Philosophical Dimensions of Human Rights

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Editor

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Some Contemporary Views

Springer

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ISBN 978-94-007-2375-7 e-ISBN 978-94-007-2376-4
DOI 10.1007/978-94-007-2376-4
Springer Dordrecht Heidelberg London New York

Library of Congress Control Number: 2011941659

To Conrad and Therese Ross with love

Acknowledgements

I would like to express my gratitude to those authors and editors who have made possible the reprint of the following essays.

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Introduction

Never before has the appeal to human rights been as pervasive as it is today. At the international level there is, indeed, a great deal of discussion about the moral standards countries must comply with in order to be considered a part of the international community. As recent events show, it is also true that the instrumental use of human rights has often been oriented to justify new forms of ideological imperialism that have little to do with the defense of a true interest in human rights protection.

Nevertheless, the incorporation of human rights and democracy as clauses of conditionality for the establishment of bilateral relations within the European Union represents more than simple wishful thinking. Also, the ideological opposition between liberal and communist countries, which influenced the structuring of the *Universal Declaration of Human Rights* of 1948, has been replaced now by new legitimising procedures rooted in a plurality of cultural traditions. Scholarly work, what was once composed solely of few studies on the cultural approach to human rights, has now become a systematic field of investigation. What was once perceived as a relatively unstructured field of study can now be labeled outrightly and without ambiguity "the philosophy of human rights." The intuitive understanding and recognition among scholars of a domain of study dealing with the philosophical reflection on human rights is not in itself a sufficient reason for yet another theory of human rights. As a matter of fact, the search for new patterns of legitimation may or may not be accompanied by the proposal for a new form of human rights justification. The question then becomes whether or not we really need new philosophical justifications of human rights and why – if yes – do we need them. Let us start from some skeptical views on new justifications to human rights: Bobbio once claimed that after the promulgation of the Universal Declaration we don't need a justification phase but rather a process of human rights implementation. What he meant by this was that the problem has nowadays become political and not simply philosophical.[1] Is this really true? Can we really separate political practice from a

[1] N. Bobbio, *L'età dei diritti* (Torino: Einaudi, 1990, 16).

philosophical justification? That is, can we simply be content with the actual philosophical foundation of the Universal Declaration and with its suggested political implications of human rights protection?

If one considers the type of justification emerging from the Universal Declaration and based on the natural law theory, it follows that the rights defended therein is insensitive to cultural interpretations and pluralistic variations. According to its strictest interpretation, natural law theory approaches to human rights do imply an homogeneous application of the proclaimed rights across different cultural and political traditions. Is this an appropriate strategy for the enforcement of a policy of human rights? The dissatisfaction arising from such views represents the most highly motivating factor for proposing, pace Bobbio, yet new justifications of human rights.

This book aims at answering not only the quest of justification, but also the contemporary ever-increasing request for a new politics of human rights. Important political signs calling for a renovation of international relations and new politics are indicated, for instance, by Obama's Cairo discourse on 4 June 2009, where a clear reference has been made to the wrongfulness of imposing democracy with force.[2]

Before this radical shift in intents, the previous American foreign policy strategy was inspired by the doctrine of "the democratic peace theory." Such theory was based upon the wrong assumption that peace is strictly dependent on democracy since democracies do not fight each other. The arbitrary conclusion drawn from such a view was that the higher the number of democratic arrangements worldwide, the higher the chance to obtain durable peace. This over simplistic view of what was the much more refined Kantian argument of *Perpetual Peace*[3] has been interpreted therefore as presenting a sufficient motivation for "stabilising" the Middle East along democratic lines. We all know the dramatic consequences this has produced.

Western failure in proposing a reliable international politics of peace has been paralleled by its incapacity to propose a reliable politics of human rights. If one is ready to embark on a more in-depth historical analysis on how human rights have become part of our modern history, it would be hard to fail to observe a strict link between a certain abstract/universalist approach to human rights principles and a certain naïve practice of human rights politics. This latter, due to its insensitivity to the recognition of the relevance of local processes of cultural interpretation and pluralist transformation of abstract principles, has resulted incapable of providing an enlightened guidance to local politics.

[2] This introduction was completed a few months before the so-called "Arab Spring." After initial enthusiasm, the hope is now that the next transitional phase will truly fulfil, at least some of, the people's expectations. The reality is, though, that those who start revolutions are very rarely the same ones who conclude them.

[3] I. Kant, "Perpetual Peace: A Philosophical Sketch," in *Political Writings*, trans. H.B. Nisbet, ed. H. Reiss (Cambridge: Cambridge University Press, [1795] 1994).

We know where from this descending parable originated. When the *Declaration of the Rights of Man and the Citizen* of 1789 was proclaimed, Europe reached the apex of a historical turning point. For the first time it seemed that there was a meaningful way to address humanity as a whole, and that this was to be found within its common moral status. It is true that, before this, other documents had been proclaimed and yet the *French Declaration* seemed to contain all the tradition-breaking force inspiring the revolution itself. Besides the great innovation it produced, its limits became immediately evident with the publication of the *Declaration of the Rights of Woman and the Female Citizen* by Olympe de Gouges in 1791.[4] As it often happens when an epochal change takes place, this case also exhibits that the innovative force of the Declaration has proved its value by manifesting its limits and, through this, prompting further changes.

