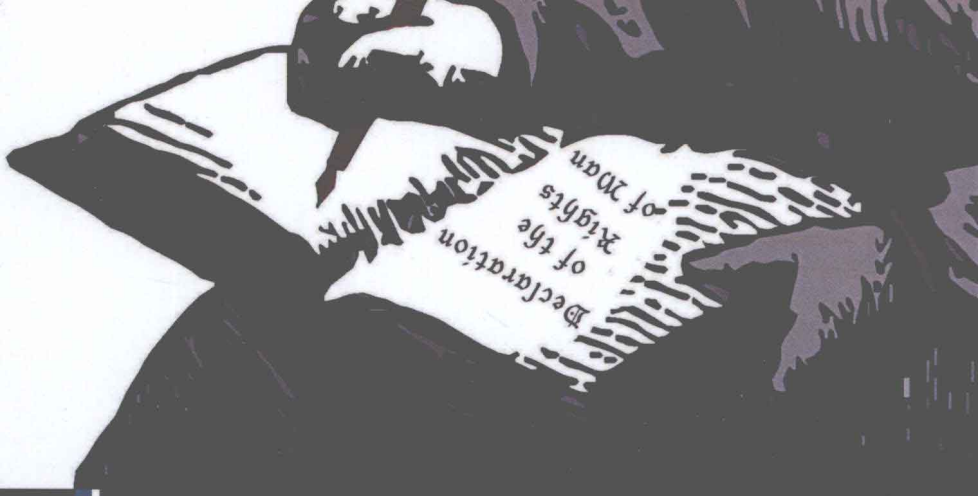

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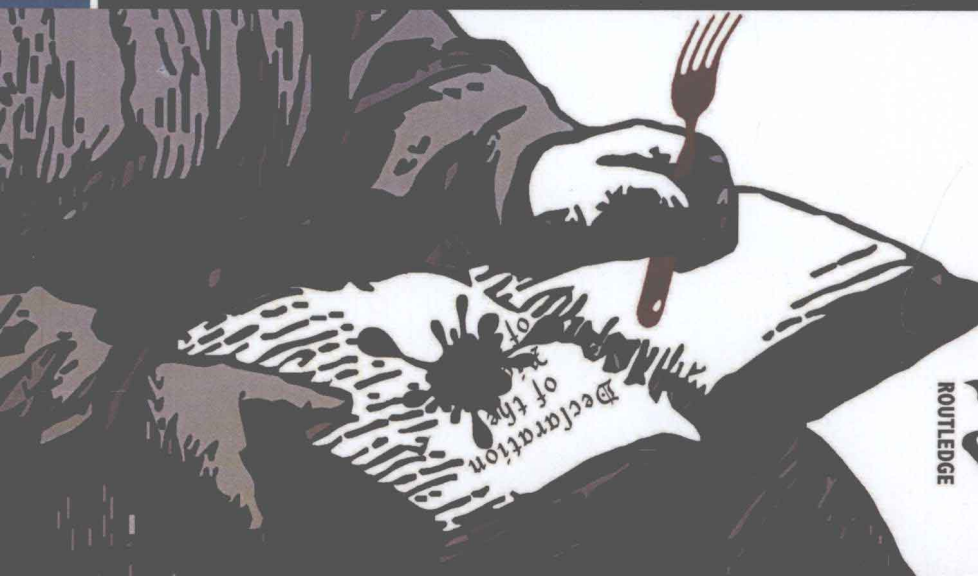
HUMAN RIGHTS & GLOBAL POLITICAL THOUGHT

WRONGING RIGHTS?

