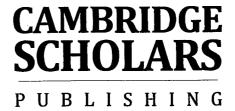Human Rights and Diverse Societies:
Challenges and Possibilities

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Notes

1 Cf. Recommendation No. 24 of the Assembly (25 August 1950). Adopted by 46 votes to 37. Cf. Recueil des Travaux Préparatoires de la Convention européenne des Droits de l'Homme, vol. V, p. 192.

CHAPTER TWO

HUMAN RIGHTS:
A FRAGILE HEGEMONY

BOAVENTURA DE SOUSA SANTOS

There is no question today about the hegemony of human rights as the discourse of human dignity. Nonetheless, such hegemony faces a disturbing reality. The large majority of the world population is not the subject of human rights. They are rather the object of human rights discourses. The question is, then, whether human rights are efficacious in helping the struggles of the excluded, the exploited, and the discriminated against, or whether, on the contrary, they make them more difficult. In other words, is the hegemony claimed by human rights today the outcome of a historical victory, or rather of a historical defeat? Regardless of the reply given to the previous questions, the truth is that, since they are the hegemonic discourse of human dignity, human rights are insurmountable. This explains why oppressed social groups cannot help but ask the following question: even if human rights are part of the selfsame hegemony that consolidates and legitimates their oppression, could they be used to subvert it? In other words, could human rights be used in a counter-hegemonic way? If so, how? These two questions lead on to two others. Why is there so much unjust human suffering that is not considered a violation of human rights? What other discourses of human dignity are there in the world and to what extent are they compatible with human rights discourses?

The search for a counter-hegemonic conception of human rights must start from a hermeneutics of suspicion regarding human rights as they are conventionally understood and sustained, that is to say, concerning such conceptions of human rights as more closely related to their Western, liberal matrix.[1] The hermeneutics of suspicion I propose is very much indebted to Ernest Bloch (1995 [1947]), as when he wonders about the reasons why, from the eighteenth century onwards, the concept of utopia as an emancipatory political measure was gradually superseded and

replaced by the concept of rights. Why was the concept of utopia less successful than the concept of law and rights as a discourse of social emancipation?[2]

We must begin by acknowledging that law and rights have a double genealogy in western modernity. On the one hand, they have an abyssal genealogy. I understand the dominant versions of western modernity as constructed on the basis of an abyssal thinking that divided the world sharply between metropolitan and colonial societies (Santos, 2007b). The division was such that the realities and practices existing on the other side of the line, i.e. in the colonies, could not possibly challenge the universality of the theories and practices in force on this side of the line. As such, they were made invisible. As a discourse of emancipation, human rights were historically meant to prevail only on this side of the abyssal line, i.e. in the metropolitan societies. It has been my contention that this abyssal line, which produces radical exclusions, far from being eliminated with the end of historical colonialism, still continues to be there by other means (neo-colonialism, racism, xenophobia, permanent state of exception in dealing with terrorists, undocumented migrant workers or asylum seekers). International law and mainstream human rights doctrines have been used to guarantee such continuity. But, on the other hand, law and rights have a revolutionary genealogy on this side of the line. Both the American Revolution and the French Revolution were fought in the name of law and rights. Ernest Bloch maintains that the superiority of the concept of law and rights has a lot to do with bourgeois individualism. The bourgeois society then emerging had already conquered economic hegemony and was fighting for political hegemony, soon to be consolidated by the American and French Revolutions. The concept of law and rights fitted perfectly the emergent bourgeois individualism inherent both to liberal theory and to capitalism. It is, therefore, easy to conclude that the hegemony enjoyed by human rights has very deep roots, and that its trajectory has been a linear path towards the consecration of human rights as the ruling principles of a just society. This idea of a long established consensus manifests itself in various ways, each one of them residing in an illusion. Because they are widely shared, such illusions constitute the common sense of conventional human rights. I distinguish four illusions: teleology, triumphalism, de-contextualization, and monolithism.

The teleological illusion consists in reading history backwards. Starting from the consensus existing today about human rights and the unconditional good it entails, and reading the past history as a linear path towards such a result. The choice of precursors is crucial in this respect.