In this regard, it is interesting to observe that the separation between the rights of man and those of the citizen characterising the French Declaration has found a "reunification" only with the Universal Declaration of Human Rights. Indeed, it was only in 1948 that the recognition of a universal right to take part in the government of one's country either by direct means or through the free choice of political representatives appears clearly (Art. 21.1). The Universal Declaration, therefore, is the highest level of expression of the natural law theory, setting a universal standard for rights to be respected without exceptions. The decline of a theory and a politics of human rights, though, began precisely from this apex. With the exception of *The European Convention on Human Rights* and notwithstanding the numerous cultural and regional charters proclaimed throughout the last decades, such as *The African Charter on Human and People's Right*, *The Islamic Declaration of Human Rights* (also known as the Cairo Charter) or even the *Asian Charter on Human Rights*, not much legal recognition has been given by regional and international bodies towards local governments for regulating and monitoring the respect of human rights. This lack of supranational empowerment has limited the scope and application of the same *Universal Declaration* or, worse, has made its content obsolete in most of the cases.

How can these lacunae be remedied? One possible path would involve the promotion of regional courts for the judicial vindication of wrongs, as well as for the development of horizontal patterns of consultation, favouring what I have termed in the past "judicial legal pluralism."[5] This strategy, in order to be pervasive, requires that a fresh reinterpretation of those same grounding principles characterising human rights is proposed. One can imagine that a new normative arrangement among international, regional and national bills of rights could be established, an arrangement moving from the abstract universalism of the 1948 Declaration down to a more and more inclusive regaining of cultural richness and life-forms pluralities.

[4] O. de Gouges, "The Declaration of the Rights of Woman and Female Citizen," in *Women in Revolutionary Paris, 1789–1795*, ed. D.G. Levy, H.B. Applewhite, and M.D. Johnson (Urbana: University of Illinois Press, 1980, 87–96).

[5] C. Corradetti, *Relativism and Human Rights* (Dordrecht: Springer, 2009).

What is at stake here is not simply the strictly legalistic problem of the hierarchical order of the sources of law, but rather the provision of "local" interpretations to "global" principles of law. The mutual confrontation between a global and a local dimension of human rights remains true even when there is a counter reaction of the local, either as a denial of human rights principles or as a declaration of autonomy as in the case of the US courts. What is not to be ignored, though, is the fact that the hermeneutical process attached to the contextualisation of human rights principles does not stop until it reaches the "phronetic" level of the *judgment of experience*. At this stage, one should question the relation between the principles of human rights and the judgmental – case by case – assessment. The problem, indeed, consists in the evaluation of the relevance that human rights principles hold when confronted with widespread conflict occurring in factual contexts. When the judgmental activity tries to find a way out of the infra-conflictual opposition among human rights, a transition from the level of *principles* to the level of exchange of *arguments* occurs. What is meant by this can be simplified as "whenever human rights principles x, y, z, etc. are in conflict in context A, a judgment capable of balancing the conflicting claims should be provided." This opens up a new perspective of human rights analysis. Last but not least, the changing approach both to the study and to the practice of international relations is widely reflected into some contemporary documents and state initiatives. In this regard, one of the most important attempts to reframe the approach to international relations in accordance to normative principles is that conducted by the *Independent International Commission on Intervention and State Sovereignty* [ICISS], established by the Canadian government in September 2000 and recently discussed (Sept. 2009) by the UN General Assembly as a framework of action for future reshaping of international relations.[6] The result of the Commission amounted to the formulation of two documents published in December 2001 under the title *The Responsibility to Protect*. The first document focused on the redefinition of the notion of state sovereignty, intervention and institution building, and the second on an expansion of some central concepts drawn from the first and followed by a large bibliography. It is important to highlight that both documents are the result of a wide process of consultation, and that especially the first one has been conducted via cooperation platforms and roundtables with experts and representatives coming from all continents.

Once the *duty* to protect one's own citizens from genocide is established as a universal and unavoidable condition of state legitimacy, the first and most relevant question is *which actors* are allowed to intervene in the internal affairs of third states. Such a principle implies, as a consequence, that in those states where genocide takes place the international community is not only justified in intervening but, most importantly, maintains a *moral duty* to do so. The discussion of whether or not interference into third states is justified and, if so, on which conditions has been

[6] See the *Report on the General Assembly Plenary Debate on the Responsibility to Protect* (2009), at: http://www.responsibilitytoprotect.org/ICRtoP%20ReportGeneral_Assembly_Debate_on_the_Responsibility_to_Protect%20FINAL%209_22_09.pdf.

