside the courts. Liberal-tending newspapers such as the *New York Times* frequently wrote in support of the work conducted by the New York Commission of Human Rights, citing in one instance an investigation into the removal of medical staff at Lincoln Hospital (due to racial discrimination) in 1970 as a step toward protections against "an unbelievable throwback to philosophies totally alien to the American concept of civil rights."⁴² Court actions, however, are hardly so overt, and in Colon's case, the decision to uphold the validity of the State Division's policies is symbolic of the relative lack of authority human rights held over American law at the time.

The District Court's decision constitutes an exceptional example of the extent to which rights were inherent and inalienable in the courtroom. The significance of Colon's appeal sees not just an early instance of a discrimination claim founded on human rights discourse, but when considered alongside the degree to which rights were palpable legally, offers greater insight into the reason why the claim was dismissible in the opinion of American law-makers. Initially, the District Court began by considering whether "policy reasons" were a legitimate justification for workplace discrimination.⁴³ As reasoned earlier, the law cited by the court was opposed to the idea of rights as inherent and inalienable. For example, Section 1 of the Fourteenth Amendment to the Constitution provides "... nor shall the State deprive any person of life, liberty or property, without due process of the law; or deny to any person within its jurisdiction the equal protection of the law".⁴⁴ The District Court extended the logic of the Fourteenth Amendment with a reference section 297.2 of the New York Executive Law – "if it finds with respect to any respondent that it lacks jurisdiction and that probable cause does not exist... an order dismissing such allegations may be served" – and reasoned that the State Division's policy not to accept jurisdiction in cases of discrimination for its own employees was constitutionally-valid.⁴⁵ Herein, it is clear Colon's minority status would have had minimal influence on the court's ruling, factors of class nor race explicitly accounted for by the Constitution.⁴⁶

Colon's status as a colonial citizen offered the same protections afforded to all Americans, however the District Court's decision insinuates that framing of his claim as racial discrimination (rather than an admittedly less-impactful assertion of character-based prejudice) saw his case fail in gaining the kind of protections deemed inherent to Americans by law-makers. Other cases of the time, such as *Goldberg v. Kelly*, highlight that a claim framed as a violation of the rights of an American citizen yielded greater success, the Supreme Court ruling that "adequate notice detailing the reasons for a proposed termination, [and] an effective opportunity to defend by confronting any adverse witnesses and by presenting orally" were a fundamental requisite of the due process

⁴¹ Henkin, 'Individual Rights and Foreign Affairs', p. 292.

⁴² John Sibley, 'Rights Commission Investigating Removal of Pediatrics Chief at Lincoln Hospital', *New York Times*, November 19, 1970, *ProQuest Historical Newspapers: The New York Times*, Accessed May 8, 2019.

⁴³ Colon (Ramon) v. New York Div. of Human Rights, p. 4.

⁴⁴ Ibid, p. 3.

⁴⁵ Ibid, p. 5.

⁴⁶ Henkin, 'Individual Rights and Foreign Affairs', p. 295.

of law.⁴⁷ In addition, *Greene v. McElroy* similarly conferred the immutable nature of certain rights in American jurisprudence, affirming that “where governmental action seriously injures an individual... the evidence used to prove the government’s case must be disclosed to the individual so that he has the opportunity to show that it is untrue.”⁴⁸ On balance, the idea of rights was certainly a familiar concept to American law-makers in the early 1970s, but the extent of their equality and/or universality in theory and application is arguable. In the courtroom, precise phrasing was of paramount concern; Colon’s case herein suffered as both his claim and character were framed as a part of a minority rather than of the American majority.⁴⁹ The District Court’s decision is therefore historically explicable as the legal understanding of the nature and function rights in context was applied as well as reasonably possible within the court’s jurisdictional influence.