As Moyn comments: "these are usable pasts: the construction of precursors after the fact" (2010: 12). Such an illusion prevents us from seeing that at any given historical moment different ideas of human dignity and social emancipation were in competition, and that the victory of human rights is a contingent result that can be explained à posteriori, but could not have been deterministically foreseen. The historical victory of human rights made possible that the same actions which, according to other conceptions of human dignity, would be considered actions of oppression and domination, were reconfigured as actions of emancipation and liberation if carried out in the name of human rights.

Related to the teleological illusion is the illusion of triumphalism, the notion that the victory of human rights is an unconditional human good. It takes for granted that all the other grammars of human dignity that have competed with the human rights were inherently inferior in ethical and political terms. This Darwinian notion does not take into account a decisive feature of hegemonic Western modernity; indeed, its true historical genius, namely the way it has managed to supplement the force of the ideas that serve its purposes with the military force which, supposedly at the service of the ideas, is actually served by them. We need, therefore, to evaluate critically the grounds for the alleged ethical and political superiority of human rights. The ideals of national liberation – socialism, communism, revolution, nationalism – constituted alternative grammars of human dignity; at certain moments, they were even the dominant ones. Suffice it to think that the twentieth century national liberation movements against colonialism, like the socialist and communist movements, did not invoke the human rights grammar to justify their causes and struggles.[3] That the other grammars and discourses of emancipation have been defeated by human rights discourses should only be considered inherently positive if it could be demonstrated that human rights, while a discourse of human emancipation, have a superior merit for reasons other than the fact that they have emerged as the winners. Until then, the triumph of human rights may be considered by some as progress and a historical victory, and by others as retrogression, a historical defeat.

This precaution helps us to face the third illusion: de-contextualization. It is generally acknowledged that human rights as an emancipatory discourse have their origin in eighteenth century Enlightenment, the French Revolution, and the American Revolution. What is seldom mentioned, however, is that since then and until today, human rights have been used in very distinct contexts and with contradictory objectives. In the eighteenth century, for instance, human rights were the main language

of the ongoing revolutionary processes. But they were also used to legitimate practices that we would consider oppressive if not altogether counter-revolutionary. When Napoleon arrived in Egypt in 1798, this is how he explained his actions to the Egyptians: "People of Egypt: you will be told by our enemies, that I am come to destroy your religion. Believe them not. Tell them that I am come to restore your rights, punish your usurpers, and raise the true worship of Mahomet."[4] And thus was the invasion of Egypt legitimated by the invaders. The same could be said of Robespierre who fostered Terror during the French Revolution in the name of piety and human rights.[5] After the 1848 revolutions, human rights were no longer part of the revolution imaginary and became rather hostile to any idea of a revolutionary change of the society. But the same hypocrisy (I would call it constitutive) of invoking human rights to legitimate practices that may be considered violations of human rights continued throughout the past century and a half and is perhaps more evident today than ever. From the mid-nineteenth century onwards, human rights talk was separated from the revolutionary tradition, and began to be conceived of as a grammar of depoliticized social change, a kind of anti-politics. At best, human rights were subsumed in State law as the State assumed the monopoly of the production of law and administration of justice. This is why the Russian Revolution, unlike the French and American Revolutions, was carried out, not in the name of law, but against law (Santos, 1995: 104-107). Gradually, the predominant discourse of human rights became the discourse of the human dignity consonant with liberal politics, capitalist development and its different metamorphoses (liberal, social-democratic, neoliberal, dependent, Fordist, post-Fordist, peripheral Fordist, corporative, state capitalism) and colonialism (neocolonialism, internal colonialism, racism, slave-like labor, xenophobia, etc.). And so we must bear in mind that the selfsame human rights discourse had many very different meanings in different historical contexts, having legitimated both revolutionary and counter-revolutionary practices. Today, we cannot be even sure if present-day human rights are a legacy of the modern revolutions, or of their ruins, if they have behind them a revolutionary, emancipatory energy, or counter-revolutionary energy.