widely debated both in cases in favour of intervention (e.g. the NATO intervention in Kosovo in 1999) and in cases with no resulting intervention (e.g. the Rwandan genocide in 1994). As is widely known, very often international military action was initiated without the authorisation of the UN Security Council, the only international body which can assign legitimacy to interference into third states. Is there any convincing reason to derogate from this requirement? How can violations be judged systematically enough to require an urgent, unilateral intervention not legitimised by the UN? No clear answer can be given without the precise assessment of the normative criteria justifying intervention and an empirical survey of the committed crimes. The opposite case, which is nevertheless indicative of the necessity to construct binding rules of state intervention, is that of Srebrenica and Rwanda, where UN troops were not only unable to protect civilians despite their physical presence in the area, as in the first case, but let one of the most systematic and tragic genocides occur without taking immediate action, as in the latter. As clearly stated by the ICISS document, the central point of conflict is how to find a solution between one of the most fundamental principles of international law and state sovereignty (Art. 2.1 of the UN Charter) and the moral requirement to stop genocides through armed intervention. This prompted the ICISS to reformulate the notion of state sovereignty by claiming that state sovereignty cannot be defined as military control over a territory. The very principle of sovereignty implies both the requirement of respect of other states' sovereignty and of citizens' dignity and fundamental rights. Sovereignty, according to the ICISS, must be reframed in terms of *internal and external responsibility*. Accordingly, the notion of responsibility cannot be left unspecified but must be articulated into a particular set of parameters and finalities defining the constraints on military intervention. These include its capacity to be effective, to minimise human casualties and to reinforce the possibility of an enduring condition of peace. Since the new notion of sovereignty includes replacing a state control of force with both an internal and an external notion of responsibility, this paradigm shift implies the respect of three further constraints: (1) responsibility to protect the welfare and security of citizens; (2) responsibility to protect other states on the basis of the principles of the UN Charter; and (3) direct accountability for one's own political actions. Such constraints reinforce a general trend that contemporary international law has developed within its documents – the centrality of the individual within the international scenario. The responsibility to protect, in as far as it represents a core mission of the states, is directed towards individuals regardless of their citizenship or affiliation; it also involves the need to prevent systematic crimes through bilateral or multilateral agreements and to rebuild those basic conditions of justice.

The ICISS constitutes a central element of a gestalt picture in need of clarification. For this reason, it is important to revitalise the debate on the theoretical aspects involved in a theory of human rights before focusing again political action. The essays presented here share a commitment, either explicitly or implicitly, to the assumption that classical abstract universalism constitutes an inadequate form of understanding of the moral world, such that a new model of universalism becomes necessary. This assumption creates the premise for a reformulation of a notion of

human rights theory capable of being maximally inclusive of cultural pluralism and contextual differentiation.

The essays collected here are thus organised in such a way to guide the reader through a progressive web of topics and arguments grounded in the conceptual history of human rights and its contemporary debate. They are organised along three central axes revolving around the reconstruction of the historical and philosophical traditions of human rights, the forms of validity of human rights and the relationship between democracy and human rights.

The first section, entitled "Historical and Philosophical Perspectives on Human Rights," is opened by Flynn's discussion on whether it is possible to provide a definition of human rights that is capable of incorporating the features of an emerging practice without missing its historical meanings. The author starts with the problem of how to propose a definition of human rights without contributing to the semantic inflation of the concept. And again, how can a notion of human rights be reconstructed in accordance with the natural law theory of the rights of man? What discontinuities can be detected through history? The author attempts to balance past meanings and contemporary definitions by referring both to Hunt's and Moyn's historical studies on human rights, as well as to Griffin's, Habermas' and Forst's historical and normative reconstructions of the concept of human dignity. One of the most interesting points is the observation of the disruption of a pattern between the meanings of the past and those of the present. By quoting Nickel, the author notices that contemporary theories of human rights are characterised by a strong egalitarian profile as well as by a low individualistic orientation and a strong international orientation. Among others things, Flynn engages himself in a truly philosophical discussion noticing that the inherent legal nature of human rights as well as the "revolutionary founding of nation-states" defended by Habermas, cannot explain the contemporary use of human rights as a "language of moral protest." Thus, it seems that a more inclusive definition of human rights must be provided and that a work of historical and conceptual clarification is required. With this view, Flynn highlights a distinction and a possible interconnection between humanitarianism and human rights.

Flynn's reconstruction of the philosophical debate is integrated by Reidy's paper. The author introduces some of the central topics debated today within human rights theory, followed by a reconstruction both of Rawlsian perspective on international law and human rights as well as its influence on Talbott and Griffin. Reidy claims that recent debate has revolved primarily around three questions: the nature and the function of human rights, their routes of justification and their specific enumeration or "list question." These issues are in turn intertwined in a further set of problems raised by skeptical challenges to human rights, and an assessment of various forms of skepticism such as positivist skepticism, relativist skepticism, realist skepticism and theological skepticism, is provided.

If human rights as universal moral norms can be saved from skeptical criticism, then it becomes interesting to see which non-skeptical approaches have advanced recently in philosophical debate. The second half of Reidy's contribution is aimed precisely at introducing the reader to some detailed technicalities

concerning contemporary debate. For instance, Reidy observes that human rights are not considered as a moral theory of interpersonal relations, but rather as a moral theory of international relations in Rawls' *The Law of Peoples*.[7] Furthermore, human rights are approached as part of a moral theory embedded within a practical perspective of existing constitutional liberal democracies. Finally, human rights represent the moral thresholds for setting states' standards for mutual recognition. Within such a picture, Reidy claims, one should be prepared to consider that Rawls commits himself to a defense of natural duties as preconditions for the achievement of an overlapping consensus within the international order and that this does not commit him to defend a parallel system of natural rights.

