



Powerlessness vs. Empowerment: Aporia of Human Rights and Political Subjectivation

FRANZISKA MARTINSEN

Leibniz Universität Hannover, Germany

Introduction

Within the critical discourse of postcolonialism on human rights, there is an argument shared by a number of theorists, according to which human rights cannot *not* be wanted (cf. Kapur 2006: 682). An ambivalence of simultaneous attraction and repulsion, it is said, is inherent in human rights. Their origins in the European tradition of natural law, the corresponding Eurocentric and hegemonic bias of their conceptual foundations in the form of an abstract individual and a moral universalism, as well as the liberalistic dominance of the notion of property make them appear suspect to postcolonialist theorists. At the same time, human rights, not least with a historical view on the French Revolution, contain a profoundly emancipatory core. In their joint text *Qu'est-ce que la philosophie?*, Gilles Deleuze and Félix Guattari share the postcolonialist skepticism of the present conception of human rights (cf. 1991). In their opinion, human rights are a central part of the capitalist system, rather than actually questioning its domination. All the more problematic, they argue, is the fact that human rights elude any questioning: "Human rights are axioms. They can exist on the market with many other axioms, notably those concerning the security of property, which are unaware of or suspend them even more than they contradict them" (1991: 107). In my essay, I want to reflect on and somewhat weaken precisely this (pre-)judgment on human rights, by disclosing within them exactly that potential for resistance that Deleuze and Guattari find so painfully lacking in the present epoch of capitalism when they write: "We lack creation. *We lack resistance to the present*" (1991: 108). It must be shown that genuine resistance to present-day human rights can be developed from the very idea of human rights itself. The prerequisite for this, however, is a certain modification of the current understanding of human rights, which has to be carried out both discursively and in practice within the framework of political processes of subjectivation (cf. Rancière 1995; Martinsen 2017: ch. 6): human rights must be conceived as political rights rather than moral universal truths (cf. e.g. Peter 2013; Kreide 2015).



My article is divided into three parts: after the introduction, I explain in the second section the powerlessness of human rights, or the powerlessness of the ‘universal holders of human rights’. In the third part, based on the critique of the present conception of human rights, I take a look at their aspirative surplus from which, in my view, an empowering potential can arise.

Regarding the question of powerlessness versus empowerment, the ambivalent attitude towards human rights, as they present themselves to us in the now almost 70-year-old conception of the *Universal Declaration of Human Rights* (1948, henceforth UDHR), results from the – also historically – triply ambivalent character of human rights.

1) The first ambivalence consists equally in its promise and its failure: on the one hand, the human rights demand for freedom and equality embodies a tremendous explosive power both in a political and social context; on the other hand, it remains merely rhetorical at precisely those points where it appears to promise inclusion and participation. According to Hannah Arendt, human rights have a tautological or empty meaning, especially in political terms. Under the present legal conditions, human rights are either the rights of citizens or they are the rights of people who are *de facto*, i.e. politically, without rights (cf. 1968: 300; Rancière 2004: 297f; Zhang 2014: 245).

2) With this, we come to the second ambivalence of universality and historicity. While the aspiration of human rights is to be, if not universally valid, then at least universalizable (cf. Pollmann 2009), it is clear from the context of their origins in European modern natural law that both their formal-conceptual form as well as their content – Marx has famously pointed this out in his text “On the Jewish Question” – are subject to historical conditions and ideas (cf. 1961). Detached from real existing political circumstances, the whole of humanity may indeed be claimed as the holder of human rights; nevertheless, national powers such as nation-state sovereignty remain *de jure* and *de facto* largely unaffected. The politico-legal guarantee of human rights is dependent on the status of citizenship. Thus, the universality of the validity of human rights already ends at national boundaries.

3) At this point, the third ambivalence of affirmation and critique is touched upon. The support for human rights is self-evident for most of the theorists of the global North; at most, there is a controversy about details relating to justification. The situation is different for postcolonialist authors who denounce the blind spots and distortions of the current human rights discourse and its narrative of civilization or progress, even if they do not necessarily want to abandon the idea of human rights as a whole.

The three ambivalences are connected with the conceptual tension between the abstract-general and moral character of human rights on the one hand and, on the other, the fact that they attain political validity almost exclusively in the form of concrete civil



rights guaranteed by the nation-state in the first place. Based on this premise, the exclusion of non-citizens from the ambit of human rights is, among other things, unavoidable. And it is precisely the exclusion of non-citizens from the realm of political participation that has to be considered problematic with regard to the question of powerlessness versus empowerment.

