Mind, Body, and Gut!
Elements of a Postcolonial Human Rights Discourse

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I. No Genetic Superiority

The discourse of human rights has become increasingly attractive to activists and policy-makers who view it as a deterrent against the proliferation of political violence. But the ambition to set universal standards for practices runs up against skepticism about the validity of the very idea of 'human' rights. Even as French revolutionaries proclaimed the Declaration of the Universal Rights of Men and Citizens, Jeremy Bentham derided the underlying notions of natural rights as 'simple..rhetorical nonsense, nonsense built upon stilts.'[1] Today, skepticism about the idea of human rights come from two distinct but often convergent sources: a cultural relativism that poses as guardian of communal autonomy or authenticity and a historical-philosophical rejection of the inherent and exclusive universality of Western conceptions of human rights. Taking the latter position,[2] Amartya Sen has argued that proponents of the universality of human rights mistakenly insist on the primacy of 'specific classes of...rights' (particularly civil and political rights) over supposedly 'economic, cultural, and social rights.' This distinction unnecessarily excludes significant conceptions of human rights from the purview of desirable

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[1] John Bowing, ed. *The Works of Jeremy Bentham*, vol II (New York: Russell & Russell, 1962), quoted by Amartya Sen, Elements of a Theory of Human Rights,' *Philosophy and Public Affairs* (2004), vol.32, issue 4, 316 .

[2] Although the 'universalist versus relativist' debate has attracted the attention of institutionalists and others, I take the view that this debate has distracted from productive consideration of the utility, instrumentalization, and appeal of the idea of global standards of governance across regions and political and cultural systems.

and enforceable human rights.[3] Worse, advocates of human rights frequently link the possibility and admissibility of human rights to Western political systems, social institutions, and constitutional orders or their likenesses.[4]

Likewise, some defenders of human rights mythically stress the European origin of the most prevalent norms. Anthony Pagden, for instance, has argued that the concept of human rights 'is a development of the older notion of natural rights' that found its present form in 'the European struggle to legitimate its overseas empires.' The decisions by French and American revolutionaries to encode conceptions of natural rights as constitutional provisions helped to further this goal.[5] Pagden concludes therefore that the institutions of human rights cannot be disentangled from the 'particular kind of political system' (i.e., liberal democracy) and ideologies (ranging from theology to post-Enlightenment humanism and rationalism) that actualized 'the Greek and Roman idea of a common law for all humanity.'[6] Pagden then urges human rights advocates to champion 'an essentially Western European understanding of the human' as the basis for international morality.[7]

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[3] Amartya Sen, 'Elements, 316.

[4] Ibid.

[5] Anthony Pagden, 'Human Rights, Natural Rights, and Europe's Imperial Legacy,' *Political Theory* (2003), vol.31, no.2, 171.

[6] Ibid.

[7] Ibid.

This call and its base mysticism have resulted in dubious ethical propositions and political hubris. Thus, for instance, Michael Ignatieff envisages a (Western) right of Western intervention in the former European expanses as a mechanism of diffusion of Western standards of freedom throughout the world.[8] The argument, as proposed by Ignatieff, is built on a supposed pragmatic ground: to enhance 'the ability of individuals to resist an unjust state.'[9] This pragmatism has broad appeal among human rights activists and policymakers in that it conforms to a specific political agenda and justifies Western intervention elsewhere.[10] The argument and the pragmatism are dismissive of the possibility of valid regional values and ideas of human and political community outside of Western visions of human subjectivity. Accordingly, Ignatieff castigates human rights activists for being overambitious and counterproductive by not acceding to the idea of limiting the scope of human rights to the 'defensible individual rights,' which are directly connected to political agency, and thus to effectively reestablish the balance between the rights of states and the rights of citizens.[11] Like Pagden, Ignatieff is credible when he proposes that 'when individuals have defensible rights, they are less likely to be abused.' But the desire to

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[8] Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), passim.

[9] Ibid.

[10] See also, Michael Ignatieff, 'The Burden,' New York Times Magazine, January 5, 2003.

[11] Ignatieff, '*Human Rights*,' passim.

limit human rights to individual civil and political rights at the expense of other classes of rights calls into question Ignatieff's commitment to international morality and justice.

This essay does not dispute that Western institutions are the primary reference for human rights theorists and advocates. Nor does it discount approaches to human rights that identify the historical points at which 'natural rights' become 'rights of nations' and later 'human rights.' The essay takes it for granted that the revolutions in America and France encoded historical conceptions of political subjectivity, personal liberties, and political freedom. The established legislation –the American Declaration of Independence and Bill of Rights and the French Declaration of the Rights of Man and Citizens– contributed to opening the possibility for the universalization of the concept of human rights. This possibility was confirmed by the 1948 Universal Declaration of Human Rights. Finally, I do not wish to diminish the appeal of certain human rights norms in political contestations such as occurred for instance in Eastern Europe, before and after the fall of communism (Thomas, 2001; Cohen, 1996; Watson, 1992; Finnemore, 1996; Callaghy et al., 2001; Ignatieff, 2001, 2004) or Latin America, upon the collapse of authoritarianism (Kolodziej, 2003; Keck and Sikkink, 1998).