Moving to Talbott's approach, Reidy observes that Talbott rejects the Rawlsian account on human rights because it is too weak in as far as the status assigned to human rights and the range of included rights is concerned. For instance, according to Talbott, Ralws should have included a wider range of political, social and welfare rights, just to mention a few, and these should have been considered as truths discovered through historical experience and not as derived by *a priori* reflection. Human rights, in this sense, express the requirement of institutions working in defense of such truths. The first and most relevant ones concern the first-person authority for valuing personal good. Talbott claims that human rights are aimed first at supporting individual autonomy of the members of a society. As in Rawls, Talbott understands human rights as part of a theory of political morality and not as part of a theory of interpersonal relations. In contrast to Rawls, he does not take human rights as a condition of reciprocity for well-ordered states, but rather as moral thresholds for the legitimation of state intervention.

Reidy analyses one of the most widely discussed positions nowadays – Griffin's theory of human rights. Griffin's views consist in seeing human rights as direct descendants of natural law theories, even if he recognises that contemporary strategies are much more sophisticated today than they used to be. According to Griffin, all people have an interest in developing their capacities for normative agency. From the universality of this common interest it follows that three component parts can be analysed: the capacity to make choices (autonomy), the capacity to act on choices (liberty) and the material conditions necessary for acting on one's choices (material welfare). These three goods are common to all since they are considered fundamental interests by all persons. The authors whom Reidy considers, while differing in the strategy they adopt for justifying human rights, are similar in that they all promote non-skeptical views.

The third contribution is Scheuerman's essay. One of the most interesting elements of Scheuerman's perspective is the reconstruction he provides for alternative and not standardly normative justifications of human rights. In his *Reconsidering Realism on Rights*, the author directs his endeavours to the clarification of how realism in international relations is far from being the naïve caricature that several normativists have depicted. Contrary to this, there are several overlapping topics

[7] J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

and worries, not to mention outputs, that are shared between the two rival positions. Scheuerman develops his arguments by replying to Caney (2005) who has recently considered the notion of "selectivity lacuna" following which human rights have not been consistently defended in all relevant cases. According to Caney, realist skepticism regarding human rights is accompanied by the requirement of adopting a uniform human right response. The lack of perception of cultural differentiations is to be seen as a form of "contextualist lacuna" to the advantage of normativist positions. According to Caney (2005), a third charge against realists exists, namely that a state does not have to prioritise human rights over its national interests in all circumstances.

Scheuerman's task is devoted to show how realists have always shared a substantial ground with cosmopolitans, a position contrary to what is commonly believed. As a matter of fact, notwithstanding certain skepticisms in totally abandoning the centrality of the state, several realists understood the contemporary relevance of a "world community" and a "world government," as was the case of Herz (1959) and Schuman (1952). Scheuerman provides a detailed reply to the three criticisms. He does so by explaining the type of rationality characterising realists' claims, for instance, by referring to power inequality as in the case of "selectivity lacuna." This is hardly a position against a strengthening of human rights at the international level; on the contrary, it recognises the limits of human rights within the Westphalian system. Scheuerman observes also that there are several elements for the consideration of realists' attention to the cultural specificities involved in the implementation of human rights. Thus, to a very large extent, realists appeared to be sensitive to the problem of pluralism as a political resource against mechanic universalism and relativism. They simply countervailed the naïve understanding of those "idealists" whose aim was to exclude the role of prudence and compromise as fundamental elements of political practice. Similarly, concerning the charge of "positive exemplarity" versus "human rights intervention," it is recalled that realists' positions against Vietnam's military intervention were motivated on the basis of a specific consideration and not an aversion to human rights intervention.

Scheuerman's essay completes what can be conceptualised as a first group of contributions dedicated to the historical and philosophical reconstruction of the debate on the meaning and the justification of human rights theory. The critical readings of the introductory section are followed by some of the most relevant essays influencing contemporary debate over the justification of human rights. The second chapter opens with Habermas' insight into the historical and philosophical role of human dignity. Habermas introduces a complex web of problems and perspectives that are reconsidered either directly or indirectly later in this book by other authors. Habermas starts his genealogical investigation into the concept of human dignity by considering the interpretation offered by the Federal Constitutional Court of Art. 1 of the German Constitution concerning the declaration of unconstitutionality of the Aviation Security Act of 2006. What the Court reaffirmed was the principle of human dignity as formulated by Art.1, which prohibits the sacrifice of passengers in a hijacked plane as a means of protection for the life of potential victims. Whereas the notion of human dignity constitutes a key concept today for interpreting

national and international legal documents, human dignity did not play a role within the declarations of the eighteenth century. Besides this element, Habermas claims, it is possible to defend the thesis according to which "an intimate […] conceptual" relation of the notion of dignity to human rights formulations has existed since the beginning, and this explains the "explosive political force of a concrete utopia" of today's process of juridification of international relations. The moral significance of human dignity has consisted in clarifying the significance of "equal dignity" among human beings, so that the positivisation of such principle has resided in the articulation (and enforcement) of specific subjective rights. Human dignity has thus played a normative-generative role from which human rights categories as well specific human rights lists have been generated. Such right-generative functions have been pragmatically activated by experiential violations of equal dignity and this explains why Habermas claims that human dignity "grounds the *indivisibility* of all categories of human rights." The synthetic unity between law and morality realised by the notion of human dignity, though, can be grasped only if two crucial steps are defined by what Habermas reconstructs as a "conceptual history." Such steps include both the role occupied by the concept of human dignity in the shift from a purely duty-centred moral perspective to a right-centred legal perspective, and the semantic generalisation of the notion of dignity from status difference (the so-called "dignitaries") to the equality of moral worth. Habermas considers two further interconnected passages consisting in a double process of universalisation and individualisation. Such process duplicity has allowed all citizens to be recognised as "*subjects of equal actionable rights*." According to Habermas, human rights constitute a realistic utopia for the fact that they have states to connect justice to real institutions of the constitutional state. This process is still the uncompleted project of post-modernity, so to say, even though the progressive institutionalisation of international justice indicates which role human dignity plays in the jus-generative constitutionalisation of the post-national constellation.