Powerlessness

Modern human rights thinking imagines human rights as the rights of the abstract individual. There is a paradox inherent in the concept of the abstract individual, the explanation of which – drawing on Hannah Arendt’s critique of human rights – illuminates the connection between human rights and powerlessness. Arendt objects to the concept of the “‘abstract’ human being who seemed to exist nowhere” (1968: 291), which, according to the tradition of natural law, conceives the human being as *detached* from his/her historical determinants. The idea of an individual freed from belonging, status, and origin is first to be understood as an Archimedean point, from which the feudal system of the estates of the realm was to be unhinged. Accordingly, the originally emancipatory idea of human rights is to put them forward as claims of individuals against the state – with a view to avoiding despotism, the state is obliged to safeguard and protect rights which are seen as innate and thus inalienable. These pre-state rights are, in short, increasingly understood as moral rights – not least because it is only in this way that they can be regarded as a standard that is universally valid and independent of realpolitik, making possible a critical and, if necessary, corrective assessment of state action. Particularly with regard to the latter function, this distinction from positivized national constitutional or civil rights is logically even necessary. Nonetheless, especially the French *Declaration of the Rights of Man and of the Citizen* (1789) already recognized the need for a legal enshrining of these pre-state rights and therefore linked them with the nationally connoted idea of popular sovereignty. With the principle of the nation, however, there arises a conceptual problem requiring the reconciliation of the declared universality of human rights on the one hand with that very limitation of their validity to a certain number of persons on the other. According to Arendt, there is thus a contradiction between the abstract man and the characteristic of the plurality of human existence, a contradiction which the current concept of human rights cannot adequately grasp. A similar thought can be found in Deleuze and Guattari: “Human rights say nothing about the immanent modes of existence of people provided with rights” (1991: 107).

Above all, Arendt criticizes that, despite a wide range of implementations, human rights still remain essentially *non-political* rights. To be sure, human rights are – in abstract terms – attributed to every human being in the world as inalienable and



indispensable. However, outside the sphere of influence of a political community or beyond international treaties and some areas of international law, they are not capable of guaranteeing an actual legal right. In other words: human rights do not acquire any political significance as long as they are not already enshrined as civil or fundamental rights in national constitutions anyway. This, as mentioned earlier, is the tautological or empty meaning of human rights.

According to Arendt, the contradiction between the (liberal) conception of an abstract man and the social, political and cultural constitution of human existence culminates in the fact that the status of having universal human rights is identical with the status of rightlessness and, accordingly, with the status of being “thrown out” (1968: 294). This claim becomes more understandable when we bear in mind that, for her, ‘thrown out’ does not only mean a spatial *outside of*, e.g., the being-far-from, as it is characteristic of the flight, when a person is outside the territory of his homeland. Her critique is rather directed at the fundamental *outside of* as it is the reality for many immigrants with regard to social and political participation, most sharply in the context of internment, deportation or deprivation of *citizenship*. We can sum up with Arendt, Rancière and Agamben (cf. Arendt 1968: 294ff; Agamben 2001; Rancière 2004) that as a refugee/stateless person, man (sic) is *merely* man, he/she is the embodiment of the abstract individual par excellence, a human being divested of his/her politically and socially defined identity. In spite of the existence of a human rights regime, the individual is virtually in the state of nature. That this state of nature is not a metaphorical description, but the site of struggle for physical survival is illustrated in a particularly extreme way by the practice of intercepting boat people at sea or of restricting those travelling on land in their mobility with barbed-wire fences, as well as that of detaining or deporting those who have reached the mainland or destination. The state of nature of human rights is thus a decidedly precarious, indeed, a life-threatening state.

Arendt refers to the powerlessness and ineffectiveness of these ‘natural’, merely moral rights with her famous formula of the ‘aporia of human rights’. Frantz Fanon, too, explains the powerlessness of human rights by reference to the liberal paradigm of the separation of the moral and the political sphere, according to which the world is divided into a “zone of being” and a “zone of nonbeing” (1967: 10). While, in the zone of being, rights as guarantors provide for legality and protection, in the zone of nonbeing, they define a ‘victim’ status under which fall those affected by marginalization, exploitation and violence, without being granted the same subject position as the beneficiaries of the zone of being. The division of the spheres results from a problematic tendency towards non-state military professionalization (e.g. in the form of a one-sided shift to humanitarian measures) and is linked with a tendency towards depoliticization and, finally, the distorting production of so-called ‘victims’ (cf. Odinkalu 1999): In the current



International Human Rights regime, it is not the case that subjects generally and universally attribute human rights to themselves, but subjects, i.e., the so-called 'holders of human rights' are only constituted by human rights in the first place – namely as passive victims on the one hand, who are to be saved by heroic actors of an International Protection System on the other. In the name of human rights, the specific colonialist-global socio-economic hierarchies, power structures and privileges are thus naturalized and perpetuated (cf. Marks 2012: 317ff).