I do dispute three central premises underlying Pagden's and Ignatieff's arguments. The first is that a valid theory of human rights must necessarily concede the Western origination of the concept and the ontological primacy of related Western institutions. The second contestable point is that the possibility of universalization of human rights resides in affirming the sufficiency of the classes of 'rights' enacted by the American and French revolutions and liberal democracies generally. The final point is that culture, tradition, and practice provide Western states and their constituencies with the legitimacy and authority to authoritatively determine the

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extent of human rights violations and thus to define the form of intervention required in any context to rectify the conditions of abuses.

Related arguments are at once theoretical, pragmatic, and ethical. I will limit myself here to ethical ones, although these too are implicit. My argument begins with the view that the *a priori* designation of Western powers as legitimate enforcers of human rights is in itself problematic. The instrumental uses of the rhetoric of human rights by 'Europe' and to multiple and contradictory ends during the era of imperialism and beyond, which is conceded by Pagden, suggest that there do not exist historically uniform Western traditions, cultures, and institutions.[12] This absence in turn affects the ability of the West to credibly project itself as the legitimate enforcer of human rights. In fact, this absence of consistency and uniformity on the part of Western states has greatly contributed to muting the receptivity of any Western rhetoric of human rights in the former colonial world. It is one of the causes of non-Western resistance to the universality of the classes of human rights conveniently recalled at moments of crisis. Finally, in the pragmatic instance, it is not far fetched to imagine that the cultural, economic, and social rights of individuals and communities would be less likely to be abused if the right to defend them was constitutively incorporated in the foreign policy rationales of hegemonic states. The related arguments are outside the purview of this essay.

Against the above views, I hold that the idea of ennobling human existence through authoritative ethical categories is not foreign to other regions and their cultures –even if the categories themselves are not expressed in the English language or formulated philosophically

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[12] Pagden, 'Human Rights,' 171-2 and passim.

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and legally as human rights. I argue that non-Europeans too have historically and contingently

appealed to higher moral orders beyond the available socio-political imaginaries as standards by

which to measure social acts and political relations. These appeals were founded upon broader

classes of moral codes and multiple formulations of ethics that sought to ennoble human

existence through enforceable standards akin to human rights. These moral codes and their

ethical expressions constitute alternative enunciations of what may be called human rights

precepts or institutes. They may be the basis of a theory or postcolonial perspectives on human

rights. To this end, and consistent with Sen's desire 'for some theory of alternative enunciations

of human rights,' I propose a brief sketch of constitutional developments during the Haitian

revolution. My key proposition is that developments in Haiti not only expanded 'the claimed

domain of human rights' for the enslaved, they also introduced equally enforceable notions of

human rights. These domains of rights may be outside of the concerns and political agendas of

many human rights theorists and activists; but they are coeval to Western practices and

institutions.

The Haitian revolution does not appear as unique in character and historic importance. In

many regards, it is an integral part of a genealogy of modernity. This simple fact has been

ignored by theorists and historians of thought. The reasons for omission are at times

straightforward. Any thoughts about historical dynamics are necessarily more uniform and less

diverse than the processes that they explain. Without due familiarity with revolutionary Haitian

symbols of liberty and anti-slavery discourses of freedom, it nearly impossible for any thought to

fully grasp the contributions of self-actualized slaves to the development of human rights. Upon

reflection, however, one is led to accept that Haitian revolutionaries must have believed that

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humans possessed inherent faculties and capacities deserving of constitutional protection. They too explored the manners and purposes for which specific moral precepts must be assembled as institutions of human rights in the context of their struggles to enact liberty, freedom, and political justice. By examining events in revolutionary Haiti, one is able to endorse a universalist position while underscoring the specificity of human rights institutions. Indeed, even if they are held to be universal, the contexts and processes of institutionalization emerged from regional and cultural contexts that stress specific dimensions of human faculties and capacities as a matter of utility and pragmatism. From my perspective, the realization of universally agreeable institutions of human rights must necessarily invite reconciling diverse positions born of ideological (or cultural) contestations and political confrontations. This is the only insurances today against the different disguises implicit in universalist and relativist positions on human rights: neo-imperialist arguments disguised as moral concern and resistance to transparency and accountability in the guise of communal autonomy and authenticity.

