

Decolonial Strategies and Dialogue in the Human Rights Field: A Manifesto*

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[let's imagine a universe—or a human rights field as] a sphere whose center is everywhere and the circumference nowhere

—Jorge Luis Borges, or Pascal

Abstract

Within the horizon of the critique of Eurocentrism, this manifesto presents methods of interpretation that can advance the project of decolonising human rights and creating new Third World discourses. These hermeneutical strategies include the re-contextualisation of human rights theory in the historical horizon of modernity/coloniality; the elaboration of alternative geographies followed by provincialising human rights; deparochialising legal theory and constructing a cosmopolitan jurisprudence; the 'universalisation' and 'globalisation' of human rights; the transnationalisation of human rights; a re-writing of the history of rights; a becoming of the Other into the Self; the critique of Critical Theory; the adoption of an ethics of emotions as an ethics of human rights; and a dialogue between different traditions and rationalities of human rights. The paper also presents concepts and ideas such as empire/suffering, modernity as crisis, the colonial origins of human rights, postmodernity as an epoch of moral sensibilisation, power/epistemology, and critical dialogue.

The quest to decolonise human rights can be summed up in two statements made by Walter Mignolo: 'the future demands thinking beyond the Greeks and eurocentrism',¹

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¹ Walter Mignolo, 'Philosophy and the Colonial Difference' in Eduardo Mendieta (ed), *Latin American Philosophy* (Indiana University Press, 2003) 85.

and ‘a radical reconceptualization of the human rights paradigm’.² Such a project is part of the wider task of decolonising knowledge. The decolonisation of the humanities, the social sciences and culture in general is both an intellectual and a political enterprise that emerges from the standpoint of the Third World, and aims at opposing colonialism and abuse of power. From the perspective of Decolonial Theory, the cultural colonisation of world civilisations, rationalities and intellectual disciplines ended in the crucial assumption according to which the origin of legitimate thinking is confined to a certain geopolitical location, Europe, excluding the existence of other sites of knowledge generation.³ The way human rights are commonly understood is a consequence of this dynamic. Egotism has blinded Europe. Being born out of European events and schools of thinking, the standard theory of human rights ignores or rejects the possibility of non-Eurocentric or Third World approaches.

The development of the critique of Eurocentrism has antecedents in the hundreds of years long resistance to modern imperialism. From the late twentieth century onwards it has been renovated and strengthened by a number of schools of thinking, among them Postcolonial Theory and Orientalism, Subaltern Studies, Critical Race Theory, Black Radical Theory, Black Atlantic Studies and Third World Feminism. Within this epochal stream of thinking, some insights developed by the Third World Approach to International Law (TWAAIL)⁴ are especially relevant for the construction of a Third World interpretation of human rights. In a fruitful dialogue with a marginal strand of the Western tradition of international law that runs throughout the writings of James Brown-Scott,⁵ Carl Schmitt⁶ and David Kennedy,⁷ Antony Anghie has shown how the modern tradition of international law was not developed exclusively from the writings of Grotius, Pufendorf and Vattel, and from dealing with the problem of regulating relations between European sovereign powers. The modern law of nations also has its origins in

2 Walter D. Mignolo, ‘The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism’ (2000) 12 *Public Culture* 739.

3 Walter D. Mignolo, ‘The Geopolitics of Knowledge and the Colonial Difference’ (2002) 101 *South Atlantic Quarterly* 59, 63–74.

4 Balakrishnan Rajagopal has examined the capacity of human rights to work as a counter-hegemonic force in world politics. See B. Rajagopal, ‘Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy’ (2006) 27 *Third World Quarterly* 767. In the same horizon of questioning see Upendra Baxi, ‘What May the “Third World” Expect from International Law?’ (2006) 27 *Third World Quarterly* 713; Obiora Chinedu, ‘Poverty, Agency and Resistance in the Future of International Law: An African Perspective’ (2006) 27 *Third World Quarterly* 799; Ikechi Mgbeoji, ‘The Civilised Self and the Barbaric Other: Imperial Delusions of Order and the Challenges of Human Security’ (2006) 27 *Third World Quarterly* 855; and Vasuki Nesiah, ‘Resistance in the Age of Empire: Occupied Discourse Pending Investigation’ (2006) 27 *Third World Quarterly* 903.

5 James Brown-Scott, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* (Clarendon Press, 1934).

6 Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum* (Telos, 2006).

7 David Kennedy, ‘Primitive Legal Scholarship’ (1986) 27 *Harvard International Law Journal* 1.

the expansion of Europe and the colonisation of the world, a theoretical and historical scenario that gave birth to the works of Francisco de Vitoria.⁸

Seeking to combine critical consciousness and moral sensibility, this manifesto presents hermeneutical strategies that have already advanced, and can continue to support, the project of decolonising human rights. In emphasising new analyses and perspectives that enable us to decipher the deceptions and biases at work in Eurocentric understandings of the subject, this text provides a tool-box for creating new decolonial or Third World discourses on human rights.

CRITIQUE OF EUROCENTRISM AND THE THIRD WORLD PERSPECTIVE ON HUMAN RIGHTS

The labour of constructing a Third World interpretation of human rights entails a departure from Eurocentric theories—the corpus of today’s dominant conceptualisations of rights inspired by different schools of thought. Pointing to the Eurocentric character of a certain body of knowledge is simultaneously an epistemological and a geopolitical issue, as it comprises the unveiling of a genealogical link between knowledge and history. Inasmuch as such a connection is made, it is evident that the hegemonic theory of human rights is the offspring of a particular perspective grounded in a historical and geographical context. As such, modern and postmodern theories of human rights which inform today’s scholarly debate and orientate activism are to be seen as a few among the various contingent possibilities for understanding rights.⁹ These theories conflate a wealth of perspectives on rights, as well as the limitations proper to the space and time coordinates of the European epistemic standpoint and the European philosophical understanding of history. In consequence, they are biased conceptions and partial accounts of the history of human rights.¹⁰

However, the Eurocentric theory of human rights presents itself as objective and universal and, while it assumes exclusive authority and legitimacy, it condemns a Third

⁸ Antony Anghie, ‘Colonial Origins of International Law’ in Eve Darian-Smith and Peter Fitzpatrick (eds), *Laws of the Postcolonial* (University of Michigan Press, 1999) 89–90. This debate has been enriched by contributions from scholars such as Fitzpatrick and Koskenniemi, who work from the perspective of European Critical Legal Studies. Peter Fitzpatrick, ‘Latin Roots: Imperialism and the Making of International Law’ in *Law as Resistance: Modernism, Imperialism, Legalism* (Ashgate, 2008); Martti Koskenniemi, ‘Colonization of the “Indies”: The Origin of International Law?’ in Yolanda Gamarra (ed), *La idea de América en el Pensamiento Ius Internacionalista del Siglo XXI* (Institución Fernando el Católico, 2010), and ‘Empire and International Law: The Real Spanish Contribution’ (2011) 61 *University of Toronto Law Journal* 1. Koskenniemi includes within this tradition the work of Ernest Nys, in particular his *Les Origins du droit international* (Nabu, 2012).

⁹ Peter Beardsell, *Europe and Latin America: Returning the Gaze* (Manchester University Press, 2000) 35–37.

¹⁰ The question of Eurocentrism has also been seen as a relevant issue for international law from a European perspective. See Martti Koskenniemi, ‘Histories of International Law: Dealing with Eurocentrism’ (2011) 19 *Rechtsgeschichte-Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte* 152.

World approach to impossibility or silence.¹¹ Hiding crucial aspects of their genealogy, Eurocentric theories of rights afford little or no significance to the history of the relations between the Third World and modern empires. This predisposition is accompanied by a tendency to give notorious and unfair weight to events occurring in Europe. This is the case in Hegel's philosophical notion of 'universal history', from which Asia, Africa and the Americas are excluded.¹² By framing human rights in conceptions of history based exclusively on European milestones, the theory of rights remains within a Eurocentric horizon of understanding. Having been born out of the experience of bourgeois revolutions, European theories of human rights deal mainly with relations between state and society, or between governments and individuals, putting aside the problematic of interactions between empires and colonies.

The critique of Eurocentrism and the questioning of its hegemony does not just thematise the 'what'—human rights as the object of reflection; it is also concerned with the 'from where'—the geopolitical context in which they are elaborated—and develops a self-understanding of the historical framework in which it is enunciated—twentieth century, Post-Holocaust or Post-Conquest history. This hermeneutical and geopolitical reflection creates the possibility of adopting a different viewpoint and, as a consequence, of being able to think of human rights from the 'standpoint' of those in the South. Such an approach arises from another geographical space and a different historical horizon of understanding—from the 'exteriority' of Europe, an outside that is inextricable from the inside and thus constitutes it.¹³

This distinct historical and geopolitical background can modify the terms, concepts and agenda of the theory and practice of human rights. The interpreter is also conscious of the fact that her perspective—that of the Third World—stands at variance with another perspective—that of Europe. The critique occurs in this shifting of viewpoints, which at the same time creates the conditions for attempting a novel and independent approach to the tradition of natural and human rights, as well as for making possible a dialogue between these two points of view.

A Third World approach to human rights encompasses a different interpretation of the philosophy of history in which the human rights theory is based on, and gives birth to, a new paradigm in which the events of the Conquest of America and the colonisation of the world are also recognised as key signposts of modern history. Developing a new version of the history of rights in the context of world history, it brings into consciousness five hundred years of utopian mobilisation of natural rights, the Rights of Man and human rights to resist imperialism.