The discriminatory, marginalizing and excluding mechanisms are still inscribed into the notion of human rights universalism. Because holders of human rights, if they are not lucky enough to possess a certain citizenship, remain in the state of nature, this means exclusion for a certain number of people – both within nation-states and worldwide. Patrick Hayden uses the term 'global apartheid' for this (cf. Hayden 2009: 80). Similarly, Étienne Balibar – here focusing on Europe – speaks of a 'European apartheid' ("European citizenship-cum-apartheid", (2004: 124) and points to the continuity of colonial practices contained in this. For Arendt, therefore, the fleeing and the stateless person is the emblematic figure par excellence, whose status reveals the contradictions between a citizenship focused on national belonging and the current conception of human rights (cf. Krause 2008: 331).

Empowerment

At this point, the dimension of human rights powerlessness, most evident in the discourse of the aporia of human rights, shall be contrasted with the – not least historically documented – differing dimension of the *aspirative surplus* of human rights. In the aspirative aspect of human rights, one can locate the possibility of self-empowering practice beyond a national framework based on territorial and parentage principles. Instead of a pre-determined attribution of the subject status (e.g. justified in the context of natural law), as is typical of the contemporary human rights discourse, I, following Jacques Rancière, want to point to the potential of human rights semantics for political subjectivation, i.e., for a process in which subjects actively constitute themselves in the first place. Political subjectivation, according to Rancière,

redefines the field of experience that gave to each their identity with their lot. It decomposes and recomposes the relationships between the ways of doing, of being, and of saying that define the perceptible organization of the community, the relationships between the places where one does one thing and those where one does something else, the capacities associated with this particular doing and those required for another. (1999: 40)



Rancière means that political subjects are not to be viewed as already existing entities. Instead, they constitute themselves, e.g. in the course of the demand for certain rights as political subjects (cf. 2004). In the process of the formation as subjects, however, the actors, as Rancière emphatically points out, generate a political space, the result of which is initially open. The activities of subjectivation can lead to the creation of a new political order (in Rancière's terminology, a new 'police' order). However, they can also, for the time being, focus on resistance and the questioning of the existing order.

Now, human rights are able to play a significant role in processes of subjectivation insofar as, on the one hand, they constitute reference points for individual political and social struggles for political equality and the attainment of rights, and, on the other, they are closely linked to diverse notions of a (also global) democratic order beyond existing police orders. Nevertheless, it should be kept in mind that the affirmative reference to human rights as a guiding principle for strategies of empowerment must not be identified with a consent to the already existing version of the conception of human rights, as it exists in the form of the UDHR 1948. On the contrary, approaches having recourse to human rights are well aware of the fact that human rights as rights in *realpolitik* constitute a facet of the practices of governmentality aimed at the stabilization of domination and the extension of control. The fear that an internationalization of the legal system primarily perpetuates or even exacerbates the inequality between the global North and South (cf. Saar 2006: 812ff), i.e., the global economic relations of precarity, so that political mechanisms of exclusion are cemented rather than dismantled, remains in place.

If, however, in the consideration of processes of subjectivation, the emphasis is placed more strongly on the aspect of critique and the questioning of existing understandings of human rights and on the aspect of resistance to prevailing patterns of order, then there is the chance of examining the prerequisites for the formation of a normative counter-order: Through a perpetual verbal attacking of the existing order, the repeated transgression of – conceptual and territorial – boundaries, as well as the gathering and pooling of experiences of resistance, actors can constitute themselves as a collective political subject, which does not necessarily have to merge into a homogeneous unity, but preserves its diversity. Concerning both, the naming and identification of experiences of injustice as well as the aspirative ideas of a humane world – especially postcolonialist theorists point this out – the vocabulary of human rights is helpful. After all, they name exactly that which should be equally and inalienably given to humans as humans. It is then up to the concrete political disputes to determine discursively the precise content of human rights claims. In this discourse, particular importance is attached to the right to political participation, with the help of which, according to Rancière, the interval between having-human-rights and not-having-human-rights could be overcome.