In line with Habermas' approach, Forst proposes a reflexive definition in which it is claimed that human beings have the right not to be subordinated to norms and institutions that cannot be "adequately justified to them." Differently from what authors such as Griffin or even Rawls have recognised, human rights are not primarily aimed at limiting state sovereignty in international relations, but they rather grant internal political legitimacy through the recognition of the right to justification. The double and reflexive character of human rights is the following: they not only protect against social domination but, above all, they protect against the exclusion from political self-determination. The argument is divided into three parts: the moral, the political and the legal dimension. First of all, the right to justification is characterised by a moral dimension; second, its legal and political dimension helps to make it effective; finally, the openness of the right to justification to the most extensive inclusion of the affected is aimed at rejecting any charge of ethnocentrism. What is meant precisely by the notion of "morally reflexive justification"? First of all, by following Habermas and Dworkin, Forst draws a distinction between "the moral" and "the ethical," dismissing the second option in view of its being intertwined with the notion of "the good"; secondly, he considers that since any moral justification of

the rights of men presupposes the respect of reciprocity then it must be admitted that a right to justification exists. It is precisely in view of the "normative grammar" unveiled by the right to justification that the reflexive approach can distance itself from ethnocentric views as well as from "false" universalisations.

In such a normative reconstruction of the significance and function of human rights, the same classical notion of "human dignity" refuses to be translated into a metaphysical or ethical concept based on the view of "the good." What it becomes is rather the idea that each must be respected as someone worth of receiving political justification. Accordingly, Forst claims that while the notion of human dignity and agency must be placed at the centre of human rights reflections, this is to be done in quite a different way from how Griffin, for instance, has proposed. Human rights cannot be justified teleologically as protecting basic interests in achieving the good. Rather than representing subjective interests, human rights are the outcome of an inter-subjective process of justification based on the test of reciprocity and generality. Indeed, only those interests which can be granted to all on the basis of the generative process of the principle of justification can be properly considered as human rights. Forst's proposal captures an interesting and so far insufficiently theorised dimension of political life, that regarding the full accountability of politics and institutional arrangements. In fact, the emphasis placed on the "receiving" dynamics activated by the right to justification provides only a partial account of the struggles for emancipation as a deliberative and participatory process for a closer involvement of citizens in public affairs.

Continuing in this direction, Azmanova's essay advances a proposal for the strengthening of mechanisms of political participation. The idea consists in providing an insight on the moral tension between the abstract character of human rights universalism and the contextual contingency of political judgment. She does so by proposing what she calls a "critical deliberative judgment" model, which, far from replicating classical models of justice based upon procedural or substantive criteria, elaborates a so-called "pragmatics of justification." The latter is inspired by a realistic approach to "human motivation in social interactions" rather than by purely normative/counterfactual scenarios. In order to develop this approach, Azmanova considers that struggles for social emancipation are neither totally cooperative nor totally conflictual, but a combination of the two. The dynamics she highlights is one that considers the process of "cooperation-within-conflict" and the reverse relation as a primary source of preservation and transformation of social order. The emancipation from mechanisms of domination, though, rather than grounded on the moral character of individuals and on some idealizing moral presuppositions of action coordination, must be seen as an element placed in the same socio-political conditions of power operation. From this perspective, the validity of the proposed "critical political judgment" does not follow from the logic of "the force of the better argument," but rather from the more contextually situated critical perspective of reaching a mutual understanding on the cooperative production of injustice. This socio-political deliberative process has precisely the goal of discussing those experiences of injustice which should be remedied through social transformation. In that sense, as clearly recognised by the author, the outcome of public deliberations is not

to produce a just political order as such, but, more modestly, to alter the existing chain of "legitimacy relationships" by highlighting the previously unconsidered relevance of new social practices.

It seems that Azmanova, by assigning this primary function to critical judgment, overemphasises the *epistemically heuristic* function of deliberation. Indeed, the modification of already existing chains of "legitimacy relationships" can occur only if judgment is recognised as a capacity to establish new politically relevant interconnections among social phenomena. All this seems very plausible and certainly part of the critical function of deliberative judgment, even if questions arise on how one can defend the epistemic relevance of judgment from outside a fully fledged model of idealising conditions of justice.

A further author whose work on human rights has targeted the contribution of contingency and contextual variation in the light of normative principles is Sadurski. His view of the normative status of universalism occupies a distinct position in the landscape of contemporary justifications to human rights. Sadurski recognizes that there are factual constraints to a pure universalist project since there are factual elements that make discourse a context-dependent variable. The author addresses three major areas in which human rights universalistic aspirations cease to be purely universalistic: the justificatory, the empirical and the institutional sector; these are, accordingly, accompanied by three explanatory examples. For instance, in the assessment of specific human rights principles, Sadurski discusses reasons in favour of the limitation of the right to free speech when outrageous speech is involved. He claims that the prohibition of discourses denying the Holocaust are justified in those countries where the risks of negative counter reactions are such that it is *prudent* to limit such right. Now, it is precisely from these prudential implications that Sadurski's position should be compelled to draw a distinction between the level of justification of human rights and its application. Were the author to claim that the application of the universal right to free speech is contextually constrained then, I believe, no one would have anything to object; but the author defends a much stronger position than only that factual elements play a role within the same *justificatory* level of human rights, and this is a much harder thesis to defend. The most obvious criticism is that Sadurski violates Hume's law, even though at the end of his essay it is clarified that the empirical variables for the justification of the right to non-outrageous speech are connected to the differential relation with other goods rather than to the same justification of that right.