11 Arturo Escobar, 'Imperial Globality and Anti-Globalisation Movements' (2004) 25 *Third World Quarterly* 210.

12 GWF Hegel, *The Philosophy of History* (Dover, 1956) 8–102.

13 Enrique Dussel, 'Democracy in the "Center" and Global Democratic Critique' in Onuki Enwezor *et al* (eds), *Democracy Unrealized. Documenta 11 Platform 1* (Hatje Cantz, 2002) 274.

RE-CONTEXTUALISATION AND CONTEXTUALISATION OF HUMAN RIGHTS

Conventional human rights theory is customarily situated either in the background of European history or in no context at all. As to the first interpretative practice, various single events or series of events can be brought to mind when we think of the historical horizon in which the standard theory of human rights is usually located. Among the more popular and influential are the Enlightenment, the Hegelian ‘world history’, the Holocaust,¹⁴ and the sequence constituted by the Renaissance, the Reformation, the English Parliament and the French Revolution, as in Habermas’s account of the crucial moments in the formation of modern subjectivity in which history has its beginnings and meaning in Europe and it is realised there, while the events occurring outside are minor episodes or simply are not part of history.¹⁵ This intra-European milieu allows and calls for a re-contextualisation¹⁶ of human rights in another historical and geographical landscape that extends beyond the borders of Europe—the landscape of the globe or the modern world as a whole. This task can be undertaken by thematising a wider and more comprehensive geopolitical setting, one in which the Conquest of America and the colonisation of the world, as well as the movements of resistance against modern imperialism, are at the core of the genealogy of rights.

The standard theory of human rights is sometimes situated in no context at all—it is kept entirely separate from the historical and geographical milieu in which it was constructed, and it is presented as ‘the’ theory of rights as such, or as the ‘universal’ conception of rights. Having roots in Medieval theology and still significant today as a component in the European mindset and European theory, the metaphor of universal concepts was developed by the transcendental philosophy of consciousness in its different versions—among others those of Descartes, Kant, Hegel and Husserl. Subjectivism constructed the figure of universal notions such as ‘pure a priori concepts’ and ‘absolute knowledge’ by locating knowledge in an abstract world in which material conditions do not apply, and by getting rid of the human faculties that can take account of it—the senses, the body, intuitions and emotions. Idealist epistemology showed how to get rid of the ways in which the subject spontaneously approaches ‘material things’—Kant’s ‘ordi-

¹⁴ This is the case with Rorty, who states that we live in a Post-Holocaust human rights culture. Richard Rorty, ‘Human Rights, Rationality and Sentimentality’ in Stephen Shute *et al* (eds), *On Human Rights: The Oxford Amnesty Lectures 1993* (Basic Books, 1994) 115. In a similar sense, Costas Douzinas states that ‘ours is the epoch of massacre, genocide, ethnic cleansing, the age of the Holocaust’. C Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish, 2007) 71. For a critique of the Post-Holocaust interpretation of human rights see José-Manuel Barreto, ‘Human Rights and the Buried Crimes of Modernity’ in Prabhakar Singh and Vik Kanwar (eds), *Critical International Law: Post-Realism, Post-Colonialism, and Transnationalism* (Oxford University Press, forthcoming 2013).

¹⁵ Jürgen Habermas, *The Philosophical Discourse of Modernity* (MIT Press, 1990) 17.

¹⁶ Richard Rorty, ‘Inquiry as Recontextualisation: An Anti-Dualist Account of Interpretation’ in *Objectivity, Relativism and Truth: Philosophical Papers I* (Cambridge University Press, 1991) 99, 110.

nary rational knowledge' and 'popular moral philosophy'; Hegel's 'sensory certainty' and 'common sense'; Husserl's 'natural attitude'—and sought to reach a point of view from which everything could be seen as it is—the modern version of the scholastic God's eye.

Enabling aspirations to universal validity, metaphysical theories of knowledge hide their locus of enunciation by avoiding or proscribing any reference to the background—epistemic, historical, geographical, political—from which they emerged. European thinking in this stream justifies its claims to objectivity and universal truth by denying that it was born in Europe. Santiago Castro-Gomez describes the grounds and consequences of this variety of epistemology with the metaphor of the 'the hubris of the point zero'.¹⁷

It is precisely in this claim to universality with negation of context that the power of subjectivism resides. The universal validity of a concept transforms it into the only valid one, and precludes the likelihood of other notions having equal or some objectivity. As when engaged with Foucault's Power/Knowledge, we are here faced with a reflection on what can be called 'Power/Epistemology'. It is not only knowledge that creates power, or that power resides in knowledge, as in Foucault. As knowledge that 'precedes' or justifies knowledge, epistemology always remains in close contact or fused with power. Already in the portrayal of the conditions in which knowledge is possible, epistemology enables domination. In the case of modern subjectivism, it has operated as a metaphysics of colonisation when taken across the seas by modern imperialism. The metaphysical epistemology of the West has had world-political consequences: it has advanced and sustained imperialism by selecting the holders of truth, dictating the colonisation of culture and propelling the West to world hegemony.

Resisting colonisation in the field of human rights can proceed by dismantling the notion that knowledge and material conditions are discrete. Contextualising theories of human rights means showing the genealogical connection that ties the Eurocentric theory of rights to the historical setting in which it was elaborated. Unveiling the linkage to the site of emergence of knowledge weakens or destroys the legitimacy of claims to universality. The dominant theory is no longer 'the' theory of human rights; it is just a theory born in the background of the history of Europe and, as a consequence, has no claim to be universally valid. The re-contextualisation and contextualisation of the hegemonic theory of human rights in the material conditions of modern/colonial geography and history paves the way for re-drawing and re-writing the geography and history of human rights.

¹⁷ Santiago Castro-Gómez, *La Hybris del Punto Cero. Ciencia, Raza e Ilustración en la Nueva Granada, 1750–1816* (Editorial Universidad Javeriana, 2005).

ALTERNATIVE GEOGRAPHIES AND PROVINCIALISING HUMAN RIGHTS

The introduction of ‘alternate geographies’ into the human rights field can lead to a substantial transformation of human rights theory. A different mapping of the sources of notions of human rights makes it clear that human rights discourse has also been developed in locations outside the borders of Europe—among colonised peoples, or in the Third World. The imperial centres of power and knowledge—England, France and Germany—have a place on this new map. However, what is a veritable new world atlas also depicts regions that had been kept off limits—neglected, ignored or condescendingly excluded from canonical cartographies. We are presented here with a new topography that enlarges the landscape of rights, one with far reaching consequences for the theory of human rights.

This utopian and anti-colonial geography maps new loci of enunciation. Woessner describes this political and argumentative strategy as one that attempts to ‘map out a different conception of human rights altogether, one that looks not just at the clean centers of cosmopolitan power, but at the messier margins of provincial suffering’ too.¹⁸ Nevertheless, whereas it establishes ignored regions as valid sources of human rights concepts, it refuses to turn marginal areas into centres, so that no centre can be found in this new paradigm. This is a truly Borgesian sphere whose ‘center is everywhere and the circumference nowhere’. This awareness is not confined to the past and the present; it also pinpoints ‘no-places’—a cartography of utopias indeed¹⁹—or draws a map of the ‘futures of human rights’, to use Baxi’s terms.²⁰

Unveiling the extended world of modern human rights does not end here. Areas ripe for a new comprehension of human rights can be found even inside the West—although at the margins of the established tradition. This is the case with Heidegger’s critique of Western rationalism and his inheritors. Woessner counts among them Jan Patočka and Václav Havel—leaders of the movement for democracy that put an end to communist totalitarianism in Eastern Europe. Charles Malik and Dipesh Chakrabarty also make use of Heidegger’s concepts, but they do it from the standpoint of the Third World or the subaltern. Heidegger, the Nazi sympathiser, is at odds with human rights projects, but his philosophical critique of modernity and modern thinking has nurtured struggles for rights in all parts of the world.²¹

18 Martin Woessner, ‘Provincializing Human Rights? The Heideggerian Legacy from Charles Malik to Dipesh Chakrabarty’ in José-Manuel Barreto (ed), *Human Rights from a Third World Perspective: Critique, History and International Law* (Cambridge Scholars Publishing, forthcoming 2013) 68.

19 *Ibid.*, 94.

20 Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 2002).

21 Woessner (n 18) 68–70.

In addition, inasmuch as human rights—in a Habermasian line of thinking—are a ‘realistic utopia’,²² or exemplars of the material and world-producing tension between theory and praxis, they are part of the global political landscape. In the words of Woessner, ‘human rights have become real.’²³ When discourses on rights are active forces in political debates, social conflicts, legal decisions and cultural processes, they become a crucial factor in politics and beacons of contemporary world and local cultures. Mapping human rights is synonymous not only with the construction of a ‘geography of ideas’, but also with the elaboration of a topography of ‘physical accidents of the landscape’—of the geopolitical situation at a given historical moment.