In this context, human rights are the synonym for the unquenchable and self-legitimizing “*desire for universal rights*” (Hoover 2013: 935). This, however, is not about the indifferent universalism of the European Enlightenment. Instead, a pluralistic, resistant universalism must be developed. Here, e.g., postcolonialist approaches which interpret human rights as an “*insurrectionary praxis*” (Baxi 2006: 22) are to be made fruitful. Following Gayatri Chakravorty Spivak (cf. 2008), with the uncovering of problematic implications and the concomitant deconstruction of the distorting connotations of the abstract individual as the holder of human rights, it could – despite a widespread skepticism towards the western-dominated human rights practice – be made possible for the subaltern to see themselves as subjects of their own history and to empower themselves to political agency. Thus, instead of completely rejecting human rights on the basis of their – indisputably – Eurocentric origin and their frequent functionalization for the purposes of power, the option is opened up to modify the concept of human rights inventively in the Deleuzian sense. Then, the goal of ‘struggles about rights’ would not be a finished interpretation of human rights. Rather, in keeping with Arendt’s demand for a fundamental right to rights, it would be about ‘the primordial political right *to take the right*’ (“*das politische Ur-Recht, sich das Recht zu nehmen*”, Raimondi 2011: 379). Certainly, this right would consist first and foremost in bringing forward new proposals for diverse interpretations of the right to have rights and thus new impulses for its political implementation.

One of the main criticisms of the critical human rights discourse (cf. Martinsen 2017: ch. 4) concerns the lack of a right to political participation within the present catalog of human rights. Insofar as the right to access to political participation is made dependent on a particular nationality, it is, according to common legal practice, not given the same status in the human rights catalog as the right to freedom of expression or assembly (cf. art. 20 UDHR 1948), let alone the right to life or freedom (cf. art. 3 UDHR 1948), which is considered universally valid and attributed to every individual independent of nationality. At this point, a corresponding criticism of human rights comes into play, by turning the tables and discussing the option in how far a right to political participation (independent of citizenship) should even be counted as part of an ineluctable core of human rights – such as the right to life – in order to meet the criterion of empowerment.

For a possible modification of the understanding of human rights, which more strongly accommodates the political dimension, indeed, the political conditionality of pluralistically constituted human life, what is thus needed above all is a critical reflection of the ‘European’ origin of the legal subject, for which particularly postcolonial theory can provide insights examining in more detail the reduction of human rights to pre-state rights. To this end, it is imperative to make the problematic inscriptions of the human



rights concept of the subject clear – albeit with the knowledge that they cannot be eliminated without giving up important historical achievements.

1) An alternative notion of human rights would therefore firstly have to attach particular importance to the right to political participation, because the possibility for each individual to have a share in the shaping of the conditions of one's own and of the collective life constitutes precisely that fundamental aspiration which deserves the name 'human right'.

2) Secondly, a critical theory of human rights should – drawing on socio-theoretically informed understandings of interpersonal communication structures and of the associated institutions – reflect on the relationship between individuals and possible forms of the political community, and thus not regard collectives such as political communities as something that precedes the individuals. This in turn means that the focus should be more on spaces of freedom to be opened up in and through political actions and on the resulting dynamics, processes and structures, and less on the details of the design of institutions concerning forms of sovereignty and government. If, in the following, a more convincing reading of the relationship between human rights and political participation is the issue, then what is primarily of interest here is the empowerment potential for individuals which could result from a conceptual connection of human rights and political participation. Jacques Rancière refers to this potential for political subjectivation as a democratic process, which

implies the action of subjects who, by working the interval between identities, reconfigure the distribution of the public and the private, the universal and the particular. Democracy can never be identified with the simple domination of the universal over the particular. (2006: 61f)

Democracy is here not identified as a mode of sovereignty or government, but as a specific practice of participation in the course of which logics and meaning patterns of existing patterns of authority and government are disrupted and redefined – if individuals are willing to see themselves as actors and to open up a political space. Democracy is then not to be confused with a general mode of sovereignty which lays down universal norms irrespective of the articulation of dissent.

The modification of the understanding of human rights could then consist in revitalizing the emancipatory potential of human rights. In this way, a reduction to purely humanitarian acts and a depoliticization of human rights activities could be countered. In the return to the *empowering* potential originally inherent in human rights, a – to put it cautiously – 'truly universal' value could be discovered, which is shared by plural concepts of subjectivation. This form of universalism, however, would not be an 'instrument of a globalization from above' (cf. Sousa Santos 1995). Rather, human rights, especially also in subaltern contexts, as demanded by postcolonial



criticism, can be read as an appropriation of the political subject status, without necessarily having to share the concept of an atomized, utility-maximizing individual inherent in the Eurocentric variant of human rights. In this open – and opening – reading, the originally progressively connoted event of the human rights declarations in the late 18th century, which is emphatically evoked by so many, could actually take a form in which the Arendtian right to rights is understood to mean that the right to political subjectivation is owed to every individual.