The contribution of Borradori is devoted to the aspect of contingency and to the quite innovative perspective of visual image analysis. With the support of visual samples, the author shows how contemporary civil society has been capable of constructing the notion of "suffering" and of violation of "humanity." According to this analysis the critical force of TV images or photographs lies in the negative-dialectical movement of visual representation which reverses any "document of civilization" to a "document of barbarism," according to Benjamin's quotation. Such self-interpretive pattern is also presented by the author on the basis of the dynamics of the "showing and seeing" the suffering of others, according to which a "we" is contingently constructed through differential relations. The contingency of image

narrations, then, serves as an interpretive context for the self-interpretation of humanity itself. One has to be careful, though, not to lose the dialectical and critical aspect to which the irreducible contingency of images lead. Indeed, the author warns us from a merely rigid definition of human rights violations such as that described by the "unloading ramp at Auschwitz." This would prevent rather than favour the recognition of others' existence and therefore of their full humanity. One unconvincing argument is that the contingency of iterations results in including *any* iteration as a legitimate element of signification. In the last footnote, the author clarifies that the iterative structures for meaning formation are not to be seen on par with the structure of iterability that defines the identity of a sign as in the token/type relation. I believe there are two problems here. The first is that if no one form of identity criterion is deployed then "anything would go," so to say. Secondly, one should not conflate a form of "positive" or "assertive" identity with the more sophisticated version of "differential identity" as the one developed by Saussure's structuralism. In this latter case, indeed, one could rather defend *both* a dialectical dynamics of visual meaning construction *and* a contingent definition of "humanity" precisely on the basis of the differential identity springing out of what "humanity is not." One final point to observe is whether visual image communication can provide *by itself* an extra load of reasoning or if, in the end, its critical force is parasitic on a discursive model of reason. Were the latter true then one would better confront what imagine analysis adds while remaining *within* a discursive system of communication.

Ferrara's essay in favour of the draft of a new Charter of Fundamental Rights, follows naturally from previous proposals. In an ever politically interdependent world, it seems that the pedagogical function traditionally assigned to the Declaration can only inadequately fulfil the international normative role it is meant to play. The problem of the international status of the Charter, is strictly connected to a second aspect concerning the limits of the Universal Declaration, namely its division into four areas that are not hierarchically structured. Such "unstructured structuring" of the Universal Declaration, as Ferrara defines it, places both the "right to life" and "the right to paid holydays" on the same level of importance, so that the result is an impossibility to intersect a large portion of internationally relevant rights that can neither be left to the will of the states nor legitimise a UN humanitarian military intervention. It is precisely in between such intersections where the need for a new Charter resides – one that is capable of integrating, without substituting, the actual international Bill of Rights. How should such a new Charter be conceived? First of all the author claims that if we were to conceive rights once again as natural rights anteceding a political will, we would be criticised again for producing yet another Western approach to human rights. Accordingly, the author defines all those liberal-perfectionist attempts pretending to superimpose one comprehensive model over a plurality of doctrines as 'anti-liberal.' Moreover, the new Charter should be given legal binding force and define the contours of international sovereignty, that is, its possibility to limit domestic state sovereignty. One can observe at this point that Ferrara's proposal requires an overall amelioration of the UN decision-making bodies, as well as a rearrangement of electoral procedures for public officials. In other words, it seems that Ferrara's new Charter, in order to be implemented, requires the

activation of a large number of institutional improvements in support of his distinct cosmopolitan views.

Finally, according to the author, the Charter should be conceived as a "thin" view of the good for humanity with which different "reasonable comprehensive views" would overlap. It is precisely starting from such minimalism that Ferrara sees the "realistic utopia" of human rights. And yet, its interconnection with the Universal Declaration, that is, the interplay the author mentions about the differentiated functions of promoting an "elementary conception of justice" and a "fully-fledged conception of justice" raises further questions on whether there is more to say about a sort of cosmopolitan "teleology."

The third section, which addresses the relation between democracy and human rights, includes a fairly articulated spectrum of interventions. The chapter opens with the well-known essay by Benhabib assessing the problem of whether it is possible to defend a human right to democracy.