II. Cultures of Protected Faculties

This essay began with the proposition that there has existed worldwide historical convergences in the human drive to institute elemental ethical principles intended to ennoble human existence. In the English language such elemental principles might be called institutes. I use the term 'human rights institutes' therefore as a separate entities from human rights institutions, without prejudice to parallel linguistic formulations elsewhere. According to the OED, for instance, institutes are 'a collection of precepts, a design or purpose'[13] regardless of

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[13] The Oxford English Dictionary, 1971, 1452.

their origins and/or domains of application. I assume for instance that the notion that 'humans'

possess faculties –or certain 'inherent biological capabilities,' 'powers of the mind,' and 'natural

aptitudes'[14]– has existed across regions, religions, cultures, ideologies, and politics. This

concern must have given rise to a multiplicity of precepts about human existence. I call the

related precepts, provisionally and only for the purpose of communication, human rights

institutes. They attained in any society around the globe that developed a number of precepts

bearing on human faculties. Such precepts would be informed by the lived experiences or

circumstances of the involved entities and their appellation would conform to local lexicons and

intellectual and moral resources.

 'Europe,' Pagden has shown, identified such precepts as natural rights in conjunction

with developments in natural law.[15]   Related developments are particular to the European

trajectory and, in this manner, are unique to it. So too are the institutions of human rights

defended by Europe today particular to it –although not their present meanings which are derived

from their global iterations and applications. Again, according to the OED, institutions are

significant social practices firmly associated with a thing and a precept, or institute. The former,

institutions, are the outcome of historical processes that either established prior precepts as

operative forms through specific instruments or ordained exogenous practices to fill an

institutional void.[16] In either case, the process of institutionalization of say 'human rights' is one

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[14] Ibid., 948.

[15] Pagden, op, cit.

[16] OED, 1971, 1452.

of political and/or ideological determination of the meanings of precepts within specific socio-political contexts. In actuality, the institutionalization of human rights injects the generalized precepts of human rights with the passion of the powerful; the prejudice of ideology; and, by the fiat of reason, the interests of a class of people. Human rights institutions reflect thus particular economies of will, values, and interests reflecting inequalities among political subjects and entities.

Based on the above, it may be said that the institutions of Europe are unique to its history and cultural resources. But it cannot be ascertained prima facie that these processes and resources have no historical or moral equivalencies elsewhere. In France, for instance, Enlightenment-era *philosophes* frequently founded their own understandings and anthologies (some would say genealogies) of natural rights on the principle that there existed parallel sentiments across the globe. Hence, Denis Diderot held that non-Europeans or 'natives' understood the concept of natural right and there was 'almost no one who would not be convinced inside himself that the thing is obviously known to him.'[17] The *philosophes* understood that non-Europeans too held out the prospect of ennobling human existence and that, for this reason, might relate to French institutions. This is to say that, although not always formulated philosophically as human rights, non-Europeans imaginaries of society, agency, and

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[17] Denis Diderot and Jean Le Rond d'Alembert, eds., *Encyclopédie ou Dictionnaire raisonne des sciences, arts, et des metiers*, 17 vols. (1751-80), vol.5 (Paris: Chez Briasson, 1755), 115-16.

ethics are valid grounds for envisaging precepts and institutions of human rights. The latter may therefore be accessible to thought through intellectual inquiry.

In sum, although human rights institutes may be related to human rights institutions, their trajectories are not identical. As such, a useful and compelling approach to human rights must distinguish between two separate spheres and trajectories of human rights discourses. Human rights institutes emerge concomitantly across regions and cultures as the products of localized imaginations of the essential needs, faculties, and capacities of persons long before their incorporation as legal instruments through political or ideological processes. They comprise ideas and/or institutes reflecting the aspirations of epic communal and individual struggles for justice, equality, and decency which must find (imperfect) linguistic representation. These aspirations are then subjected to political and ideological agendas during the course of the embodiment of institutes as institutions.

It follows then that moral institutes and ethical codes that may be translated as 'human rights' are neither necessarily Western nor inevitably relative. Human rights institutions, on the other hand, are necessarily and contingently tied to particular political and ideological agendas, or to the pursuit of a specific political order. This does not mean that they may never have universal applications. As studies of the French and American revolutions show, localized events may nonetheless tap into or initiate generalized views of the human condition. These particular events produced the American Bill of Rights and the French Declaration of the Rights of Man and Citizen.[18] Disagreements emerge only when theorists and advocates ignore the

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[18] Louis Henkins, *The Age of Rights* (New York: Columbia University Press, 1990).

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contingent histories of their particular human rights institutions and thus cast doubt on the possibility that other equally local human struggles were inspired by broader moral and political concerns.