The notion of a sphere of political self-empowerment, which ideally consists not only in a worldwide inclusive political negotiation process as regards the content of human rights, but also in the active struggle for the right to political participation, consequently raises expectations concerning the development of a disputatious public regarding the scandal of human rights exclusion, expectations that are directed neither solely at official institutions, office holders and decision makers, nor at theorists, but simply at all people.

The outcome of this negotiation process is by no means certain. At the present time, it has not been decided which concrete conclusions are to be drawn from a human rights critique such as the one made here – the spectrum of approaches ranges from ambitious deliberations on equal opportunities policies for refugees and stateless persons within nation states, such as the *Charter of Lampedusa* (cf. Melting Pot Europa 2014), to the conception of a transnational citizenship (cf., among others, Cabrera 2010), and all the way to the idea of a global political sphere of a democracy ‘without demos’ (cf. Colliot-Thélène 2011). The step towards the establishment of a global order in which all humans are equal world citizens would not be far at this point. The fact that these approaches, even if they appear to be desirable in normative terms, appear utopian or are at least regarded as unrealizable, causes much dismissal within the discourse. However, Alex Demirović (2008: 117) recalls that in the course of the historical development, a lot has been included in the canon of human rights that corresponds to the experiences and the social struggles of past centuries.

As part of a critical human rights semantics, human rights could hence at least serve as a radical interrogation reservoir and thus assume a role that seems to have somewhat fallen into oblivion in the course of a sometimes over-affirmative human rights policy. Wendy Brown points out that the current human rights regime and its rhetoric must be reminded that the realization of human rights does not consist in the enlargement of market-compliant freedom-of-choice options, but that they are threatened precisely by this regime’s often undemocratic and hegemonically enforced interventionist remedies against so-called human ‘suffering’. Brown certainly does not deny that human suffering is to be combated, yet she doubts whether prevention and alleviation of suffering are ultimately “the most that can be hoped for” (2011: 145) just because the hopes for more



than the alleviation of suffering, i.e., e.g., for inclusive participation and democratic equality, must be considered as utopian. At this point, however, Wendy Brown's pessimism reveals precisely its opposite, namely that the present conception of human rights is precisely not the best that can be hoped for. Instead, the anthropological notion of human life contained in it should urgently be revised. In this context, the Deleuzoguattarian skepticism has already been pointed out, and indeed, one has to agree with them when they write that human rights do not say anything about the concrete modes of existence of human beings provided with rights" (cf. 1991: 107). It is therefore all the more important that people around the world make their diverse views of human life as well as their desire to have a political say in the conditions of life heard.

This would already be a first step towards (self-)empowerment. And Claude Lefort's notion of a 'politics of human rights' proceeds from this empowering potential:

Human rights politics and democratic politics are two different ways of responding to the same demand: to exploit the resources of liberty and creativity from which an experience derives its power to bear the effects of the division; to resist the temptation to exchange the present for the future, but rather to make the effort to trace in the present the prospects of success which become apparent through the defense of acquired rights and the demand for new rights, and by doing so to learn to differentiate these from the mere satisfaction of interests. (cf. 1981: 83, my translation)¹

Certainly, this form of human rights politics is, if at all, still at the beginning of its possibilities of development. What the future of human rights will look like, if a global political negotiation process about them will soon be initiated, all this is left to a becoming which, according to Deleuze and Guattari, "always eludes the majority" (1991: 108). The urgent normative demand of human rights to make the current exclusion of a large number of people marked as 'strangers', 'refugees', 'stateless persons' or simply 'others' a historical fact, just like the exclusion of 'savages', workers and women in past centuries, can, in my opinion, not be denied. For the time being, the semantics of human rights lends itself to this. As Deleuze puts it in his "Postscript on the Societies of Control": "There is no need to fear or hope, but only to look for new weapons." (1992: 4)

translated from German by Florian Cord

¹ The original reads: "Politique des droits de l'homme, politique démocratique, deux manières donc de répondre à la même exigence: exploiter les ressources de liberté et de créativité auxquelles puise une expérience qui accueille les effets de la division; résister à la tentation d'échanger le présent les lignes de chance qui s'indiquent avec la défense des droits acquis et la revendication des droits nouveaux, en apprenant à les distinguer de ce qui n'est que satisfaction de l'intérêt." (Lefort 1981: 83)



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