In the context of these elaborations on human rights, the quest to provincialise Europe turns into one of provincialising the mainstream ‘universal’ conception of rights. Woessner translates Chakrabarty’s critique of transcendentalist European thinking²⁴ into the field of law, and proposes ‘provincializing human rights.’²⁵ Chakrabarty’s work removes the philosophical universalist mask that hides the spatial and historical attachments and limits of European thought, building on Heidegger’s ideas on thought and dwelling according to which there is an irresolvable link between ideas and ‘modes of belonging.’ The analytical tradition that wipes out the remains of experience and local inheritances in order to arrive at universal concepts is the object of this critical uncovering. For Chakrabarty, the European way of thinking becomes ‘inadequate’ because of its characteristic aspiration to universalism. The consequences for the understanding of human rights are acute. Human rights cannot be based anymore in a priori universal principles detached from geopolitics and history, and Europe—the traditional centre of human rights theory and history—is transformed into one of the provinces in which such histories occur. This is not to dispute that Western thinking remains ‘indispensable’; rather, as a matter of urgency, it needs to be ‘renewed from and for the margins.’²⁶

Drawing upon Hollinger’s insights, Woessner understands the goal of provincialising human rights as a matter of finding ‘the field of concrete possibilities that stretches between the abstract notions of provincialism and cosmopolitanism.’²⁷ As every notion of rights comes from provincial loci of enunciation scattered throughout the extended landscape of world geography, the new paradigm of human rights is to be constructed through a conversation between provincialised Europe and notions emerging from those provinces that have been marginalised or excluded. The enlarged discussion may be thought of as a multiple exchange between provinces—European and Non-European—,

22 Jürgen Habermas, ‘The Concept of Human Dignity and the Realistic Utopia of Human Rights’ (2010) 41 *Metaphilosophy* 464.

23 Woessner (n 18) 67.

24 Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press, 2007).

25 Woessner (n 18) 94.

26 Chakrabarty (n 24) 16.

27 Woessner (n 18) 94.

a new gestalt or constellation in the making offering enhanced power to speak to all contributors. As geographically grounded interlocutors can however enunciate both locally valid and globally significant²⁸ theories of rights, provincialising human rights requires a dialogue between provincial and less provincial views—or between local notions of human rights with both provincial validity and international or worldwide significance.

DEPAROCHIALISING LEGAL THEORY AND THE QUEST FOR A COSMOPOLITAN JURISPRUDENCE

Apparently opposed to the idea of provincialising human rights, the project of deparochialising Western human rights concepts is guided by the same telos. While the former traces so-called universals to their roots in the European local circumstances, the latter is well aware of how Western thinking remains circumscribed to its all too familiar horizon of understanding and needs to see beyond its limits. The placement of European theories in their particular geographical context and the questioning of European claims to universality are complemented here by a certainty about the parochialism of the origins and content of Western jurisprudence. This is the accomplishment of a self-critiquing European consciousness, and it is one of the key tenets of the thinking of William Twining on globalisation, law and human rights.²⁹ Thus, while the provincialisation of Europe and human rights are the declared ends of Chakrabarty and Woessner's projects, parochialism is the point of departure for Twining's enterprise.

Twining has developed an internal critique of Western jurisprudence on the basis, or as a consequence, of the experience of living and thinking of law outside Europe—arriving at the conclusion that his own tradition suffers the weakening effects of confinement and myopia. Making use of geographical and mental maps,³⁰ and through fruitful exchange with Boaventura de Sousa Santos's contributions to mapping law and postmodern jurisprudence,³¹ Twining calls into evidence the blinding effects of the parochialism of Western legal theory, which has been 'developed and debated with at most only tangential reference to and in almost complete ignorance of the religious and moral beliefs and traditions of the rest of humankind'.³² Not only mainstream but also critical legal philosophy remains in a veritable soliloquy, ie engaged most of the time only with those who belong to the same theoretical tradition or those living and working in the same Western-wide local parish. Twining not only bears witness to the shortsightedness

28 Chakrabarty (n 24) x, xi.

29 William Twining, *Globalization and Legal Theory* (Butterworths, 2000); William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press, 2009).

30 *Ibid*, 136–73.

31 *Ibid*, 194–244; Boaventura de Sousa Santos, *Towards a New Common Sense* (Routledge, 1995).

32 William Twining, 'Human Rights, Southern Voices: Yash Ghai and Upendra Baxi' in Barreto (n 18) 256.

of Western jurisprudence, but also points to the futility and inconsistency inherent in an insular mode of thinking that claims to be universal:

Western jurisprudence has a long tradition of universalism in ethics. Natural law, classical utilitarianism, Kantianism and modern theories of human rights have all been universalist in tendency ... How can one seriously claim to be a universalist if one is ethnocentrically unaware of the ideas and values of other belief systems and traditions?³³

The need to deparochialise Western jurisprudence is not only a question of avoiding the cage and boredom of European closed-mindedness. If legal and human rights theory are to engage current processes of globalisation they need to start to work in the direction of what Twining calls a 'cosmopolitan general jurisprudence'. The nature of a cosmopolitan legal theory requires further elaboration here. The term 'cosmopolitan' can be related to the scale of the topic under examination, as well as to the characteristics of the perspective from which the analysis is made. In the first case we are speaking about the world or the global political scenario, as when Kant proposes his 'Idea for a Universal History with a Cosmopolitan Purpose'. The adjective 'cosmopolitan' alludes here to the third of the orders into which Kant divides public right—the other two being political and international right.³⁴ When we speak of a 'cosmopolitan perspective' we are considering something entirely different, namely the standpoint from which a subject approaches law or human rights, or the *world* geographical and historical circumstances in which the modern subject of this enquiry is always already immersed.

Twining's proposal of a cosmopolitan jurisprudence is not only an invitation to widen the horizon of Western legal theory—usually national legal orders or Western legal orders—and to look at law as it functions today from the logic of global dynamics on the world stage. The idea of a cosmopolitan jurisprudence entails a further modification of legal theory. Indeed, Twining suggests a double transformation: of both the object and the subject of jurisprudence, enlarging the first and multiplying or globalising the second. A cosmopolitan jurisprudence requires destabilising the 'mono-logical' or internal conversation in which Western theory has stalled, and recognising the numerous legal perspectives whose standpoints rest in the vast geography of the world.³⁵ These other Non-Western legal theories have also developed distinct conceptions of human rights since the beginning of modernity with the Conquest of America.

³³ *Ibid.* Aníbal Quijano, who, together with Enrique Dussel and Walter D Mignolo laid the foundations of 'Decolonial Theory', offers a similar critical insight: 'Nothing is less rational ... than the pretension that the specific worldview of a particular ethnic should be taken as universal rationality, even if such an ethnic is called Western Europe ... [This would be] to impose a provincialism as universalism.' Aníbal Quijano, 'Coloniality and Modernity/ Rationality' (2007) 21 *Cultural Studies* 177.

³⁴ Immanuel Kant, 'Idea for a Universal History with a Cosmopolitan Purpose' in *Political Writings* (Cambridge University Press, 1991).

³⁵ Twining (n 32) 256.

A truly cosmopolitan theory of human rights can only be constructed through a dialogue between the established Western approach and the other strand of contributions which has itself acquired a tradition in the colonised world since the sixteenth century. This is precisely the place of encounter and the dialogical dynamics that Twining has begun to assemble over the past decade, opening up his own Western legal tradition of human rights to contemporary scholarship that has emerged outside the dominant canon (see Critical Dialogue below, p 26). After a long period of close intellectual and personal contact with various human rights scholars born in Africa and Asia who have developed insights into human rights from the standpoint of ‘the South’, Twining has written ‘introductions’ to the work of Francis Deng, Abdullahi An Na’im, Yash Ghai and Upendra Baxi,³⁶ and has collected their writings on human rights.³⁷ The cosmopolitan theory of human rights being elaborated here forgoes the transcendental basis that sustains Kant’s cosmopolitanism. It is rather grounded in the critique of Kantian transcendental understanding of natural law and human rights, and in a much wider horizon built up through dialogue between the members of an increasingly cosmopolitan constituency situated in the geographical and historical contemporary world landscape.

UNIVERSALISING AND GLOBALISING HUMAN RIGHTS

HG Wells is best known as one of the originators of Science Fiction—that ‘literature of ideas’ that imagines ‘possible alternative worlds’ or that projects forward past or present tendencies in dystopian futures. Not so well known are his theoretical contributions to human rights. At the beginning of the Second World War he wrote *The Rights of Man; or, What We Are Fighting For?*, and some years later he presented a draft bill of rights for the consideration of the United Nations when the Universal Declaration was being debated.³⁸ What is of special interest to us is his insistence on the ‘importance of a de-Westernization and true universalization of human rights’.³⁹ This is precisely the

³⁶ The studies on the works of Yash Ghai and Upendra Baxi are reproduced in Barreto (n 18), and the collection of all four of them was published in William Twining, ‘Human Rights: Southern Voices—Francis Deng, Abdullahi An-Na’im, Yash Ghai and Upendra Baxi’ (2006) 11 *Review of Constitutional Studies* 203.

³⁷ William Twining (ed), *Human Rights: Southern Voices: Francis Deng, Abdullahi An Na’im, Yash Ghai and Upendra Baxi* (Cambridge University Press, 2009).

³⁸ HG Wells, *The Rights of Man; or, What We Are Fighting For?* (Penguin, 1940). See also Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Indiana University Press, 2008) 144.

³⁹ Marina Svensson, *Debating Human Rights in China: A Conceptual and Political History* (Rowman & Littlefield, 2002) 26. Wells had a consciousness about the meaning of empire for the history of violence, and some of his best known novels can be read as metaphors for the colonial world and wars, among them *The Time Machine*, *The Island of Doctor Moreau*, *The Invisible Man* and *The War of the Worlds*. On the critical import of Wells’s work for Victorian imperialism see Sven Lindqvist, *Exterminate All the Brutes* (Granta, 1998) 75–81.

direction of a decolonisation of human rights in the sense of unearthing and recognising the contribution made by Third World countries and cultures.