Philosophical Challenges for Human Rights

EDITORS
Aakash Singh Rathore | Alex Cistelecan



ROUTLEDGE

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Editors
Aakash Singh Rathore
Alex Lefebvre

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Contents

INTRODUCTION

1

Which Critique of Human Rights? Evaluating the Postcolonial and the Post-Althusserian Alternatives

Alex Cistelecan

In a short pamphlet written in 1808 bearing the title 'Who Thinks Abstractly?' Hegel joined the contemporary debates concerning the importance of the recent French Revolution. His position basically reverts the arguments advanced by the German nationalists and by various conservatives like Joseph de Maistre or Edmund Burke. While these authors accuse the abstraction of the French principles (equality, liberty, etc.) and oppose to it the richness of the local customs, traditions and common sense, Hegel argues that, on the contrary, it is common sense and the common people who think abstractly, while the presumably abstract principles of the French Revolution open up the space in which a concrete understanding of human nature can take place.

In today's world, one could say that the legacy of human rights is in need of a similar Hegelian reversal. Nowadays, the general trend regarding human rights consists of a constant attack on the formal, empty, abstract nature of the declaration of human rights, and an emphasis on the possible alternatives to it, namely, the plural, rich, vivid, authentic particular cultures, narratives, situations. To put it in Hegelian terms, this contemporary trend could be accounted as demanding a necessary passage from 'abstract right' to 'morality' — where morality is to be understood as the sphere of the particular will, with its centring on identity, intention, demand and the 'ought-to-be'. If one were to push the structural comparison further, two more similarities between the Hegelian framework and today's debate on human rights would appear: in Hegel's *Philosophy of Right*, the moment of abstract

right is surpassed through the inherent contradictions of right, manifested in 'non-malicious wrong, fraud, and crime'. In all cases, the particular will, through its opposition to abstract right, reveals the universality of the latter as being only contingent, unstable, arbitrarily coercive. Not incidentally, most of the contemporary critiques of human rights can be accounted for under these Hegelian categories — to paraphrase Kojève, it is as if all the current approaches to human rights could be exhaustively divided into left Hegelianism or right Hegelianism.

Furthermore, in the same way as in Hegel's *Philosophy of Right*, it is the moment of fraud and crime (as the inherent failure of abstract right), paradoxically, which triggers the development towards morality and acts as the catalyst of the good. Similarly, in contemporary accounts of human rights, it is the inherent contradiction of rights — which has exploded recently in the phenomena of humanitarian wars and democratic exclusions — which seems to drive the need for a similar urgent supplement of morality.

However, not all critique of the abstract nature of rights has to lead in a moralizing direction. In what follows, I will discuss two of the inherent tensions in the sphere of abstract rights that have of late been unmasked or confirmed: the one between the formal object of human rights and their actual bearers, and the one between the position from which the discourse of human rights is enunciated (or criticized) and those in the name of which it is being proffered. I will start by analyzing these critiques in the work of the three postcolonialist thinkers whose works appear as Part I of this volume — Ratna Kapur, Upendra Baxi, Gayatri Chakravorty Spivak — and then I will evaluate them through the lenses provided by the two approaches of Rancière and Žižek that I will call post-Althusserian, covered in Part III of this volume. My thesis is that while the postcolonialist discourse tends to move from this critique of the contradictions of abstract rights to a demand of morality (under any of its guises, which we will see later), the post-Althusserian group seems to point towards a different way out, and reproposes the abstraction of rights with all its contradictions as symbolic efficiency and as the only way of 'tarrying with the negative'

of politics. So as not to exclude the American interlude (Part II of this volume) from this introduction, some mention will also be made of the critiques of Rorty and Brown, and an attempt will be made to map their work in relation to the postcolonialists and post-Althusserians.