The fourth illusion is monolithism. I elaborate on it here in greater detail having in mind the main theme of this book. The illusion consists in denying or minimizing the tensions and even internal contradictions of the theories of human rights. Suffice it to remember that the French Revolution's Declaration of the Rights of Man is ambivalent as it speaks of the rights of *man* and of the *citizen*. These two words are not there by chance. From the very beginning, human rights foster ambiguity by creating belongingness to two different collective identities. One of them is supposedly a totally inclusive collectivity, humanity, hence human rights. The other is a much more restrictive collectivity, the collectivity of the citizens of a given State. This tension has troubled human rights ever since. The goal of the adoption of international declarations and of regimes and international institutions of human rights was to guarantee minimal dignity to individuals whenever their rights as members of a political collectivity did not exist or were violated. In the course of the past two hundred years, human rights were gradually incorporated into the Constitutions and were re-conceptualized as rights of citizenship, directly guaranteed by the State and adjudicated by the courts: civic, political, social, economic, and cultural rights. But the truth is that the effective, ample protection of citizenship rights has always been precarious in the large majority of countries. Human rights have been invoked mainly in situations of erosion or particularly serious violation of citizenship rights.[6] Human rights emerge as the lowest threshold of inclusion, a descending movement from the dense community of citizens to the diluted community of humanity.

The other tension illustrating the illusory nature of monolithism is the tension between individual and collective rights. The United Nations Universal Declaration of Human Rights, last century's first major universal declaration, to be followed by several others, recognizes only two lawful subjects: the individual and the State. Peoples are only recognized to the extent that they become States. When the Declaration was adopted, it should be noted, there were many peoples, nations, and communities that had no State. Thus, from the point of view of the epistemologies of the South, the Declaration cannot but be deemed colonialist (Burke, 2010; Terretta, 2012). When we speak of equality before the law, we must bear in mind that, when the Declaration was written, individuals from vast regions of the world were not equal before the law because they were subjected to collective domination, and under collective domination individual rights provide no protection. At a time of bourgeois individualism, the Declaration could not take this into account. This was a time when sexism was part of common sense, sexual orientation was taboo, class domination was each country's internal affair, and colonialism was still strong as an historical agent, in spite of the drawback of Indian independence. As time went by, sexism, colonialism, and the crassest forms of class domination came to be acknowledged as giving rise to violations of human rights. In the 1960s, anti-colonial struggles were adopted by the Declaration and became part of UN affairs. However, as it was understood at the time, self-determination concerned

peoples subjected to European colonialism alone. Self-determination thus understood left many peoples subjected to internal colonization, indigenous peoples being the paramount example. More than thirty years had to go by before the right of indigenous peoples to self-determination was recognized in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007.[7] Lengthy negotiations were needed before the International Labour Organization approved Convention 169 regarding indigenous and tribal peoples. Gradually, these documents became part of the legislation of different countries.

Since collective rights are not part of the original canon of human rights, the tension between individual and collective rights results from the historical struggle of the social groups which, being excluded or discriminated against as groups, could not be adequately protected under individual human rights. The struggles of women, indigenous peoples, afro-descendants, victims of racism, gays, lesbians, and religious minorities marked the past fifty years of the recognition of collective rights, a recognition that has been always highly contested and always on the verge of being reverted. There is necessarily no contradiction between individual and collective rights, if for nothing else because there are many kinds of collective rights. For instance, we can distinguish two kinds of collective rights, primary and derivative. We speak of derivative collective rights when the workers organize themselves in unions and confer upon them the right to represent them in negotiations with the employers. We speak of primary collective rights when a community of individuals has rights other than the rights of their organization, or renounce their individual rights on behalf of the rights of the community. These rights, in turn, may be exerted in two ways. The large majority of them are exerted individually, as when a Sikh policeman wears the turban, an Islamic female doctor wears the hijab, or when a member of an inferior caste in India, a Brazilian afro-descendant or indigene takes advantage of affirmative action provided in their communities. But there are rights that can only be exerted collectively, such as the right to self-determination. Collective rights are there to eliminate or abate the insecurity and injustice suffered by individuals that are discriminated against as the systematic victims of oppression just for being who and what they are, and not for doing what they do. Only very slowly have collective rights become part of the political agenda, whether national or international. At any rate, the contradiction or tension vis-à-vis more individualistic conceptions of human rights is always there.[8]