Moving from Rawlsian's absence of formulation of a right to self government, as well as from Cohen's distinction between *substantive* and *justificatory minimalism*, the conclusion the author reaches is that while Rawls leads to a form of "liberal indifference" if not of "unjustified toleration," Cohen leads to considering "the equality of political rights" as a non-necessary condition for "interest representation." Benhabib's proposal consists in extending the interpretation of Arendt's famous view on the strictly political notion of "the right to have rights." The author's aim is to suggest a reformulated approach moving beyond an institutionally-state-centred view. The point consists in taking "self-government" as a fundamental human right and to conceive human rights as legal measures grounded upon moral principles for the protection of communicative freedom. Benhabib conceives that communicative freedom lies at the intersection of the generalised other and the concrete other, that is, at difference and commonality. One question which arises concerns whether the principle of having a right to self-government can be seen on par with having a right to democratic arrangement. As a matter of fact, if self-government represents a broader category than democracy then the latter becomes a non-compelling criterion and Rawlsian notion of "decent consultation" reappears as a favourite candidate. Furthermore, the interesting discussion of Aristotle's *Ethics* on the circularity of practical reason points in the same – Rawlsian – direction, since the same "recursive validation" of the preconditions of discourse that Benhabib considers in her argument can be seen on par with the hermeneutical function of Rawls' reflective equilibrium. The argumentative richness of the essay suggests many philosophical echoes, for instance that "the right to have rights" defended here is strictly dependent upon the condition of *recognition* of the communicative potentiality of the other. Due to this strict interdependence, it becomes necessary to provide a comprehensive explanation for which function recognition has within the theory. Let's return to the alternative between sovereignty and democracy and assume, as done by the author, that a human right can be established to democracy and not simply to self-sovereignty in general. For those who are familiar with the Habermasian view on the mutual co-implication between democracy and human rights, the proposed recognition of the communicative capacity of the other would

sound like a new version of a well-known strategy. If this is true, then one could claim that the most important contribution of this essay is the clarification and the enrichment of this interpretive model. The enquiry into the philosophical meaning of human rights and democracy as institutionalisations of communicative settings, unexpectedly, does not lead to an interventionist foreign policy conducted in the name of a right to democracy. On the contrary, the author, quoting Kofi Annan's reference to the "responsibility to protect" previously presented in this introduction, suggests the opportunity to promote a "new Law of Humanitarian Interventions" clarifying more precisely the political and social conditions in which military interventions are required. Indeed, it is precisely in this direction that advancements have been made at the international level, as I referred to earlier.

From a rather historical and genealogical perspective, Brunkhorst's contribution highlights the double transition characterising human rights both *within* the birth of modern constitutional state and *after its collapse* into a globalised market, society and institutions. It has been only thanks to the nation state that civil and political freedoms have found their fully legal recognition and administrative implementation and that, as Brunkhorst says, a "dialectic of enlightenment" has flourished. Indeed, while all declarations of human rights in the eighteenth century affirmed the universal profile of rights, their progressive concretisations into legal norms during the nineteenth and the twentieth century limited their scope and inclusive capacity within national boundaries. Nation state in modernity underwent radical transformation since pluralism of societies shifted from being internal to individual states' affairs to being internal to one single global *basic structure*. The twentieth century meant not simply the emergence of some of the most cruel regimes, but also a crucial transition from constitutional to global human rights law. International law today has, in turn, undergone several transformative processes, for instance those from a law of coexistence to cosmopolitan rights. Additionally, this further transformation of the nation state is itself subject to a new dialectic of enlightenment, as in the case of global actors who escape constitutional control. Such new dichotomy between the local and the global, both at the structural and at the legal level, bears serious consequences at the economic, religious and power-structural levels, or as Brunkhorst puts it: "There will be Blood."

External conditions of international intervention are matched on the domestic side by a consideration of the several techniques deployed in achieving public consensus. Accordingly, the interest raised by the paper of Bellamy and Schönlau consists in addressing the case of disagreement on matters of principle and not simply on their application. The authors suggest a parallel between "constitutional" and "normal" politics by observing that, contrary to Rawlsian and normativist reading, agreement on constitutional essentials is more often than not the result of different forms of compromise such as bargaining, trading, segregation, trimming or third-party arbitration. Normally, forms of compromise are associated to low-level standards of interest bargaining, and the proposed solutions are generally oriented to second best options. Nevertheless, the justification provided for the role of compromise, besides practical effectiveness in factual circumstances of political mediation, is grounded on a distinct philosophical interpretation. The authors claim that Rawls'

notion of the burden of judgments does not apply only to the assessment of public goods, but also to the idea of the right. This means that the same abstention from publicly upholding a comprehensive conception of the good must be maintained also in the case of the search for a public consensus on the right. These strategies of interest and principle mediation are presented by the authors as optimally suited for obtaining an unanimous agreement which cannot be guaranteed through classically defended views based on the force of the "best argument." The strategic role of such techniques is then tested through the discussions characterising the Convention of the EU Charter of Fundamental Rights as approved in Nice in 2000. From the analysis of the preliminary debate over the Charter, it was shown how disagreement involved not only the substance of the rights discussed, but also the question on the addressed subjects and the pursued scope. Overall, from the points raised by Bellamy's and Schönlau's article, it can be said that Rawlsian views require further analysis and philosophical work. Nevertheless, what remains unclear is whether the authors target the point, since Rawls distinguished quite clearly constitutional agreements and a proper overlapping consensus of principles of justice, seeing the first as an inadequate instrument for achieving political stability. Also, in response to the authors it can be said that from the fact that the discussion of the EU Charter has not followed a normativist approach based on reasonability, it does not follow that interest-mediation should be pursued. On the contrary, one might argue that the deliberative process that occurred during the formulation of the EU Charter is invalid specifically from a normative perspective. As a corollary of such line of reasoning, one might consider whether Rawlsian notion of reasonability is in need of further elaboration and reformulation, as in the case of the recognition of the role of truth in the use of public reason. But, even if this were the case, one would remain anchored to a normativist model without this leading to a paradigm shift.