The question remains as to why Colon and his claim were framed as minority cases. The answer lies in the significance of the case itself – one of the first cases argued on the basis of inherent and inalienable *human rights*. The early 1970s identified the confluence between an earlier tradition of declaring rights and postcolonial constitution-making, or in America’s case constitutional re-developing, which “persuasively illustrates the persisting national framework for rights... that worked to ward off as to prepare the legalisation of rights on the international scene.”⁵⁰ Herein, Colon embodied an uncharacteristic position in American civil society. In part, the value Colon placed on his ethnic traditions and his desire to inspire later Puerto Rican immigrants to retain a similar connection to their native country impinged on his image as an ‘American’. Yet, Colon was a colonial citizen, and therefore had legally conferred, and acted on, the same rights and responsibilities of any other American, highlighted by his strong work ethic and fundamental belief in notions of freedom and liberty.⁵¹ Considering both sides, the idea of human rights as natural, equal and universal certainly seems self-evident to Colon. However, as Moyn would attest, the status of rights in the United States was “at best, in the tradition of the connection of rights and sovereignty... at worst, trampled in the name of that nation state’s construction.”⁵² Colon lost the case by attempting to remain a symbol of the minority, while claiming rights outlined as inherent and inalienable for the majority. He idealistically sought to mitigate the acculturation of Puerto Rican tradition by American culture yet was ill-equipped to deal with the prevailing socio-political rights discourse and jurisprudence of the time.⁵³

The place of human rights in history is a relatively recent question, and has produced a burgeoning field of academia with naturally conflicting opinions. An immediate tendency is to envision human rights as an old ideal, that materialised with the creation of the UDHR, the “explicit language about the rule of law striking a powerful chord... the resonance greatly

⁴⁷ Supreme Court of the United States, *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970), Lexis Advance US Research, Accessed April 20, 2019, at 267 - 268.

⁴⁸ Supreme Court of the United States, *Greene v. McElroy*, 360 U.S. 474, 79 S. Ct. 1400 (1959), Lexis Advance US Research, Accessed May 23, 2019, at 496 - 497.

⁴⁹ Colon (Ramon) v. New York Div. of Human Rights, p. 6.

⁵⁰ Moyn, *The Last Utopia*, p. 113.

⁵¹ Rivera, Rivera and Correa, ‘Ramon Colon: Oral History Interview’.

⁵² Moyn, *The Last Utopia*, p. 114.

⁵³ David Gordon, ‘Students Gather Hispanic History’, *The New York Times*, June 24, 1973, *The Times Print Archive*, Accessed May 8, 2019, <https://www.nytimes.com/1973/06/24/archives/students-gather-hispanic-history-defender-of-puerto-ricans.html>

assist[ing] in the process of establishing norms”.⁵⁴ Ideas of universal and equal rights were certainly visible in the decades leading up to the early 1970s, yet their insufficient integration into popular and legal language, especially in the United States, promoted the concept itself as a marginal idea inextricably bound up in state politics. Alternatively, and in my opinion more accurately, human rights did not achieve political salience in the United States until the late 1970s.⁵⁵ This is not because they offered a vision of rights for the first time. Rather, the collapse of competing Cold War internationalisms allowed for the very neutrality in which human rights could survive and prosper, creating an ideological climate conducive to making a difference not through political ideas but visions of morality.

However, Colon’s case did not occur at this time in history, and as a result was forced to battle competing claims over the nature and function of human rights. His appeal against the State Division is peculiar in its construction, and is moreover significant as one of the first to engage with a powerful discourse not typically seen as persuasive in the courtroom until later in the decade. While I have argued that the District Court’s decision is justified by the lack of understanding surrounding terms such as inherent and inalienable in rights discussions of the time, this is not to contend the decision was just. Histories through the court record grant different insights to tales of morality, and Colon’s story is no exception. He travelled to Brooklyn in search of prosperity and stability, and depending on the viewpoint, whether that was found is debatable. In fact, what Colon did uncover was an underlying lack of clarity in a concept preached as inherent and inalienable to all humans, and his experiences in the early 1970s did little to establish as much. If this case is a cautionary tale in any sense, it is a reminder that human rights are not instances of continuities in history, but an example of how dominant ideas can be variably impactful well-beyond the scope of their immediate audience.

⁵⁴ Paul G. Lauren, ‘Transforming Visions into Reality: The First Fifty Years of the Universal Declaration’, in *The Evolution of Human Rights: Visions Seen*, (Philadelphia: University of Pennsylvania Press, 1998), pp. 228.

⁵⁵ Moyn, *The Last Utopia*, pp. 10.