What does ‘universalising human rights’ mean when dealing with the Universal Declaration? According to the customary account of the antecedents and sources of the Declaration, this document was the result of the unwavering will of the members of an exclusive club of hegemonic powers—chiefly the United States, Great Britain and France. There is also the popular belief that the Universal Declaration was the invention of a handful of European and US authors—René Cassin, Eleanor Roosevelt, John Humphrey and Jacques Maritain.⁴⁰ These assumptions are based on the idea that the Universal Declaration is mainly a Western achievement. Dismantling these and other myths requires an interpretative strategy aimed at universalising the Universal Declaration of Human Rights.⁴¹

‘Universalising the universal’ or globalising human rights means here, according to Susan Waltz and Zehra Arat, unveiling and acknowledging the global origins of the Declaration, including the contribution made by Non-Western countries as active participants, advocates and partisans, and as leaders of the political and legislative process that culminated in the adoption of the Declaration.⁴² The Human Rights Commission—which debated and wrote a first draft of the Universal Declaration—and the UN General Assembly—which discussed and approved it—were also composed of Asian, African, Muslim, communist and Latin American countries.⁴³ Chile, Cuba and Panama presented entire drafts of the Declaration,⁴⁴ while the original draft prepared by the Human Rights Commission drew ‘most heavily’ on the one prepared by the Chilean jurist Alejandro Alvarez, as Waltz tells us.⁴⁵ In this sense, universalising or globalising human rights also means retrieving from the archives the contributions made to the edifice of contemporary human rights by individuals who represented Third World

⁴⁰ A recent edition of the Universal Declaration published in the United States in hardback with golden characters on the cover signals Eleanor Roosevelt as author. See Eleanor Roosevelt *et al*, *Universal Declaration of Human Rights* (Applewood Books, 2000).

⁴¹ Susan Waltz, ‘Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights’ (2002) 23 *Third World Quarterly* 437.

⁴² Susan Waltz, ‘Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights’, and Zehra F Kabasakal Arat, ‘Forging a Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights’, both in Barreto (n 18).

⁴³ Asian countries: Burma, China, India and the Philippines; African countries: Egypt, Ethiopia, Liberia and South Africa; Muslim countries: Afghanistan, Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Turkey and Yemen; communist countries: USSR and Yugoslavia; Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. Fifty states in total participated in one way or another over a two-year period, proposing drafts of the Declaration, joining the debates, proposing amendments, wording the articles, and voting for and against.

⁴⁴ Normand and Zaidi (n 38) 144.

⁴⁵ Waltz (n 42) 366.

countries, as in the cases of Charles Malik from Lebanon and Carlos Romulo from the Philippines, a task undertaken by Glenn Mitoma.⁴⁶

The globalisation of human rights can also be accomplished by making more complex the way in which the cultural sources of human rights are described.⁴⁷ For a judicious witness to the vicissitudes of the human rights saga they are not simply 'a Western concept'. As the historical evidence shows, the Occident has also been an enemy—the deadliest?—to their existence. As much as the West has produced treatises, manifestos and legal documents that enshrine rights, the Occident has also been the perpetrator of large-scale, unspeakable crimes such as colonialism—an age-long 'violation of human rights'—as well as the Nazi atrocities. Towering figures of the European philosophical tradition of rights have also defended or condoned their outright negation, as in the cases of Aquinas, Locke and Mill. Locke, as Arat reminds us, has been uncovered as racist, sexist and classist.⁴⁸ He justified slavery theoretically as a 'right of nature' and profited from it by monetary investment.⁴⁹

The project of globalising human rights can also move ahead by thinking of them not only in legal or philosophical terms but also in connection with the evolution of cultures and civilisations, as well as in relation to the modern anti-colonial tradition of rights. Christianity—a principal component of Western civilisation and a key institution for the preservation and development of the natural law tradition in medieval times—has been at different times a long-standing campaigner for love, compassion and mutual respect between human beings, as well as for sexism, intolerance, torture, violence and the Inquisition. The West cannot claim any sort of identification with, or exclusive parenthood of, human rights because it has also been the agent and site of their ruin. In the words of Louis Henkin, quoted by Arat, 'the idea of rights ... is not more congenial to Western societies than to others.'⁵⁰ Human rights are not 'a Western concept', any more than they are autochthonous for the Eastern or Southern regions of the world. While Non-Western cultures exhibit a record of wilful destruction of human lives, they have

46 Glenn Mitoma, 'Mode d'assujettissement: Charles Malik, Carlos Romulo and the Emergence of the United Nations Human Rights Regime' in Barreto (n 18).

47 Arat (n 42) 389–90.

48 *Ibid*, 390–1.

49 Other European philosophers can also be found fractured by a twofold engagement with rights. While Kant showed 'enthusiasm' for the French Revolution, he remained silent about the Terror unleashed by Robespierre. Hegel, for his part, denounced the Terror but understood colonialism and colonial genocide as the materialisation of the display and advance of the Spirit. A contemporary case in point is that of Žižek, who defended the banner of human rights against the communist regime in the former Yugoslavia, but declares human rights quasi-bankrupt when living under and opposing capitalism, and who criticises neo-colonialism, as in Iraq, but salutes and commends the Terror and Robespierre—in a stark inversion of Hegel's position. See Slavoj Žižek, 'Against Human Rights' (2005) 34 *New Left Review* 115; Slavoj Žižek, 'The Obscenity of Human Rights: Violence as Symptom', www.lacan.com/zizviol.htm (accessed 10 September 2012); Slavoj Žižek, *Iraq: The Borrowed Kettle* (Verso, 2004); and Slavoj Žižek, Introduction to *Virtue and Terror*, by Maximilien Robespierre (Verso, 2007).

50 Arat (n 42) 392.

also produced concepts and traditions that oppose barbarism on the basis of a certain understanding of 'human nature' and humanity. This allows us to maintain that there are Non-Western values that match those impinging on natural law and human rights. In addition, since the very beginning of modernity, at different times and in different places, the ideas of natural rights and human rights have been seized upon by colonised peoples to oppose imperialism and abusive national regimes, a cultural and political endeavour that already constitutes a five centuries long tradition.

TRANSNATIONALISATION OF HUMAN RIGHTS

The power of transnational law as a framework of analysis resides not just in making more complex the understanding of cross-border legal orders in a time of globalisation. It does not just create a new sphere of interpretation alongside or above those of international and constitutional law. More importantly, it challenges the Westphalian international legal order, whose pillars are the concepts of nation-state and state sovereignty.⁵¹ While classical international law and the international law of human rights are state-centred regimes, non-state actors have been given secondary roles or remained almost invisible.⁵² Transnational law gives centre stage to non-state actors,⁵³ among them transnational corporations, bringing into the spotlight a number of opportunities to check and restrain their penchant for wreaking havoc in the Third World.

Non-state actors like companies have been key figures in the history of modern colonialism. Since early modernity, Spanish, Portuguese and German conquistadors, as well as English and French pirates, operated as quasi one-man enterprises, ransacking continents and the seas. Later on, pools of private investors created businesses that traded in human beings and gold, silver, sugar, tea, opium, ivory and rubber, amongst other things, all over the world. They predated or inaugurated the Dutch, British, Belgian and German empires, as in the cases of the Dutch East India Company, the East India Company, the Association Internationale du Congo and the East Africa Company. These corporations were key players in the violent colonisation of Asia and Africa, and in deeds of devastation such as the Opium War,⁵⁴ the Congo⁵⁵ and Namibian⁵⁶ genocides, as well as

51 Peer Zumbansen, 'Transnational Law' in Jan Smits (ed), *Encyclopedia of Comparative Law* (Edward Elgar, 2006) 743–4.

52 Fleur Johns, 'The Invisibility of the Transnational Corporation: An Analysis of International Law and Legal Theory' (1994) 19 *Melbourne University Law Review* 893.

53 Zumbansen (n 51) 742.

54 William Travis Hanes and Frank Sanello, *The Opium Wars: The Addiction of One Empire and the Corruption of Another* (Sourcebooks, 2002).

55 Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Houghton Mifflin, 1999).

56 David Olusoga and Casper Erichsen, *The Kaiser's Holocaust: Germany's Forgotten Genocide and the Colonial Roots of Nazism* (Faber and Faber, 2010).

in massacres and mass killings in India⁵⁷ and German East Africa⁵⁸—today's Tanzania, Rwanda and Burundi.

The twentieth century and the start of this century are not short of crimes for which transnational corporations are responsible. We can quote amongst the most infamous the disaster caused by Union Carbide in Bhopal, India; the environmental degradation and human rights abuses that came about as a consequence of the exploitation of oil by Shell in Nigeria; the continuing scandal of sweat-shops and suicide-shops in China and the Third World run by sub-contractors of Nike and Apple, among other multinationals. Economically and politically powerful, transnational corporations are today the 'new sovereigns', operating on equal terms with the old empires, overpowering and exploiting the wealth of Third World countries: by the dawn of the new millennium, 51 of the 100 biggest economies were transnational businesses, and only 49 were nation-states.⁵⁹

In this landscape of opprobrium and unequal partners, transnational human rights litigation is one of the new paths opened for resisting and looking for compensation for abuses committed by corporations. State regulation in the Third World is not enough in many cases because of the weakness of governments and judicial systems in the face of the standing foreign companies enjoy there, and because of their capacity for harassment and corruption. The likelihood of a fair trial increases notably if a transnational company is brought to justice in the country of its headquarters, or where important assets are based. In the United States, bringing from obscurity the US 1789 Alien Tort Claims Act, the 1980 *Filartiga Case* inspired a number of claims brought against US corporations operating in the Third World, as well as decisions taken by courts in countries such as Canada, Germany, Greece, Italy and the UK with mixed results.⁶⁰

Transnational legal analysis disturbs the structure of international and constitutional human rights law by altering the balance between nation-states and non-state actors as subjects of legal responsibility for abuse. In this way, it supplements, enlightens and strengthens long-standing efforts aimed at limiting the illegal actions of multinationals. The current process and program of transnationalisation of legal analysis and trans-border legality can contribute to enhancing the capacity of human rights to resist contemporary neo-colonialism by putting into evidence a number of ways to resist transnational corporations through law and litigation.