Like revolutionary events in France and the US, for instance, the Haitian revolution aspired to emancipate human beings from political serfdom. As Michel-Rolph Trouillot has shown, late-eighteenth-century revolutionaries in France, the US, and Haiti uniformly held slavery as metaphor of human indignity and, thus, determined to implement instruments that would end it. From this convergence one may read that, by necessity, modern political struggles referred to a moral commonplace: the need to protect the faculties and capacities that define human existence away from the metaphorical slavery. Such a conclusion would be hasty. Moral differences manifested themselves from the outset due to divergent political and cultural contexts in the three localities concerned. In Europe and in America, the word 'slavery' was 'accessible to a large public' for whom it 'stood for a number of evils,' or 'whatever was wrong with European rule in Europe and elsewhere.'[19] Yet, most eighteenth-century French and American revolutionaries gave different weight and signification to *the* actual system of slavery (or the enslavement of Africans in the New World) even as they likened their own lot –or the absence of freedom– to enslavement, or the institution of slavery. The fact that many of the Western revolutionaries were directly involved in the actual evil of slavery partly explained their ambivalence. It remains that they enacted juridico-political regimes and political systems that

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[19] Michel-Rolph Trouillot, *Silencing History: Power and the Production of History* (Boston: Beacon Press, 1995), 85 and passim.

upheld slavery. They also continued the practices of imperialism and colonialism that disavowed the freedom of others.[20] Specifically, American and French revolutionaries formulated constitutional norms that, although based on compelling moral precepts, institutionally construed the word 'slavery' to mean impositions or limitations on the individual liberties and freedoms of particular human entities, excluding the actual slaves.

To the extent that one is required to maintain the boundaries between the theory of language and the language of theory, the above commentaries are not an indictment of political theory. They are to suggest however that a theory of human rights must demarcate the political discourses of revolutionaries from the available political thought – or philosophical ideas and ethical concepts bearing on human rights. The relevancy of such ideas and concepts to discourse must be judged by their applications to historical and cultural contexts. These applications are themselves partly mediated by the intentions and actions of revolutionaries which produced specific idioms, linguistic practices, or language games.[21] These language games created casts and classes of persons with assigned roles and, for this reason, attributed them in time and space bundles of capacities that defined their existence and their understanding of themselves.[22] These language games also stripped others of the capacity to define the terms under which their own situations can be described.[23]

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[20] Ibid., passim.

[21] Ibid., 23, and passim.

[22] Ibid.

[23] Ibid.

It would not be exaggerated to say that the subject of the 'Universal Declaration of Man and Citizen' was not Man, or humans in the broader sense of the term. Nor was that the subject of the Bill of rights persons in their biological capacities and mental faculties. Just as full citizenship was to be granted only to 'natural members' of the Third Estates and not others, the right-bearing American individual was not the biological or natural person, but a propertied, race and class-based person aspiring to dominate others. There is no belaboring the point that the promoters of the inalienable rights of the individual reconciled them both metaphorically and actually with the enslavement of other persons. According to Michel-Rolph Trouillot, the French and American revolutions developed linguistic techniques and peculiar constructs of the ideas of Man and Reason and historical consciousness and agency that accentuated self-referentiality and the repression of the other.[24] Indeed, the concerns about enslavement and the related discourses of freedom and individual liberties pertained to the self. Few sought to enlarge the ethical propositions contained in the narratives of emancipation for their application to the slaves, the colonized, and the displaced natives. These linguistic techniques of the Western revolutionaries and their base-morality or Reason 'exacerbated the fundamental ambiguity that dominated the encounter between ontological discourse and colonial practice.'[25] They spoke of Man and Reason even as 'Men (Europeans) were conquering, killing, dominating,

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[24] See, ibid., and Sibylle Fischer, *Modernity Disavowed: Haiti and the Cultures of Slavery in the Age of Revolution* (Duke University Press, 2004), 22 and passim.

[25] Trouillot, 78.

and enslaving other beings thought not to be equally human, if only by some.'[26] These events

were not merely ethical lapses. They reflect comparatively on the moral character of the French

and American revolutions.

III. The End of Enslavement

Occurring a mere twenty years after the French Revolution and two hundred miles from

the shore of the United States, the Haitian revolution properly belongs to the genealogy of

modern conceptions of constitutional power, popular sovereignty, and entitlements for the

citizenry. First, the Haitian revolution was fought to end political absolutism and a related form

of sovereignty. Jefferson's and the American Declaration of Independence literally dethroned an

absentee sovereign, King George III. Toussaint Louverture, and upon his death, Dessalines and

Henry Christophe did likewise by seizing the opportunity of the French revolution to rebuke their

former masters, whether monarch, French revolutionaries or counter-revolutionaries. Besides

their rebuke of the absentee King, the Americans beheaded native American sovereigns

(including King Philip), just as the French had done with Louis XVI and Marie Antoinette, to

mark their rupture from the past. Haitian revolutionaries would not resort to such 'barbarism' but

signified the barbarism of enslavement through language. Thus Boisrond Tonnerre, a formally

educated mulatto, marked the rupture between the past and the present by stating that the

independence act required 'the skin of a white man for parchment, his skull for a desk, his blood

for ink, and a bayonet for a pen.'[27] This musing had deeper symbolic appeal than the contained

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[26] Ibid., 74-99.