I

In Chapter Two, 'Human Rights in the 21st Century: Take a Walk on the Dark Side', Ratna Kapur argues that 'assertions about the universality of human rights simply deny the reality of those whom they claim to represent and speak for, disclaiming their histories and imposing another's through a hegemonizing move' (this volume, Chapter Two, p. 36). The abstract universality of human rights is, in fact, a 'discriminatory universality', and one can see this in all the attempts of the West to relate to its other. There are three such attempts, and they are all equally discriminatory: 'The first is through the assumption that the difference can be erased and the "Other" tamed and assimilated through some form of cultural or racial strip. The second is to treat the difference as natural and inevitable. And finally, there is the response that justifies incarceration, internment or even annihilation of the "Other" . . . ' (this volume, Chapter Two, p. 36). So assimilation, tolerance, or violent rejection — in all its logical possibilities, the proclaimed universality is discriminatory. Hence, one is led to assume that for Kapur the only non-discriminatory universalism would be a non-mediated particularism. According to Kapur, the problematic gap between the assertions of rights and 'those whom it claims to represent and speak for' can only be reduced by the '*centring* of excluded subjects, excluded zones and excluded histories' (this volume, Chapter Two, p. 55). The story of human rights must 'be told from the perspective of transnational migrants', for example, because of the 'urgency of re-reading human rights from alternative locations, the excluded zones or from the perspective of excluded subjects' (this volume, Chapter Two, p. 51). As Kapur puts it emphatically, they — the excluded ones — are 'the creditors' (this volume, Chapter Two, p. 53). Unless the West

opens the door, repays its debt of 'cultural erasure' and allows them to tell the story as it really is, that is, from their own perspective, there is no chance to 'put some life back into a project in desperate need of resuscitation and to give this body [the legacy of human rights] a soul' (this volume, Chapter Two, p. 55).

With Upendra Baxi (Chapter Three) the case is more complicated. And yet the urgency of the passage from abstract right to morality, or the need to 'put some life' into the project of human rights, to 'give this body a soul' is also discernible in his writings. The starting point is, for Upendra Baxi, rather similar to Ratna Kapur's: the modern conception of human rights was based on the 'discursive devices of Enlightenment', which were in fact 'devices of exclusion' (Baxi 2002: 29). The passage from modern human rights to contemporary human rights is a passage from an exclusionary to an inclusionary approach, which is accomplished by 'taking suffering seriously': 'No phrase except a romantic one — the revolution in human sensibility — marks the passage' from the first to the second. In a truly dialectical move, Baxi claims that the previous, formal and abstract conception of human rights was in fact 'essentialist'; while the contemporary one, based on the fetishization of pain and on the direct access to difference, is not (ibid.: 79). The unending task that lies ahead of us is, for Baxi, 'one of humanizing human rights, going beyond rarefied discourse . . . to histories of individual and collective hurt . . . To give language to pain, to experience the pain of the Other inside you, remains the task, always, of human rights narratology (this volume, Chapter Three, p. 76).' Following the terminology developed by Baxi in his *Human Rights in a Posthuman World*, one could say that he is moving here dangerously from a sort of resistance to theory/resistance as theory to a clear cut case of aversion to theory (Baxi 2007: Chapter One).

With Gayatri Chakravorty Spivak, the case becomes yet further complicated. As a deconstructionist, Spivak knows very well that there's no direct and innocent access to alterity, that the subaltern cannot just simply start talking, that there's no immaculate self-presence of the subject which

could simply replace or refill the abstract discursive frame. But this is precisely why her approach to human rights in Chapter Four, 'Righting Wrongs', is even more interesting. Spivak is perfectly aware that there is a certain tension between, on the one hand, the need to give a soul to the body and replace the abstract rights with morality (or, in her own terms, the need to effect the passage from rights to responsibility to the Other) and, on the other hand, her own theoretical deconstructionist background. And yet, Spivak attempts to solve this potential conflict not through the infusion of a sort of theoretical scepticism in the project of responsibility to the Other (after all, '*il n'y a pas de hors texte*'), but rather through the suspension of this theoretical background as such. Witness her repeated confessions that the suffering of the rural poor of the global South is impossible to translate in the language of academic theory and scholarly research: 'writing this piece has almost convinced me that I was correct in thinking that I should not make it part of my academic discourse'; or, 'I am not able to give scholarly information. . . . I do not usually write about this activity'; or, 'I leave this essay with the sense that the material about the rural teaching is not in the acceptable mode of information retrieval. The difficulty is in the discontinuous divide between those who right wrongs and those who are wronged' (this volume, Chapter Four, p. 102).