57 Marguerite Eyer Wilbur, *The East India Company and the British Empire in the Far East* (Russell & Russell, 1970).

58 Isabel Hull, 'Military Culture and the Production of "Final Solutions" in the Colonies: The Example of Wilhelminian Germany' in Robert Gellately and Ben Kiernan (eds), *The Spectre of Genocide: Mass Murder in Historical Perspective* (Cambridge University Press, 2003) 161.

59 Sarah Joseph, *Corporations and Transnational Human Rights Litigation* (Hart Publishing, 2004) 1.

60 Zumbansen (n 51) 746–7.

RE-WRITING THE HISTORY OF HUMAN RIGHTS

The rationale of human rights cannot be grasped without considering the ancient European tradition of natural law. A connection between the ideas of *nomos* and *physis* was already present in Greek tragedy and Stoicism. The concept of rational law was central in Roman law and to the philosophy of Cicero. Medieval Europe produced notions of natural law in close association with Christian doctrine as in the case of Aquinas.⁶¹ However, what can be described until the Middle Ages as a unitary tradition would grow in different directions with similar or opposite orientations. The advent of modernity with the Renaissance and the Conquest of America gave birth to at least two distinct streams within the tradition of natural rights: that elaborated in Europe, and that emerging from the colonies in the wake of resistance to modern imperialism.

While the history of human rights in modernity is manifold, we are usually presented with a single historiography. When genealogical lines are traced in order to pinpoint the vicissitudes of the history and concepts that form the modern philosophy of natural law it is common to find a reiteration of a lineage formed by epoch-making events such as Magna Carta, the British Revolution and the Bill of Rights,⁶² the US Revolution and the Virginia Declaration of Rights, the French Revolution and the Declaration of the Rights of Man, the Marxist critique⁶³ and the social rights proclaimed in the Constitution of the USSR, the Holocaust and the Universal Declaration, the emergence of a 'genuine' human rights movement in the 1970s,⁶⁴ the end of the Cold War, and September 11 and the War on Terror. The key events of this history remain concentrated within the borders of Europe,⁶⁵ or are interpreted from the European horizon of understanding. Not surprisingly, the standard philosophy of rights continues to be assumed as 'the' theory of human rights, as if no other possibility for thinking human rights would exist outside the history of ideas represented by names like Hobbes, Locke, Rousseau, Kant, Hegel, Marx, Habermas, Lyotard, Derrida, Rawls and Rorty.

61 Costas Douzinas, *The End of Human Rights* (Hart Publishing, 2000) 23–68.

62 Among the more recent accounts see AC Grayling, *Towards the Light: The Story of the Struggles for Liberty and Rights that Made the Modern West* (Bloomsbury, 2007). It should be noted that Grayling dedicates a chapter to the struggle against slavery.

63 Louis Henkin describes contemporary human rights as 'a kind of twentieth century synthesis of an eighteenth century thesis [the US Bill of Rights and the Rights of Man] and a nineteenth century antithesis [the Marxian critique]'. Louis Henkin, *The Rights of Man Today* (Westview, 1978) 5.

64 According to Samuel Moyn, the 'true origins' of human rights are to be located in the 1970s, and would have been brought about by US President Carter and his foreign policy, the struggle against communist regimes in Eastern Europe, and the crisis of both socialism and the newly independent states in the Third World. Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010) 5–8.

65 'Europe' is used here as shorthand for the philosophical concept of Europe in a Habermasian sense: not only geographical Europe, but also the United States, Australia and Japan are part of the world that, because of the rationalisation, democratisation and industrialisation of their cultures and societies, has reached an advanced degree of modernisation. The term 'Europe' also stands for 'the West'.

And yet, there is another canon that remains marginalised or invisible—that of the theory of human rights that emerged in the background of the history of the modern colonisation of the world and the struggle against imperial violence. One of the key tenets of the historiography of rights in this horizon of understanding is the idea according to which the history of human rights in modernity starts with the Conquest of America.⁶⁶ The tradition of natural law was brought to the forefront of the debate on the legitimacy and consequences of the conquest, both to justify war and plunder—as in the cases of the writings of Vitoria and Sepúlveda—and to oppose violence, genocide and torture—as in the philosophical, legal and theological works and activism of Las Casas, Suárez and Vieira. In the current debate on the history of international law Antony Anghie has pointed to its colonial origins: the question of the relationship between Spain and Portugal, on the European side, and the ‘New World’ on the other side of the Atlantic, created the challenge of imagining a world-encompassing legal system. The construct available to answer this need was the doctrine of natural law, as the universality of a metaphysical understanding of natural rights and humanity—of both secular and theological lineage—allowed for the construction of a jurisdiction wide enough to ensure that American aboriginal peoples were placed under the power or protection of ‘international law’.⁶⁷

Above all, this was not only the birth of modern international law. It is precisely the embracing of the theory of natural law by international law that gives sense to the claim that this is also the beginning of modern human rights history, so we can speak of the ‘colonial origins of human rights’. This enable us to claim a genesis of human rights in response to the crisis brought about by colonialism. The foundational stages of human rights theory and history in modern times are to be found not only in the Enlightenment, but even before that, in the resistance to the display of the capacity for destruction of imperialism—the dark side or the other constitutive pillar of modernity. Modernity cannot be identified exclusively with emancipation; plunder and genocide were prior realities of its formation. The crisis of modernity did not emerge with the Holocaust. It was present long ago, from the Conquest of America.

Such a fruitful dynamic does not consist only in a transfer of concepts and the configuration of two legal spheres. We encounter here a case of reciprocal stimulation and foundation of intellectual disciplines: while modern international law was constituted by drawing some of its central foundations from natural law theory, human rights in modernity were born in the intellectual and political sphere of international law. This insight is not completely foreign to classic internationalist scholarship. According to Normand and Zaidi, Hersch Lauterpacht suggested that there is a genealogical link that goes in both directions between international law and human rights:

66 José-Manuel Barreto, ‘Imperialism and Decolonization as Scenarios of Human Rights History’ in Barreto (n 18).

67 Anghie (n 8) 94.

Lauterpacht traces the history of the law of nature and its role in the creation of modern international law and the [Rights of Man], noting that ‘each of the three has been, in relation to the two others, the recipient and the benefactor, the master and the tool, the originator and the product.’⁶⁸

Acknowledging the origins of modern human rights in the event of the Conquest of America and the colonisation of the world is also a question of historical justice. For Paul Gilroy it is essential to make more complex the usual ‘shallow’ chronology of human rights, an endeavour that can be pursued by listening to the silences that exist in standard accounts of the trajectory of rights in modern times. Moreover, it is crucial to be more attentive to voices that testified in the struggles against slavery, racial domination and the colonial enterprise. Even though they were articulated in terms of humanity and natural rights, they are usually neglected as valid sources of inspiration for contemporary human rights movements, and for building a comprehensive political and legal theory, because—among other things—of the ‘myopic Europe-centredness’ of human rights scholars.⁶⁹ According to Gilroy, it is necessary to construct

a genealogy for human rights that differs from the usual one. It should begin with the history of conquest and expansion, and must be able to encompass the debates about how colonies and slave plantations were to be administered. At its most basic, this agonistic, cosmopolitan enterprise must incorporate the contending voices of Bartolomé de las Casas and Juan Ginés de Sepúlveda ... The counter-narrative of human rights we require is evident in opposition to racial orders, in the struggles of indigenous peoples and in the post- and anti-colonial pursuit of liberation from imperial domination.⁷⁰

This distinct account of human rights in the history of modernity would rest on a different philosophy of history, one in which modernity is recognised as co-terminous with coloniality,⁷¹ and European civilisation is obliged to acknowledge its barbarism. From this perspective, it is not just the Renaissance, the Enlightenment and the Holocaust that would fulfil the role of historical signposts of modernity and human rights. This path for historical research is yet to be explored. The tradition of human rights that emerged in the context of colonialism incorporates events such as the Conquest of America and the wider process of colonisation of the world, as well as the movements of resistance to imperialist violence and domination; the anti-slavery movements; the struggles for independence fought from the North to the South of America in the late eighteenth

⁶⁸ Normand and Zaidi (n 38) 366–7. Lauterpacht’s remarks were originally published in Hersch Lauterpacht, ‘The Law of Nations, the Law of Nature, and the Rights of Man’ (1943) 29 *Transactions of the Grotius Society* 2.

⁶⁹ Paul Gilroy, *Darker than Blue: On the Moral Economies of Black Atlantic Culture* (Harvard University Press, 2010) 3, 55–59.

⁷⁰ *Ibid.*, 57, 71–72.