[27] Fischer, 201.

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figurative violence. Haitian revolutionaries hoped to deracialize political agency (by stripping it

symbolically of its 'white skin'); to debunk post-Enlightenment ontology (by figuratively

flattening 'the skull' that contained it); to rewrite their own history by uprooting racial

oppression (where needed by spilling 'white blood'); and to replace the violence of modernity

represented by the bayonet (by converting it into a 'pen').

In other respects, the post-revolution Haitian constitution affirms the freedom of religion

(Art.50-52) and equal access to property (Art.6). So too does it assert that 'The house of every

citizen is an inviolable sanctuary,' only to be entered 'in the case of fire, a flood, [or in the event

of] a plea' (General Dispositions, Art.6-7). It also affirms marriage and divorce (General

Dispositions, Art 14-15).[28] In these and other regards, the Haitian revolution was integral to

modern political debates on the moral quality of modern existence and the need to separate the

public and private spheres of life. Like the other revolutions, the slave revolution delineated the

legislative provinces of governors from the domains of decisions of the governed. Haitian slaves

too realized the advisability of binding norms that protected the faculties and capacities of

humans. By assuming themselves to be humans, Haitian slaves challenged reigning notions of

humanity, of Man and Reason, or their access to human faculties and capacities.

Still, the Haitian revolution was not ordinary. It was in some ways a direct response to

events in France and the US. As Sidney W Mintz has noted, it 'was, above all, the only

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[28] For the full text and commentaries on the Imperial Constitution, see ibid., Appendix A,

227-281.

revolution of those first three –American, French, and Haitian– that freed the slaves.'[29] Not only

did the Imperial Constitution ban all references to gradations of skin color (Art.14), it also

abolished 'titles, advantages and privileges other than those necessarily resulting from the regard

and compensation for services rendered for liberty and independence' (Art.3).   The Haitian

constitution also granted equal rights to children born out of wedlock (General Dispositions,

Art.16); adopted marriage and divorce laws favorable to women'' and granted equal access to

property to *anciens libres* (the formerly free) *and nouveaux libres* (freed slaves). Further, in

recognition of the universality of goodwill, the Haitian revolution rendered 'homage to the

friends of liberty, to the philanthropists of countries, as a sign of proof of divine

goodness...which provided us with the opportunity to break our chains and to constitute

ourselves as free, civilized, and independent people' (General Dispositions). Now self-

proclaimed blacks after independence, the former slaves recognized the equal dignity of 'all

mortals,' including 'white women who have naturalized,' 'their present and future children,' and

'Germans and Poles who have been naturalized by the Government (Art.13).

There have been many commentaries about the philosophical depth of the ideas held by

the former slaves. The prejudice comes partly as a result of the fact that few of the Haitian

revolutionaries had any formal education and 'None could appeal directly to friends, college

chums, or political allies in Europe.'[30] But they were among the first to realize the connections

between political violence, on the one hand, and modern political thoughts and systems, on the

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[29] Sidney W Mintz, 'Can Haiti Change?,' *Foreign Affairs*, vol. 74, no.1 (1995), 77.

[30] Ibid., 78.

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other. They rose up against 'being someone else's property...being flogged...being denied a family or the right to testify in court...being raped, tortured, murdered, or sold.'[31] Mintz is unquestionably among the most sympathetic to the Haitian revolution and its causes. But one is compelled to disagree with him that the central issues of the Haitians were 'less stirring issues' that those that presented themselves to the French and American revolutions.[32] As I show later, the enslaved Haitian envisaged institutions that anticipated modern day conventions on the abolition of torture, the protection of refugees and displaced persons, and the reunification of families. They also initiated protection for women (whether married or unmarried) and children (whether 'legitimate' or not). In fact, their perspectives in these regards anticipated current international debates on the subjects.

The Haitian revolution and constitution are not without controversies. Whereas it too had been inspired by the desire and precepts of freedom, justice, equality, and decency, the Haitian constitutional provisions were drafted by historical agents with different relations to state, society, and economy. As a result, they envisaged liberty differently. The result is that social conflicts remained beyond the revolution. The most significant lines of contention opposed former slaves of African descent 'who felt liberty meant securing racial equality' to large planters (*grands blancs*) and *gens de couleur or affranchis* 'who identified liberty with having a lot of land for themselves.'[33] Both groups sought to keep the state at bay but meant separate

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[31] Ibid., 77-8.