For Spivak, the discontinuous divide between those who right wrongs and those who are wronged is such that the suffering of the latter cannot be translated into the language of the former. But this radical divide is, according to Spivak, inherent in the very project of human rights, which is why the project of human rights is nothing but a kind of 'social Darwinism': '"Human rights" is not only about having or claiming a right or a set of rights; it is also about righting wrongs, about being the dispenser of these rights. The idea of human rights [carries within itself the idea that] the fittest must shoulder the burden of righting the wrongs of the unfit' (this volume, Chapter Four, p. 79). For Spivak, the only chance to correct this structural injustice of human rights is through the appeal to responsibility, which is an 'antonym of right' and whose possibility is 'underived from rights'

(this volume, Chapter Four, p. 88). The responsibility approach is a miraculous process in which the dispenser of rights learns directly from the subaltern, and in which the educator as educated takes the form of humanities teaching. 'This is the different way of epistemic access, this the teacher's apprenticeship as suturer or invisible mender' (Spivak 2004: 559). Obviously, in the end, this alternative or supple-mentary project remains virtually untranslatable and almost impossible to communicate: it is just a 'licensed lunacy in the name of the unnamable other' (this volume, Chapter Four, p. 103).

Of course, although we group all these authors together into Part I under the rubric 'postcolonialist', the different places and importance that each of them assigns to their analysis of human rights within the framework of their own theoretical practice generates relevant differences between these accounts. For Baxi, for example, the endured research on human rights revealed a complex and multidimensional reality, marked by various irreducible tensions (universalization vs globalization; politics *for* human rights vs politics *of* human rights, etc.), which allows for a rich set of possible theoretical point of views. For Kapur, the re-evaluation of human rights is rather an extension of her theoretical critique from the perspective of feminism and postcolonialism. While for Spivak, as we have already seen, the topic of human rights imposes itself more like an exception to her usual academic research.

However, what is common in all these three approaches to human rights is the dialectic that takes place between the two tensions that I mentioned in the beginning: the full particular identity of the Western male (the presumed subject of enunciation) is, apparently, fully transposed in the essentialist traits of the subject of the rights of man (the subject of the enunciated), and so the particularity of the former is just barely concealed under the proclaimed universality of the latter; consequently, the fallacious universality of the subject of the enunciated denies and precludes the full particularity of the real referent — the excluded ones. The underlining assumptions to all this narrative seem to be a curious

combination of utmost confidence in language (or representation), and utmost distrust of it. On the one hand, on the Western side of human rights, language has absolute power, or, to put it better, it is a perfectly docile and passive channel of expression; through the declaration of so-called universal rights, the particular identity of the Western male is simply transposed in a different (and deceiving) form. On the other hand, in the non-Western world, language seems to be almost useless: the particular suffering of the excluded is readable only as long as it is not translated into the abstract frame of human rights. But, as Derrida used to claim, the simple reversal of metaphysics remains metaphysics, and the two seemingly opposed views (language as innocent channel of expression or as an obstacle to genuine communication) turn out to share the same premise. This fact is visible in the postcolonialists' idea according to which as soon as the excluded would occupy simultaneously the positions of the subject of enunciation, subject of the enunciated and referent, and as soon as we would start to listen without pretending to understand and translate, their demands would be audible in what the early Lacan would have called 'parole pleine'. Except that it is a pre-linguistic 'parole pleine'. More like a sigh. Paradoxically, the three postcolonialists thus seem to be obliged to suspend language in order to make room for undisturbed communication. Words may lie and deceive, but affects don't. This dream of non-disturbed self-transparency and self-expression beyond language remains a truly Cartesian utopia. There is no trace of false consciousness in it. Ideology or alienation seem to be operative only in the West, and even here they seem to be more like a deliberate process of camouflage than a political unconscious. As Richard T. Ford has rightly pointed out in a critique of the politics of identity, which can be extended here to also address this postcolonialist discourse, there is a sort of distortion in this approach to culture and difference, which puts all the emphasis on non-recognition versus (self)recognition, but leaves out the whole problem of (self)misrecognition (Ford 2002). Trauma and pain stand here as the infallible index of truth. Language is no longer necessary; its task of expressing and transposing the

essence of the Other is much better accomplished by the pre-linguistic channel of compassion and empathy.