⁷¹ On the concept of coloniality see Anibal Quijano, ‘Coloniality of Power, Eurocentrism, and Latin America’ (2000) 1 *Nepantla: Views from South* 3.

and early nineteenth centuries and the singular experience of the Haitian revolution of independence; the Mexican revolution and its land reform; the process of decolonisation of Africa, Asia, the Caribbean and the Middle East mainly in the second half of the twentieth century; the Civil Rights and the Anti-Apartheid Movements; the struggle for human rights alongside the Third World as a reaction to authoritarian regimes; and the contemporary pro-indigenous peoples, anti-globalisation, anti-war, environmental and anti-corporations movements. By admitting this alternative narrative of the struggle for rights—be they natural, civil or human rights—we bring out of the shadows significant personalities who deserve a place in the lineage of human rights: Vitoria, Las Casas, Sepúlveda, Suárez, Antonio Vieira and Guamán Poma; Elahuda Equiano and Ottoba Quogoano; Jefferson, Toussaint L'Ouverture and Bolívar; Frederick Douglas, Soujourne Truth, WEB du Bois, Martin Luther King, Malcolm X and Nelson Mandela; Gandhi, Fanon, the Dalai Lama and Baxi; Ariel Dorfman and Rigoberta Menchu.⁷²

THE OTHER BECOMING THE SELF

A critique of the Eurocentric understanding of human rights can also draw upon a heterodox reading of one of the more accomplished elaborations of Emmanuel Levinas's philosophy of otherness, namely Zvetan Todorov's theory of moral history. Todorov's 'The Conquest of America: The Question of the Other' takes Levinas's philosophy of alterity to think the history of modern imperialism. In the description given by Todorov of the coming of Columbus to America in terms of the 'discovery the self makes of the other', those in America⁷³—or outside Europe—are the 'other' for the self that looks at

⁷² There already exists a body of research that starts to bring to light the history of the Third World tradition of human rights—be they anti-colonial, liberal, social or democratic. A long-term historical detour that includes Las Casas, Bolívar and the constitutions of independence, the Mexican Revolution and the Latin American contribution to the Universal Declaration can be found in Paolo Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights' (2003) 25 *Human Rights Quarterly* 2. On Guamán Poma see Fernanda Bragato, 'A Contribuisao do Pensamento de Felipe Guaman Poma de Ayala para Repensar o Discurso Hegemonico dos Direitos Humanos' in Narciso Baez and Douglas Cassel (eds), *A Realizao e a Protecao Internacional dos Direitos Humanos Fundamentais* (UNESCO, 2011); on Quobna Quogoano see Anthony Bogues, 'The Political Thought of Quobna Quogoano' in *Black Heretics, Black Prophets: Radical Political Intellectuals* (Routledge, 2003). On the Mexican revolution and land rights see Judith Schacherreiter, 'Un Mundo donde Quepan Muchos Mundos: A Postcolonial Legal Perspective Inspired by the Zapatistas' (2009) 11 *Global Jurist* 2. On decolonisation and the contribution of Africa and Asia to the international human rights regime see Roland Burke, *Decolonization and the Evolution of International Human Rights Law* (University of Pennsylvania Press, 2010); Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (SUNY Press, 2007).

⁷³ America is not 'America'. Currently in Europe and the United States it is common—in day-to-day conversation, in the media and in scholarly publications—to refer to the United States of America as 'America'. This practice is even common in authors who have presided as masters of suspicion and critical thinking such as Kafka, Baudrillard, Deleuze and Guattari. Probably adopted just as a helpful and innocuous shorthand or abbreviation, this practice confuses the part with the whole, taking the name of a continent

the world from the location of Europe. If the path of reflection that departs from this standpoint is followed, a wealth of insights regarding the constitution of Europe can be gained, showing how the presence of ‘the other’ is at the core of Europe’s political, cultural and historical formation.

More interestingly, the ‘conquest of the other by the self’ reveals the ‘other’ to be the victim of imperialism.⁷⁴ Todorov offers a large-scale picture of the history of modernity that proceeds from its genesis to the current situation, laying bare the genocidal consequences for America and the Third World: ‘What took place in America after 1492, and continues to happen today, is the virtual obliteration of one cultural world by another.’⁷⁵ Positing the colonised or the Third World subject as a victim in the context of the history of modernity leads to the indictment of Europe as the land of the barbarians, and holds it responsible for the slaughter carried out over centuries of colonialism. Auschwitz is revealed to be nothing new, for in the deprecation of the colonial world since the fifteenth century Europe has fully deployed its capacity for extermination.

Above all, interpreting Todorov in a Third World key requires a process of de-identification: the reader from the South needs to leave behind the identification with ‘the other’ that has been so graciously bestowed upon her, and adopt the role of the ‘self’—not the mask of the European self, but her own self, ie the self of the colonised. Thus, the subject from the Third World places herself in the role of ‘the self’ that faces the European ‘self’. Todorov refers to this shift when he writes that ‘others are also “I”s’, subjects just as Europeans are.⁷⁶ However, the Third World subject must be recognised not only by Europeans; more importantly, it needs to be grasped by those in the Third World too—it has to be a process of self-recognition. When reading the European interpretation of modern history inspired by the philosophy of otherness, the Third World subject needs to abandon the European self and personify the Third World self—she must undertake a labour of self-emancipation.

To occupy the place of the self—that of the historical subject—also means that the peoples of the Third World inhabit the role of agents of human rights, emancipation and humanisation. In the words of Fanon, ‘the native never ceases to dream of putting himself in the place of the settler—not becoming the settler but of substituting himself for the settler’, so that the native embodies ‘history in his own person’ and creates ‘a new

to refer to a single country. What could be seen as just a crass example of geographical inaccuracy ends up involving political and philosophical problems. If the United States monopolises the name America, the countries that stand to the south are dispossessed of their generic name and in this slip of the tongue they disappear from the map and from the notion of America. Mirroring political and economic history, in this appropriation of a word the United States steals something which does not belong to them, dispossessing the American nations of the Caribbean and Central and South America of their ‘proper name’, and of their place in geography and history.

⁷⁴ Zvetan Todorov, *The Conquest of America: The Question of the Other* (University of Oklahoma Press, 1999).

⁷⁵ *Ibid.*, xii.

⁷⁶ *Ibid.*, 3.

humanity'.⁷⁷ The evidence of such an achievement can be seen throughout the history of the struggles to restrain imperialist violence, and to gain independence and self-determination since the Conquest of America.

CRITIQUE OF CRITICAL THEORY AND MODERNITY AS CRISIS

Habermas takes issue with Adorno and Horkheimer's critique of modernity and modern reason because of its supposedly extreme character: the 'Dialectic of Enlightenment'⁷⁸ would take, he imagines, Critical Theory into the no-go area of nihilism. If the Enlightenment's power for self-destruction outweighs its capacity for emancipation, there would be no reason to believe anymore in the project of modernity.⁷⁹ And yet, it is only for a subject that thinks from a Eurocentric point of view—like Habermas—that the 'Dialectic of Enlightenment' has gone beyond what is admissible or adequate for a critique of modernity to accomplish. On the contrary, for a thinking that stands in the proximity of the history of modern colonialism, Adorno and Horkheimer's critique is not radical enough. This is the path of reflection adopted by Sabine Broeck, who shifted her standpoint—the European horizon of understanding—and opened her thinking to the history of European colonialism. Working in the fields of Black Feminism, African-American and Slavery Studies, Broeck has developed a powerful critique of key tenets of Critical Theory. This 'critique of the critique' advanced by Broeck can offer valuable modifications of Critical Theory. More importantly, it strengthens the efforts of the drive to open up the theory of human rights to grasp the weight of the violence generated by imperialism.

According to Broeck, the incapacity of Critical Theory to fully decipher modern history stems from framing the clash between the dark and the emancipatory sides of modernity as an inner European conflict, so that the climax of modernity's self-destruction and the collapse of civilisation are found in the Nazis' crimes against humanity. The emphasis on this line of interpretation leads Critical Theory to keep modern imperialism out of focus and to assume modernity innocent of colonialism.⁸⁰ The Frankfurt School does not pay due attention to the role played by colonialism and slavery in the constitution of modernity, and it does not recognise that the vast accumulation of capital, political power and knowledge in modern Europe was made possible in a substantial way by the undertakings of imperialism.

⁷⁷ Frantz Fanon, *The Wretched of the Earth* (Penguin, 2001) 28, 31, 41.

⁷⁸ Max Horkheimer and Theodor Adorno, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford University Press, 2002).

⁷⁹ Habermas (n 15) 106–30.

⁸⁰ Sabine Broeck, 'The Legacy of Slavery: White Humanities and its Subject. A Manifesto' in Barreto (n 18) 108–11.