[32] Ibid. 78

[33] Fischer, 37.

things by it. Whereas the *affranchis* and planters aspired to a state that did not interfere with elemental freedoms of religion and speech and property rights, the former slaves (led by Christophe) sought to limit the sovereign power of the state as a way of preserving the integrity of the person, encompassing the human body, mind, and soul. Hence, the objections to torture and other forms of physical molestation; to interference with familial peace; and to being sold or held as property.

It is widely recognized today that the struggle against slavery and the foundation of the Haitian state must be matters of separate concerns. The construction of the state has suffered serious setbacks over time due to internal dissension and external intervention, principally by the US. These setbacks resulted first and foremost from domestic resistance to the implementation of the economic clauses of the constitution. In the first instance, the Haitian revolution put forth a view of human needs and natural faculties and capacities that aimed to ensure humane existence to all persons –former slaves, or those without prior political affiliation, and freemen, or citizenship whose political status preceded the revolution.[34] Related arguments bore on the plantation which was the primary site of production and association between workers (mostly former slaves) and planters (formerly privileged). Considering it to be a 'manufacture,' the

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[34] Trouillot, 1995, op. cit.; David P Geggus, ed., *The Impact of the Haitian Revolution in the Atlantic World* (Columbia: University of South Carolina Press, 2001); and Doris Y Kadish, ed, *Slavery in the Caribbean Francophone World* (Athens: The University of Georgia Press, 2000).

former slaves envisaged a system of solidarity that eliminated titles – 'No white person...shall set foot on this territory as a master'– and joined together the planters and the workers.[35]

The aim was not to disrupt the economy but to allow the former slaves to enjoy the benefices of the economy: 'The colony being essentially agricultural, it can not suffer the smallest disruption in the operation of its plantations' (Title VI, Art.14).[36] The constitution encouraged Haitians to be productive for the duration of their natural lives in order to deserve their moral status as 'good father...good son...good husband...and good soldier.' Concurrently, the constitution mandated good management by posing the threat of loss of citizenship 'as a result of insolvency and bankruptcy'(Art.8 and 9). These constitutional dispositions granted equal access to all to the resources necessary to their subsistence. The related arrangements did away with prior political and economic covenants that had endangered the capacity of enslaved persons to lead a humane existence. But they also ran afoul of the titles and privileges of the *affranchis* (or free people of color) and white Frenchmen –but not French women who had been granted equal citizenship and certainly not Germans and Poles of any gender.

The reactions of the formerly privileged manifest themselves even in today's Haiti.[37] It is the stuff of the crisis of the Haitian state, a topic which lies beyond the purview of this essay. It suffices to add that US interventions accentuated social tensions there between the former slaves of African descent (or those who spearheaded the revolution) and the *affranchis* (those whose

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[35] Fischer, 267.

[36] Fischer, 267.

[37] Mintz, 'Can Haiti,' passim.

interests were affected by the drive of former slaves to full equality). Over the decades,

successive coalitions of *affranchis* aligned themselves with and benefitted from interventions by

American capital and states.[38] These interventions aggravated local conflicts and helped to derail

the revolutionary project: to guarantee individual liberty as freedom from slavery and equality as

protection from racial and economic discrimination.[39]

IV. A Hermeneutic of Rights

Theorists still have difficulty considering that 'illiterate black slaves' could produce

universal notions of rights. According to Mintz, many today are unable or unwilling to image

Haitian revolutionaries on par with such 'intellectual giants' as William Jefferson or the Abbé de

Sieyès.[40] Hence, it is generally noted that the American and French revolutions endowed

particular historical subjects with specific faculties and capacities which they thought to be

essential to 'good government' and the 'good life'. It is also known that revolutionaries on both

the European and American continents imagined 'rights' as instruments to guaranteeing such

faculties and capacities. Specifically, it is held that French revolutionaries envisaged the *citizen*

as a distinct entity with essential endowments and, thus, entitled to fundamental rights. It is also

generally acknowledged that American colonists imagined the *individual* as independent and in

an antagonist relation to the sovereign and the constitution confirmed this by modeling

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[38] Trouillot, op. cit.

[39] Fischer, 267 and passim.

[40] Mintz, op. cit.

individual rights on sovereignty –God given or natural and, at any rate inviolable by the state and other citizens.

Hannah Arendt, for instance, upholds the primary role played by the American revolution in laying the foundation of freedom on the distinction between political and social questions.[41] The related arguments are aimed at the French revolution whose descent into violence is attributed by Arendt to the invasion of politics by moral sentiments and economic matters. She thus attributes the success of the American revolution to the fact that it wisely relegated social questions to separate domains –of legislation for instance as opposed to constitutional debates. Sibylle Fischer has appropriately deduced from Arendt's arguments that she presents slavery as a social question against the position of the colonists themselves who considered slavery a political question.[42] Significantly, Arendt's views lead to equivocation on the implication of the colonists' refusal to grant freedom to slaves. This equivocation is surprising because Arendt had earlier argued for the primacy of the right to have rights,' or 'the right to belong to some kind of community.'[43]   Then, according to Seyla Benhabib, Arendt located the origins of totalitarianism in the distant European scramble for Africa, particularly in the accompanying 'racial

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[41] Hannah Arendt, *On Revolution* (Harmondsworth: Penguin, 1963).