To push this critique even further, one should notice, with Žižek, that 'colonization was never simply the imposition of Western values, the assimilation of the Oriental and other Others to the European Sameness; it was always also the search for the lost spiritual innocence of *our own* civilization' (Žižek 2001: 67–68). From this perspective, Kapur's suggestion that we should treat the excluded ones as our 'creditors', or Baxi's idea that we should effect a 'revolution in human sensibility' by turning our ears to the stories of suffering from the global South are not so much ways to break free from the colonialist legacy, but rather a way to prolong or fulfil it. The postcolonialist particularist resistance in the name of the genuine authenticity of the 'bon sauvage' is already inscribed in the colonialist discourse; as we will see later, it is its obverse, the retroactive illusion of a fatal loss of particular substance, an illusion which is spontaneously generated by the imposition of the abstract universal frame.

II

But the problem is not just about a misconception of the nature and efficiency of language — it also regards the practical consequences that derive from it. Since any reversal of metaphysics remains metaphysics, there is no coinci-dence in the fact that, as much as the postcolonialists would disagree, their approach to human rights shares an essential trait with the liberal approach of thinkers like Richard Rorty (this volume, Chapter Five, pp. 107–31) or Michael Ignatieff (2001). In their anti-foundational approaches to human rights, both Rorty and Ignatieff argue that universal human rights are not to be based on a belief in a 'metaphysical' idea of human rationality, but on a pragmatic idea of sensibility to cruelty. Although they both try to hold on to crucial ingredients from the original project of human rights (the Enlightenment utopia for Rorty, its universalism for Ignatieff), the way to achieve these goals is, for Rorty and Ignatieff, by discarding the maximalist claims to human nature and universally

shared rationality and by replacing them with 'the most we can hope for' — a minimalist account of resistance to cruelty. In both cases, this shift towards minimalism and sentimentalism is grounded on a pragmatic basis: as Rorty argues in Chapter Five, 'the best, and probably the only, argument for putting foundationalism behind us is [that] it would be more efficient to do so, because it would let us concentrate our energies on manipulating sentiments, on sentimental education' (this volume, Chapter Five, p. 118).

At first sight, the sentimental education seems to do the whole job: 'Producing generations of nice, tolerant, well-off, secure, other-respecting students of this sort in all parts of the world is just what is needed — indeed *all* that is needed — to achieve an Enlightenment utopia' (this volume, Chapter Five, p. 123). At a more careful inspection, the shared sensibility to cruelty is not the only necessary ingredient, since it has a condition of possibility of its own: security. 'Security and sympathy go together, for the same reasons that peace and economic productivity go together' (this volume, Chapter Five, p. 124). As it turns out, the sentimental education, as vital as it is, is only the moral superstructure that drags along the even more vital base, namely, the shared peace and security of our shared mode of production.

From this perspective, the critique that Wendy Brown lays out in Chapter Six against Ignatieff's account of human rights can easily be extended to also apply to Rorty's. There are three major critiques that Wendy Brown formulates in her contribution. First, human rights discourse, as imagined by Ignatieff, 'not only aspires to be beyond politics (notwithstanding his own insistence that it is politics), but carries implicitly antipolitical aspirations for its subjects — that is, casts subjects as yearning to be free of politics and, indeed, of all collective determinations of ends' (this volume, Chapter Six, p. 138). Second, human rights 'are not simply rules and defences against power [as Ignatieff claims], but can themselves be tactics and vehicles of governance and domination' (this volume, Chapter Six, p. 142). In the best case scenario, what they amount to is 'a form of "empowerment" that fully equates empowerment with liberal individualism' (this volume, Chapter Six, p. 137). And third, human rights are