Bibliography

Primary Sources

- Colon (Ramon) v. New York, Div. of Human Rights, 417 U.S. 946 (1974), April 8, 1974, U.S. Supreme Court Records and Briefs, 1832 - 1978, <http://tinyurl.galegroup.com/tinyurl/9LwSk7>, Accessed March 4, 2019.
- Gordon, David, 'Students Gather Hispanic History', *The New York Times*, June 24, 1973, *The Times Print Archive*, Accessed May 8, 2019, <https://www.nytimes.com/1973/06/24/archives/students-gather-hispanic-history-defender-of-puerto-ricans.html>
- Jefferson, Thomas, 'Declaration of Independence', *Historic American Documents*, 1776, <http://www.ushistory.org/declaration/document/>, Accessed May 23, 2019.
- Rivera, Pedro, Rivera, Tomas and Correa, Elba, 'Ramon Colon: Oral History Interview', April 30, 1973, *Brooklyn Historical Society*, Accessed March 29, 2019.
- Sibley, John, 'Rights Commission Investigating Removal of Pediatrics Chief at Lincoln Hospital', *New York Times*, November 19, 1970, *ProQuest Historical Newspapers: The New York Times*, Accessed May 8, 2019.
- Supreme Court of the United States, *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970), Lexis Advance US Research, Accessed April 20, 2019.
- Supreme Court of the United States, *Greene v. McElroy*, 360 U.S. 474, 79 S. Ct. 1400 (1959), Lexis Advance US Research, Accessed May 23, 2019.
- United Nations General Assembly, 'Universal Declaration of Human Rights', 217 (III) A. Paris, 1948, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, Accessed May 8, 2019.

Secondary Sources

- Borgwardt, Elizabeth, 'Charting a New Course for Human Rights', in *A New Deal for the World: America's Vision for Human Rights*, (Cambridge: Harvard University Press, 2005), pp. 1 - 11.
- Burke, Roland, 'Transforming the End into the Means: The Third World and the Right to Self-Determination', in *Decolonisation and the Evolution of International Human Rights*, (Philadelphia: University of Pennsylvania Press, 2012), pp. 35 - 58.
- Duranti, Marco, 'Human Rights and Conservative Politics', in *The Conservative Human Rights Revolution*, (London: Oxford University Press, 2017), pp. 361 – 384.
- Henkin, Louis, 'Individual Rights and Foreign Affairs', in *Foreign Affairs and the United States Constitution*, (Oxford: Oxford University Press, 1996), pp. 283 - 310.
- Hunt, Lynn, "'We Hold These Truths to be Self-Evident'", in *Inventing Human Rights: A History*, (New York: W.W. Norton & Company, 2007), pp. 15 - 34.
- Keys, Barbara, 'Congress, Kissinger and the Origins of Human Rights Diplomacy', *Diplomatic History*, vol. 34, no. 5 (2010), pp. 823 - 851.
- Keys, Barbara, 'The Postwar Marginality of Universal Human Rights', in *Reclaiming American Virtue*, (Cambridge: Harvard University Press, 2014), pp. 15 - 31.

- Lauren, Paul G., 'Transforming Visions into Reality: The First Fifty Years of the Universal Declaration', in *The Evolution of International Human Rights: Visions Seen*, (Philadelphia: University of Pennsylvania Press, 1998), pp. 227 - 266.
- Lorrin, Thomas, 'Puerto Ricans in the United States', in *Oxford Research Encyclopedia of American History*, (New York: Oxford University Press, 2015), pp. 1 - 25.
- Moyn, Samuel, *Human Rights and the Uses of History*, (Brooklyn: Verso Books, 2014)
- Moyn, Samuel, *The Last Utopia: Human Rights in History*, (Cambridge: Harvard University Press, 2012).
- Quataert, Jean H., 'The New Moral Order: Between Human Dignity and Territorial Sovereignty', in *Advocating Dignity: Human Rights Mobilisations in Global Politics*, (Philadelphia: University of Pennsylvania Press, 2009), pp. 1 - 18.
- Simpson, Bradley R., 'Self-Determination, Human Rights, and the End of Empire in the 1970s', *Humanity: An International Journal on Human Rights, Humanitarianism and Development*, vol. 4, no. 2 (2003), pp. 239 - 260.
- Tulli, Umberto, 'Whose Rights are Human Rights? The Ambiguous Emergence of Human Rights and the Demise of Kissingerism', *Cold War History*, vol. 12, no. 4 (2012), pp. 573 - 593.
- Whyte, Marama, 'How Women in Media Won Some Pay Equality in the 1970s, and Why They are Still Fighting Today', *The Conversation*, January 15, 2018, <https://theconversation.com/how-women-in-media-won-some-pay-equality-in-the-1970s-and-why-theyre-still-fighting-today-89914>, Accessed June 1, 2019.