Bellamy's and Schönlau's contribution is complemented by Cedroni's and Marko's reflections into the process of democratisation through the politics of human rights and the role of minority rights. Cedroni's analysis adds insight into the philosophical understanding by depicting the institutional and legal framework required for the functional effectiveness of human rights. The latter are presented as prerequisites for democratic interplay so that, accordingly, violations of human rights diminish the degree of political legitimacy and democratic stability. The author suggests to consider human rights as a never-ending process which, by favouring cultural equality, contributes essentially to the democracy-building process. Human rights are the cornerstone for effective transitional justice processes. Nevertheless, the process of democratisation of transitional states does not and cannot depend on pure legalisation of human rights principles. For such reason, the author at the end of her essay indicates that the key concept in any politics of human rights rests on the recognition of "cultural equality," a concept which requires a deep structural transformation in any transitional (and non-transitional) society.

A further input regards which role should be assigned to ethnopolitics in respect to human rights implementation strategies. Marko's contribution into the ethnopolitics of human rights reconstructs some of the historically relevant steps that have contributed to defining the modern notion of the nation-state and its relation to

minorities. As long as minorities have been considered on an ethnic basis and on "naturally given" differences, only a certain (inadequate) model of state can follow. But since, as the author claims in coherence with a long established tradition, "ethnic differences" are to a large extent a "social construction of reality," the state model and its related politics should be reconceived along new strategic directions. In order to introduce either the ethno nationalist or the inclusive model of society, the author presents three binary criteria (identity/difference, equality/inequality and inclusion/exclusion), which emphasize identity-equality-inclusion criteria in the latter case or difference-inequality-exclusion in the former case. Such normative criteria are then matched by empirical examples taken from recent history, as well as from institutional designs aimed at favouring fair representation, reconciliation and dialogue among conflicting parties. One of the most crucial suggestions the author provides for the overcoming of ethnic divides is the shift in composition of political parties from a typically monoethnic to a multiethnic arrangement, so that the construction of "generalisable interests" begins from the bottom of the political will formation.

Sartor's essay concludes the collection. Sartor describes some of the forefront problems and transformations that states and democracies in particular are facing today. Indeed, Sartor introduces an interesting and innovative perspective concerning the relation between human rights and information society. He considers in particular the possibility to construct a humanistic information society by taking into account the advantages and disadvantages that Information and Communication Technologies (ICTs) provide for human development. For example, ICTs are changing processes of production from the physical to the informational. Such change of production affects, not surprisingly, also the production of culture through an ever closer connection between industry and culture. This new system of socio-productive arrangement provides, according to the author, both new opportunities and problems. It is clear how ICTs have sped up the process of economic and industrial production. Indeed, the processing of a very high amount of informational data has prompted the growth of computerised material production. Besides further areas of advancement, such as the improvement of efficiency in administration or even the formation of a virtual "unconstrained" global public sphere, ICTs have increased the risk of privacy intrusions and exposure to discrimination. Sartor's style is fascinating; he constructs his arguments through reference to those nightmares described in classical fiction books such as Asimov's, Dick's or Vonnegut's. By considering such potential (and in some cases real) threats to human security and social life, the author engages himself in the discussion of which role must be assigned to human rights, that is, whether they should be seen as legal constraints or simply as "threshold conditions." According to this latter view, endorsed also by Sartor, the ethical nature and function of human rights is more crucial than their positivisation, even if this does not elicit possible legal translation of ethical principles.

Sartor deals with rapidly developing issues and scenarios. Indeed, one of the breaking news stories nowadays regards the information disclosure made by WikiLeaks concerning secret communications among high state officials or state industrial espionage of foreign countries. What is even more interesting as a

socio-political phenomenon is that Assange, the founder of WikiLeaks, is now in the position to provoke an international political crisis. If it is not a novelty that massive informational storage can affect the life of citizens, what is new now is that informational power acquired by one citizen can affect the life of a world's state leader administration, not to mention the life of the international community. One should not be so naïve to underestimate the WikiLeaks phenomenon, nor its symbolic meaning. First of all, WikiLeaks has greatly contributed to increasing international awareness of gross human rights violations such as in the case of the documentation of extrajudicial killings in Kenya for which the Amnesty International New Media award was awarded in 2009. Secondly, WikiLeaks represents the first collaborative experiment of freely unconstrained collection of information. In its mission it is clearly stated that the main source of organisational inspiration is derived from Art. 19 of the Universal Declaration of Human Rights where the right to freedom of opinion and expression is defended. Furthermore, in accordance with the mission, it is made clear that the main organisational goal is to disseminate "original source material alongside our news stories so readers and historians alike can see evidence of the truth."

It seems to me that the political challenge raised by the WikiLeaks phenomenon consists precisely in the following: that global civil society has for the first time in history counter-reacted to state informational power control through the development of a systemic networking of information sharing. Whether or not such informational documents add more truth to the public awareness of global civil society depends on the evolution that current global public debate will generate. In light of such a rapidly evolving scenario, this book has the ambition of indicating some of the most crucial areas from which new political philosophical challenges will arise. It is my hope that the theoretical insights and political suggestions gathered here will help improve the understanding of our contemporary world.

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