[42] Fischer, 7-9.

[43] Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, Jovanovich, 1968).

extermination policies.'[44] To take the argument further, totalitarianism as the 'heart of darkness' originated in hearts of Enlightened Europe in slavery and what followed it.

Arendt is not alone in her equivocation toward the rights of others, particularly those conquered and dominated by Europe. Isaiah Berlin too maintains that absolute freedom is best defined as negative liberty, or 'the area within which a man can act unobstructed by others.[45] Berlin understands this form of liberty to be the sphere of action over oneself, body and mind, 'when the individual is sovereign.'[46] Berlin contrasts negative liberty with positive liberty, or the right to be 'one's own master' and to be self-directed in choosing and pursuing one's own goals. Thus construed, positive freedom does not offer merely absolute immunities but presupposes agency and conditions such that some individuals might be at liberty but lack the requisite necessities, including education, training, skills, and tools. Generations of scholars and politicians have justified slavery and colonialism on the basis of this distinction by assuming that slaves and the colonized lacked both agency (Reason) and the means (science) to be free.[47]

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[44] Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), 52.

[45] Isaiah Berlin, *Four Essays on Liberty* (London: Oxford University Press, 1969), Chap 3.

[46] Ibid.

[47] Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990), 26-31.

In fact, modern slavery was founded upon a political rationality and rationalization of economic processes. Slavery and the plantation economy entailed 'a radical rationalization of labor processes, an utter disregard for traditions, and a degree of instrumentalization of human life' that had not previously been seen in the colonies or by the slaves themselves in their places of origination.[48] To the slaves at least, slavery and the plantation economy were at once political, social, and moral questions in a revolutionary age. They responded as other revolutionaries would and did by drawing on their own human condition. Reading the Haitian constitution one notes that Haitian revolutionaries were inspired by the insights of the first two revolutions: that citizens should be accorded faculties of self-governance; and that individuals rights could not be curtailed by the state. But one is struck by their rejection of the moral foundations of the attendant rights as enunciated by French and American revolutionaries. For instance, the Haitians rejected the idea that *privileges* of citizenship could be envisaged for whimsically defined active, laboring, and virtuous members of society. One is also impressed by the form of human subjectivity ascertained by the Haitian revolutionaries and their understanding of the forms and range of human bondage, oppression, and suffering.

The former slaves better understood what it meant to be a *person*, a biological entity, whose existence could not be predicated upon the strictures of any political system. Before the duty-bearing citizen and the rights-bearing individual, one was first and foremost a person –an entity with faculties without the protection of which life itself was without meaning. Thus, where the American stressed *life*, *liberty*, and the *pursuit of happiness* as the teleology of the

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[48] Fischer, 12.

revolution and the French emphasized *liberty*, *equality*, and *fraternity,* the enslaved sought to institutionalize the most basic of immunities. These can be viewed either positively as the right to the integrity of the body (including the gut), the mind, and the soul, or spirit; or, negatively, as freedom from *oppression*, *exploitation*, and *suffering*.

When the landscapes and fragmentary but concordant facts of the Haitian revolution are put together in the form of a theory of human rights, it become clear that so-called economic and social rights are not, as currently believed, a second generation of rights. They can be traced from the Haitian revolution and anticolonial struggles against political systems and economic forms that deprived persons of the means to sustain life. Then as now, the existence of the privation, and the context, was ostensibly not the cause of revolution. In other words, the politics of human rights concerned the types of privation and political and economic systems that prevented persons from attaining their humanity. To the stave, the plantation economy, as mode of production, caused privations of body, mind, and soul. The plantation not only authorized physical molestation, interference with family, and starvation and torture, it permitted humans to be sold and exchanged as one would things. The economic system was thus as objectionable as the political system when it resulted in dehumanization. They belong properly to the authoritative lexicon and repertoire of universal rights on the basis of their coevalness with civil and political ones.[49]