Critical Theory, Broeck states, also fails to realise that ‘the modern free subject is the result of slave trading and colonialist practices.’⁸¹ In this sense, the freedom of the white subject presupposes the non-subjectivity, reification, objectification or abjection of the colonised and the slave. The freedom of the white subject is made possible by the ownership of slaves, which allows for a new definition of ‘freedom as ownership’ or freedom as negation of freedom, or freedom purchased by slavery. Such a deep gash in the hull of Critical Theory comes as no surprise, as it re-enacts a flaw ingrained in the critical tradition—that of thematising the relationship between master and slave without referring to modern capitalist slavery, ie colonial slavery. Hegel preferred to think of the dialectics of master and slave on the basis of the relation between feudal lords and servants, and the transit to the modern subject.⁸² Marx, equally blinkered, followed Hegel’s dialectics in conceptualising the class struggle. These immense gaps in Critical Theory’s understanding of modern history lead Broeck to conclude that not only the Frankfurt School, but also Foucaultian critique, Psychoanalysis and Feminism, are all characterised by a theoretical ‘narcissism’ that has not allowed them to trace a genealogy of the modern subject that includes colonialism and slavery.⁸³

On the basis of this diagnosis, Broeck formulates a number of adjustments that Critical Theory needs to perform in order to gain a more encompassing philosophy of modern history. Critical Theory must adopt a *longue durée* historical approach beyond the consequences for civilisation of the Second World War, and widen its field of study as to the defining moments of modernity to include the fifteenth century and the early modern origins of colonialism and slavery. More radically, Broeck challenges critical scholars to read history from the point of view of the colonised or the slave, and to review the self-understanding of Critical Theory—all within the spirit of one of the archetypal capabilities of Critical Theory, that of self-critique.⁸⁴

Indeed, the Frankfurt School’s conceptualisation of the crisis of modernity should be radicalised. Adorno and Horkheimer’s interpretation requires a sweeping modification so that our understanding of the history of atrocity and human rights in modernity shows due regard to the victims of colonialism. The schizophrenia of Europe in the twentieth century, which evinced expressions of high culture and materialistic progress on the surface but concealed the most depraved savagery in extermination camps, ought now to be understood as present centuries ago. Modern reason and slaughter did not coincide only in Auschwitz. As Europe was giving birth to Humanism and culturally

⁸¹ *Ibid*, 105.

⁸² Susan Buck-Morss’s hypothesis, according to which Hegel should have, or might have, elaborated his master-slave dialectics bearing in mind the Haitian Revolution, appears farfetched if we take into account his notion of ‘world history’ from which the US revolution of independence, as well as the wars of independence fought throughout Central and South America in the early 19th century, are excluded. See Susan Buck-Morss, ‘Hegel and Haiti’ (2000) 26 *Critical Inquiry* 821; Hegel (n 12) 8–79, 79–102.

⁸³ Broeck (n 80) 106.

⁸⁴ *Ibid*, 105, 107, 111–15.

efflorescing, it put millions to death in the Americas. Europe's march of progress from its renaissance emergence has cost an ocean of blood. The first modern genocide already had an extreme anti-moral quality such that, at the very moment European civilisation was blossoming, it had already negated itself, collapsed and disintegrated. Modernity was born already in crisis. Modernity is crisis.⁸⁵

EMOTIONS, THE ETHICS OF HUMAN RIGHTS AND EMPIRE/SUFFERING

The 'turn to emotions' or the affective turn, an increasingly pervasive feature of our zeitgeist, is compelling legal theory and, in general, the social sciences and the humanities to engage with feelings and the 'global sentiment'. This phenomenon entails both an internal, ie European, and a decolonial critique of rationalism. In the field of human rights, the internal shift can be traced back to the 1993 Oxford Amnesty Lecture given by Richard Rorty with the title 'Human Rights, Rationality and Sentimentality', in which he distanced himself from Kant's transcendental foundation of ethics and rights, and proposed to understand the culture of human rights as one of sympathy and solidarity.⁸⁶ According to Woessner, Rorty's critique is heir to Heidegger's portrayal of reason 'as the most stiff-necked adversary of thought'.⁸⁷ While Heidegger describes the hardness—the painful tension and the malaise—of rationalism as an enemy of thinking, it is the absence or the repression of emotions that is denounced. We are here in front of another philosophical inversion. The rationalist banishing of emotions and sympathy from truth and ethics is no longer tenable. The opposite is the case: these are times for a 'post-rationalist philosophy'. And when rationalism is put into question, the modern and dominant rationalist discourse in which human rights are framed becomes the object of suspicion too.

Rorty calls us to abandon a certain kind of human rights discourse—that resting on transcendental foundations—and proposes the development of a theory and practice of a cultural politics aimed at strengthening the contemporary human rights tradition. This praxis for human rights is to be carried out by poets, novelists, artists, journalists and all sorts of story tellers who create narratives or chronicles able to elicit identification with strangers or sympathy for the victims of abuse.⁸⁸ In the words of Woessner, Rorty's project of the 'sentimental education' of the epoch—that of enhancing the capacity of people for moral feeling—can advance human rights 'whether human rights

⁸⁵ On the concept of 'modernity as crisis' see Barreto (n 14).

⁸⁶ Rorty (n 14).

⁸⁷ Martin Heidegger, 'Nietzsche's Word, "God is Dead"' in *The Question Concerning Technology and Other Essays* (Harper & Row, 1977) 112.

⁸⁸ On Rorty's conception of human rights see José-Manuel Barreto, 'Rorty and Human Rights: Contingency, Emotions and How to Defend Human Rights Telling Stories' (2011) 7 *Utrecht Law Review* 93, www.utrechtlawreview.org/index.php/ulr/article/viewFile/164/163 (accessed 10 September 2012).

were enshrined in local traditions, positivist law, transcendental philosophy, physical science—or not.⁸⁹

In contrast to both Kant's understanding of the Age of Enlightenment as a process of universalisation of the use of reason and Weber's conception of modernisation as rationalisation of the life world, Rorty poses the idea of the sensibilisation of the age. The motto of our times would not be the Kantian *sapere aude!*, but the injunction 'dare to feel!'. Postmodernity could be defined in this sense as a process of cultivation of a greater capacity in individuals and collectives—societies and the world community—for moral emotions, or as 'the sentimental education of modern culture by the fostering of moral feelings'.⁹⁰

Among the host of elaborations on the relationship between emotions and human rights inspired by Heidegger's critique of rationalism we can also count that of Havel and Patočka, as Woessner has explored.⁹¹ Havel and Patočka's reconstruction of human rights out of a capacity for feeling for others was made in the context of the crude and cruel reality of Stalinist totalitarianism, and as a strategy for resisting and overcoming its dogmatic principles of 'objectivity, historical necessity, technology, system and the apparatus'.⁹² But the coldness of Leftist totalitarianism is just an exemplar of the coldness that characterises modern reason and political culture, the other exemplars being fascism, capitalism and its conjoined twin, modern imperialism. For Woessner we are facing 'a new understanding of human rights' based on 'irrational ideas' such as empathy, love and 'the solidarity of the shaken'—a political culture in which human rights can breed and thrive. This conception of human rights answers to 'the suffering of the human person', and emanates 'from the heart' and not from the 'unflinching, rationalist universalism of previous human rights discourse'.⁹³

I now turn to another critique of rationalism from the side of authors wrestling with the legacy of colonialism and with the opinion that emotions entail a setback for emancipation. Discussing the sceptical reception in psychoanalysis to Harriet Beecher Stowe's *Uncle's Tom Cabin*, Paul Gilroy calls for more nuanced reflection on the process of identification with the suffering of victims:

The outright dismissal of any useful outcome from the familiarity with the suffering of others should itself be questioned ... There are a number of ways in which strategies premised upon emotional communication, psychological identification, and the formation of moral communities might open up possibilities for change achieved through social and political mobilization ... What if Stowe's structure of feeling was instrumental in the formation of a moral collectivity and in winning recognition of the suffering humanity of the slave, whom it was no longer possible to dismiss as a brute?⁹⁴

⁸⁹ Woessner (n 18) 87.

⁹⁰ Barreto (n 88) 106.

⁹¹ Woessner (n 18) 88–90.

⁹² Havel, 'Politics and Conscience', quoted in Woessner (n 18) 83.

⁹³ Woessner (n 18) 85.

⁹⁴ Gilroy (n 69) 65–66.

Sharing these concerns, Subaltern Studies have elaborated various insights towards establishing a link between colonialism, human rights and feelings. This is the case with Upendra Baxi, whose introduction of ‘the language of the violated’⁹⁵ transforms the nature of human rights discourse. For Baxi, to talk about human rights from the perspective of the victim means speaking about abuses in terms of suffering. This narrative opposes and supplements the rationalist mood of established scholarship. Baxi points to the strange discordance experienced in listening to the voices of sorrow and tragedy against the background of the dry and abstract hegemonic discourse on democracy and human rights theory, which remains ‘sanitised’ and purged of references to pain.

Adopting the ethos of the language of the violated, Baxi characterises the Third World as ‘the suffering humanity’.⁹⁶ This notion defines the Third World in terms of the pain it has endured over the centuries as a consequence of imperialism. Suffering becomes in this rights-talk one of the crucial aspects of the history of the Third World, a history of millions of individual lives damaged and destroyed, and a tale of the genocide of entire peoples. This is a suffering that permeates and taints the entire history of continents and our whole era. It is a pain that becomes compounded with the spirit of the times. Speaking about how the twentieth-century history of the European Jews can be summarised in the word Auschwitz, Lyotard has said that ‘there is a sort of grief in the *Zeitgeist*’.⁹⁷ The agony evoked by the words ‘a suffering humanity’ is of this quality.

Decolonisation of human rights can also be pursued by thematising concepts that offer the possibility of approaching rights from a non-rationalistic point of view, and that are capable of establishing a significant connection between the violence of imperialism and suffering. Such an association can be explored in the concept of ‘empire/suffering’. The exercise of imperial power has resulted in multitudinous individual, and in this sense, unique experiences of pain, distress, anguish and trauma. From a wider perspective this can be described as harm caused to entire peoples, and as social and global suffering. There is an immediate and inexorable link between the power of empire and the suffering of the colonised. The development of the concept of empire/suffering can benefit from revisiting Foucault’s dyad ‘power/knowledge’, focusing on its idiosyncratic structure. There exists a causal relation between power and knowledge: ‘There is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.’⁹⁸ The counter-intuitive notion according to which knowledge is always the product of the operation of power is ‘paraphrased’ here by the notion of empire/suffering, which encapsulates the all too obvious but neglected historical fact that the deployment of colonial violence was and continues to be followed by pain and anguish in the bodies

⁹⁵ Baxi (n 20) 126.