Bearing in mind these illusions is crucial to build a counter-hegemonic conception and practice of human rights, particularly when they must be based on a dialogue with other conceptions of human dignity and the practices sustaining them. In order to better clarify what I have in mind, I will go on to define what I consider to be the hegemonic or conventional conception of human rights. I consider the conventional understanding of human rights as having some of the following characteristics: they are universally valid irrespective of the social, political and cultural context in which they operate and of the different human rights regimes existing in different regions of the world; they are premised upon a conception of human nature as individual, self-sustaining and qualitatively different from the non-human nature; what counts as a violation of human rights is defined by universal declarations, multilateral institutions (courts and commissions) and established, global (mostly North-based) non-governmental organizations; the recurrent phenomenon of double standards in evaluating compliance with human rights in no way compromises the universal validity of human rights; the respect for human rights is much more problematic in the global South than in the global North.

The limits of this conception of human rights become obvious in the responses it gives to one of the most important questions of our time. The perplexity it provokes grounds the impulse to construct a counter-hegemonic conception of human rights as proposed in this book. The question can be formulated in this way: if humanity is one alone, why are there so many different principles concerning human dignity and a just society, all of them presumably unique, yet often contradictory among themselves? At the root of the perplexity underlying this question is a recognition that much has been left out of the modern and Western understanding of the world.

The conventional answer to this question is that such diversity is only to be recognized to the extent that it does not contradict universal human rights. By postulating the abstract universality of the conception of human dignity that underlies human rights, this answer dismisses the perplexity underlying the question. The fact that such a conception is Western based is considered irrelevant, as, so it is claimed, the historicity of human rights discourse does not interfere with its ontological status. Generally embraced by hegemonic political thinking, particularly in the global North, this answer reduces the understanding of the world to the Western understanding of the world, thus ignoring or trivializing decisive cultural and political experiences and initiatives in the countries of the global South. This is the case of movements of resistance that have been emerging against oppression, marginalization, and exclusion, whose

ideological bases have often very little to do with the dominant Western cultural and political references prevalent throughout the twentieth century. These movements do not formulate their struggles in terms of human rights, and, on the contrary, rather formulate them, often enough, according to principles that contradict the dominant principles of human rights. These movements are often grounded in multi-secular cultural and historical identities, often including religious militancy. It will suffice to mention three such movements, of very distinct political meanings: the indigenous movements, particularly in Latin America; the peasant movements in Africa and Asia; and the Islamic insurgency. In spite of the huge differences among them, these movements all start out from cultural and political references that are non-Western, even if constituted by the resistance to Western domination.

Conventional or hegemonic human rights' thinking lacks the theoretical and analytical tools to position itself in relation to such movements, and even worse, it does not understand the importance of doing so. It applies the same abstract recipe across the board, hoping that thereby the nature of alternative ideologies or symbolic universes will be reduced to local specificities with no impact on the universal canon of human rights.

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Notes

[1] The liberal matrix conceives of human rights as individual rights and privileges civic and political rights. Upon this matrix, other conceptions of human rights evolved, namely those inspired by Marxist
or, more generally, socialist ideas that recognize collective rights and privilege economic and social rights over civic and political rights. On the different conceptions of human rights, see Santos, 1995: 250- 378 and Santos, 2007a: 3-40.

[2] Moyn (2010) considers human rights to be the last utopia, the grand political mission that emerges after the collapse of all the others. His insightful historical analysis on human rights is very convergent with my own.

[3] This point is also mentioned by Moyn (2010:89-90) who adds that neither Gandhi nor Sukarno or Nasser viewed in human rights doctrine an empowering instrument.

[4] "Napoleon's Proclamation to the Egyptians, 2 July 1798", cited in Hurewitz (ed.) 1975: 116.

[5] . For a detailed analysis of this issue, see Arendt, 1968 and 1990.

[6] This is what is happening today in many countries of the European Union, countries struck by the economic and financial crisis of the euro zone.

[7] Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_pt.pdf. Accessed 18 March 2013.

[8] Another dimension of the illusion of monolithism, not addressed in this book is the issue of the Western cultural premises of human rights and the quest for an intercultural conception of human rights. I address this dimension elsewhere. See Santos, 2007a. See also Eberhard (2002).