Conclusion

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[49] Sen, Ibid., 316

The events and motivations that generated Western conceptions of human rights are not without parallels elsewhere. The institutes (or precepts) and institutions of human rights are scattered across regions (most recently in the colonial worlds) and idioms (including those of anticolonialism) as a result of contingent events. These precepts and idioms continue to reside in the consciousness and memories of untold numbers as receptacles for the proposition that humans possess faculties and capacities that need protection if life itself is to be ennobled. To reiterate an earlier point, these simple facts are often lost on human rights theorists and advocates. The political cause of neglect and/or erasure is the post-Cold War advent of certain *realism or political pragmatism* that instrumentalizes human rights on behalf of political and ideological agendas. When the purpose of theory is to craft 'defensible' norms of human rights as basis for Western intervention in wayward states, then the necessity arises to teleologically insist on existing Western legislation and institutions of human rights and to affix them with determinate meanings.[50] This is not to say that existing institutions and instruments of human rights do not contingently have determinate meanings. It is to say that strictly legal and political arguments advanced in defense of interventions are not good substitutes for a reflection on the human condition. The latter requires attention to the existential conditions of persons everywhere as well as consideration of their multiple conceptions of political subjectivity and rationality. It also requires that theorists accommodate the multiple temporal and spatial motivations and articulations and iterations of the central moral precepts upon which life may be founded.

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[50] Ignatieff, *Human Rights*, op. cit.

Reading Pagden's and Ignatieff's arguments one is struck by their elaborations on Western jurisprudence and their silence on the contributions of others to moral progress. For instance, Ignatieff envisages breaking the monopoly of the state on the conduct of international affairs, and therefore the need to 'trace the fine line between the rights of states and those of citizens.' This impulse is commendable in view of the spread of political violence by states against their own citizens and others. Anti-colonialists envisage a similar line between the capacity to intervene and the authority to intervene. Like their Western counterparts, anticolonialists and postcolonial theorists maintain even today that just the postcolonial state may loose its sovereign privileges when it is unwilling and unable to protect some or all of its citizens, hegemonic states too lost their moral authority and, thus the right to intervene elsewhere, when they have consistently promoted political and economic regimes that deprive millions of the basic amenities of life.

If, as Ignatieff claims, Western states that are hypocritical in their adoption and monitoring of human rights do not lose 'the right to use force to defend them'[51] then it may be equally morally consistent to posit the following: that developing states that are hypocritical in their implementation of Western norms of human rights do not lose the right to use force to maintain the domestic order if in fact they promote other classes of human rights. This is not a position that I would defend. I make the inference to highlight the disturbing logics that are attained through a peculiar sort of moral and methodological instrumentalism. It necessarily gives the authority to a few states and their societies to define human rights and promote a select

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[51] Ibid, passim.

class of institutions in combination with other declared or undeclared goals, including imperialism.[52] This sort of instrumentalism not only perpetuates the fallacious assumption that the 'righteous sovereign' is necessarily a composite of Western states, it also assumes that developing states, mostly of the former Western colonial provinces, that do not adhere to Western precepts of human rights are morally deficient and in need of institutional reformation, involving the curtailment of their sovereignty.

By contrast, it is possible to close the gaps between 'the given' (or the proclaimed reality of human rights) and 'the real' (the heterogeneity and productive ambiguities of discourses and practices of human rights) without creating the expectation that any single entity monopolizes human aspirations and that any one method will completely reveal the complexity of human rights institutes and institutions. Again, the latter obey temporal and spatial motivations that are reflected in their articulations and iterations. But by revisiting the scenes of modern revolutions and anticolonial struggles, it is possible to obtain insights into diverse cultures of human rights and the precepts or institutes that inspired them. In the event, one is impressed that, in times of political crises, human rights institutes are derived from scattered ideas, facts, and practices. These are instrumentally assembled during political experimentation to respond to temporal and spatial conditions in conformity with existing fears, visions, desires, and fantasies.[53] In short, broader understandings of the value, extent, and forms of specific classes of human rights might

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[52] Ignatieff, 'The Burden,' passim.

[53] Fisher, 20.

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be gained from visiting moral and intellectual landscapes of heterogeneous ideas, facts, and practices.[54]

From this perspective, the moral status of classes of human rights does not depend upon their point of origination. This means that the non-Western origination of the idea that human rights necessarily encompass entitlements due to economic, social, and cultural needs does not inherently confer upon them a lesser moral status. Nor does it signify a lesser concern among non-Western entities for the common good or a weaker sense of the common human past. In fact, it may be ascertained that Haitians too understood their ethical injunctions or commands as bearing on the aspiration of citizens, individuals, and persons everywhere to a higher moral order. They projected these injunctions and commands as immutable imperatives transcending time and space. In sum, Haitian revolutionaries and anticolonialists everywhere recognized the existence of 'essential' human faculties and capacities and, as result, made the moral choice to protect them as a means to ennobling human existence. Like French and American revolutionaries, Haitians too designed their moral or ethical precepts with the purpose of bettering the lot of similarly-situated persons and collectives everywhere. Their distinctive precepts and institutions of human rights were responses to the common human condition and, as such, belong equally to the collective human inheritance.

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[54] Ibid., 2.

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