⁹⁶ Upendra Baxi, ‘Global Justice and the Failure of Deliberative Democracy’ in Enwezor *et al* (n 13) 113–14.

⁹⁷ Jean-Francois Lyotard, *The Postmodern Explained: Correspondence, 1982–1985* (University of Minnesota Press, 1997) 78.

⁹⁸ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Pantheon, 1979) 27.

and minds of the victims of imperialism. In every deployment of imperial power there has been, as an unavoidable consequence, a causation of suffering. Empire and suffering are inextricably and necessarily linked. Empire/suffering does not enshrine another modern binary opposition; rather it highlights an amalgam of two inseparable sides: suffering is a potency residing in imperial power, and the consequence of the materialisation of power. In the context of modern colonialism this translates into the cruelty of empires which may extend as far as exterminating their victims *en masse*, and into the suffering of the colonised.

CRITICAL DIALOGUE

A historiography of human rights that claims to bear witness to the struggles for human rights and to the contributions to human rights theory made by the colonised asserts the existence of a history of human rights in the geography of the colonial world. It also looks for recognition of Third World theory as a valid interlocutor in any conversation about rights—not simply as a listener without a voice, or a ventriloquist's dummy. If human rights are not a 'gift of the West to the rest' it is possible to see that they are an endowment of the Non-West to the world as well.

Above all, this is not to suggest that the European legacy should be abandoned or rejected. On the contrary, it calls for the Eurocentric understanding of rights to escape its monologue, and to enter into a dialogue with other visions of rights. A Third World human rights theory operates in a dialogic epistemological ethos that seeks to replace the European monologist self-centred culture. This is a call for an exchange of ideas in which the status of the interlocutors and the terms of the conversation are transformed by a new geography of knowledge in which all those involved come from different provinces of the world. The hermeneutics of provincialising human rights leads to a dialogue between local conceptions, both those coming from what was the centre, as well as those emerging from places that customarily had been reckoned to occupy the margins.

As interpreted by Woessner, Chakrabarty's and Fanon's idea of an 'anti-colonial humanism' is 'a new humanism that keeps the universal and the particular always and everywhere in dialogue with each other'.⁹⁹ The universal mentioned here is rather unique: it is a particular disguised as a universal, or that calls itself universal—the basic epistemological and power-seeking deception of European thinking. Above all, European philosophy and the European conception of human rights form part of the utopian thinking that can contribute both to resisting and reversing the deeds of imperialism and to creating a new 'human being', a 'new society', and a 'new world'.¹⁰⁰ A Third World

⁹⁹ Woessner (n 18) 96.

¹⁰⁰ In addition to the possibility of taking the capacity for critique of Western thinking, including Marxism, to oppose colonialism, there are other thinkers who offer specifically targeted attacks on modern imperialism.

theory of human rights—an exemplar of anti-colonial humanism—cannot avoid counting among its sources the European humanist tradition.

Paraphrasing Chakrabarty, as quoted by Woessner,¹⁰¹ Eurocentric human rights theory is ‘at once indispensable and inadequate’ and it must be ‘renewed from and for the margins’. The European tradition must sacrifice its presumption of centrality and enter into a critical dialogue with those outside Europe in order to rid itself of its destructive core, and to actualise its emancipatory potential for the victims of power both in the centre and in the colonised world. The partiality and bias of Eurocentrism can be left behind by engaging with visions coming from the borders. In this way a cooperative spirit can be mobilised to deal with questions of global justice. In this sense, Woessner puts forward the idea that it is ‘between the global north and the global south where the utopia—the no-place—of human rights is to be found’, and that to provincialise human rights is ‘to struggle to hold in a permanent state of tension a dialogue between two contradictory points of view’.¹⁰²

A similar dialogical stance has been adopted by Decolonial Theory. If, as Quijano maintains, the specific European *weltanschauung* cannot have universal validity, then the only possible way in which universal knowledge can be arrived at is through ‘epistemological decolonization ... to clear the way for new intercultural communication; for interchanging experiences and meaning as a basis of another rationality which may legitimately pretend to some universality’.¹⁰³ But dialogue is not only the ethos and telology of the decolonisation of knowledge. It is a political quest too: a world-creating hermeneutics and practice, and a path towards a new theory and practice of human rights and global justice. This is evident in the notion of ‘transmodernity’, an idea formulated by Enrique Dussel in order to move beyond ‘postmodern’ theory—a critical perspective that aims at transcending modernity from within and that, in doing so, remains a Eurocentric critique of modernity. According to Dussel, in transmodernity:

both modernity and its negated alterity (the victims) co-realize themselves in a process of mutual creative fertilization. Trans-modernity (as a project of political, economic, ecological, erotic, pedagogical and religious liberation) is the co-realization of that which is impossible for modernity to accomplish by itself: that is of an *incorporative* solidarity that I have called analectic between centre/periphery, man/woman, different races, different ethnic groups, different classes, civilization/nature, Western culture/Third World cultures, et cetera.¹⁰⁴

On Diderot, Kant and Herder’s contribution see Sankar Muthu, *Enlightenment against Empire* (Princeton University Press, 2003).

¹⁰¹ Woessner (n 18) 93.

¹⁰² *Ibid.*, 94.

¹⁰³ Anibal Quijano, quoted in Walter Mignolo, ‘The Historical Foundation of Modernity/Coloniality and the Emergence of Decolonial Thinking’ in Sara Castro-Klaren (ed), *A Companion to Latin American Literature and Culture* (Blackwell, 2008) 27.

¹⁰⁴ Enrique Dussel, ‘Eurocentrism and Modernity’ (1993) 20 *Boundary 2* 76. Dussel himself has been eager to engage in a longstanding philosophical dialogue with Apel, Taylor, Rorty, Vattimo and Ricoeur. See Enrique

A dialogue on human rights can be undertaken between diverse conceptions and from distant geopolitical loci of enunciation, but also between different rationalities. Within the Western philosophical tradition, we can pinpoint the exchange between analytical thinking and hermeneutics as exemplified in the famous Habermas-Gadamer debate, or imagine a dialogue between Marx's materialism and Heidegger's ontology as suggested by Chakrabarty. A dialogue can also be enacted between European and decolonial critiques of reason, on the one hand, and rationalist theories of human rights on the other, all of which can take us to the elaboration of a new understanding of human rights. In this regard, the following comment of Woessner's is germane:

If a connection can be made between the sort of internalist critiques of Western rationalism that we find in Malik, Havel and Rorty, on the one hand, and more recent postcolonial writings from the margins of the West, on the other, perhaps we might be able to hold open, if only temporarily, a fertile space for an alternative conception of human rights, one that fosters empathetic solidarity over and above impersonal, bureaucratic rationalism.¹⁰⁵

And yet a more heterodox path for the dialogical decolonisation of rights will be suggested: Can reason and emotion enter into a rational or reasonable dialogue, or can they enter into a—sentimental—relation so that they can feel for each other? This possibility is just to be mentioned; its elaboration and justification will not be undertaken here. In the meantime, let's state that there is a substantial claim in this call for rational and sentimental dialogue, and it has to do again with the decolonial *telos*. Were we to remain within a mere rationalist approach to rights or, taking the opposite stance, restricted to a sentimental comprehension of human rights, we would stick with the modern and colonialist separation of heart and mind. As quoted by Woessner, Chakrabarty has pointed out that the 'strong split between emotion and reason' is in itself constitutive of colonialism.¹⁰⁶

Dussel, *The Underside of Modernity: Apel, Ricoeur, Rorty, Taylor and the Philosophy of Liberation*, Eduardo Mendieta (trans and ed) (Humanities Press, 1993). The inclination for dialogue is not only a Postcolonial and Decolonial enterprise. Characterising modern knowledge and modern law as two cases par excellence of Northern Abyssal thinking—a type of thought that establishes radical distinctions between concepts, creates hierarchies, negates subalternised knowledges and monopolises 'truth'—Santos similarly proposes an epistemology of the South or ecologies of knowledge in which, after decentring hegemonic thinking and adopting the perspective of the Global South, dialogue between Western and Non-Western knowledge leads to mutual enrichment. Boaventura de Sousa Santos, 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledge' (2007) 1 *Review* 45. As understood by Twining, a cosmopolitan jurisprudence can only be constructed on the basis of a dialogical dynamic (see above). It is also one of the tenets of the internal critique of European thought, as in the case of Thomas McCarthy who, as quoted by Woessner, argues that there is no need to abandon the 'universal' discourses of human rights, but that they should enter into a dialogical relation with the 'barbarian' voices coming from the borders. Woessner (n 18) 93.

¹⁰⁵ Woessner (n 18) 89.

¹⁰⁶ *Ibid.*, 94.

The quest to create conditions for dialogue is another strategy for decolonising the theory of human rights. It would be fruitful to grasp that even the work of enabling dialogue and advancing a transition from the habit of monologue to authentic conversation will help us all towards a less ethnocentric view on these matters. The move from soliloquy to dialogue as methodology, hermeneutical process or ethos—the struggle to justify and create spaces for dialogue—can take the theory of human rights to a less Eurocentric, partial and provincial outlook. In other words, it can lead to a more universal—based on many perspectives, geographies, histories and rationalities—understanding of human rights, and of their consequences for social and global justice.

