

Rethinking Kant's Concept of Human Rights as Freedom

Repensando o conceito de direitos humanos como liberdade de Kant

Edward Demenchonok¹
Fort Valley State University

Abstract

The paper examines the current debates regarding the grounding of human rights in a pluralistic, culturally diverse world. It analyses the challenges which come today from certain policies of human rights which instrumentalize them under the pretext of a "global war on terror" and redefine them in terms of democracy promotion and regime change, as well as those challenges which come from ideologies which question the core principles of human rights and provoke the so called "crisis of legitimization." The paper argues for the necessity of restoring the genuine meaning of human rights and of the role of citizens in striving for their implementation. At the heart of the analysis is Kant's concept of human rights as freedom. With Kant as its backdrop, the paper shows that the claim that religious worldviews provide the only intelligible foundation, as in Nicholas Wolterstorff, faces serious challenges in a pluralistic, culturally diverse world. The paper then analyzes the non-religious philosophical concepts which seek to develop an account of human rights that does not depend upon controversial metaphysical or religious doctrines. It examines an account of human rights from the perspective of discourse ethics as developed by Karl-Otto Apel and Jürgen Habermas. It also analyses the concepts of human dignity and "emerging morality" by Arturo Roig and the "ethics of liberation" by Enrique Dussel. The analysis shows the ongoing relevance of Kant's ideas and their recent development by the theorists of discourse ethics and of dialogical and democratic cosmopolitanism.

Key words: human rights, freedom, dignity, cosmopolitanism, Kant.

Resumo

O texto examina os debates atuais a respeito da fundamentação dos direitos humanos em um mundo pluralista e culturalmente diversificado. Analisa os desafios que surgem atualmente de certas políticas de direitos humanos que os instrumentalizam sob o pretexto de uma "guerra global contra o terror" e os redefine em termos de promoção da democracia e regime de mudança, assim como aqueles desafios que surgem de ideologias que questionam os princípios básicos dos direitos humanos e provocam a assim chamada "crise de legitimação". O texto argumenta pela necessidade de restaurar o significado genuíno de direitos humanos e do papel dos cidadãos em lutar por sua imple-

¹ Fort Valley State University, 1005, State University Drive, Fort Valley, GA 31030. E-mail: demenche@usa.net.

mentação. Com Kant como pano de fundo, o texto mostra que a afirmação de que visões religiosas ao redor do mundo fornecem a única fundamentação inteligível, como em Nicholas Wolterstorff, enfrenta sérios desafios em um mundo plural e culturalmente diverso. O texto então analisa os conceitos não religiosos que buscam desenvolver um tratamento dos direitos humanos que não dependa de controvérsias metafísicas ou doutrinas religiosas. Examina-se o tratamento dos direitos humanos da perspectiva da ética do discurso desenvolvida em Karl-Otto Apel e em Jürgen Habermas. Ele também analisa o conceito de dignidade humana e "moralidade emergente" de Arturo Roig e a "ética da libertação" de Enrique Dussel. A análise mostra a contínua relevância das ideias de Kant e seus desenvolvimentos recentes por teóricos do discurso, da ética do diálogo e do cosmopolitismo democrático.

Palavras-chave: direitos humanos, liberdade, dignidade, cosmopolitismo, Kant.

In this paper, I will begin with Kant's concept of human rights as freedom and his ideal of cosmopolitan order, arguing for their relevance. I will examine the concept of human rights as moral rights, as developed by the religious theorists, such as Nicholas Wolterstorff (2011, 2008). Then I will analyze the alternative concepts, mainly focusing on the discourse-ethics approach to justification of human rights by philosophers such as Karl-Otto Apel (1997) and Jürgen Habermas (2001, 2008, 2010). I will also analyze the concepts of human dignity and "emerging morality" by Arturo Roig (2000, 1997, 1994, 1981) and the "ethics of liberation" by Enrique Dussel (1998). The paper culminates by relating human rights to the current debate on cosmopolitanism.

Restoring the Genuine Meaning of Human Rights

In rethinking the problem of human rights, it is helpful to look at their modern origins. The genesis of human rights shows their moral core stemming from different religious and philosophical grounds. From the very beginning of the development of the humanitarian rights concept there was a moral underpinning, essential to its meaning. The concept of human rights had religious-moral origins: It emerged during the 16th and 17th centuries in theological disputes, the Reformation, the ensuing struggle for religious tolerance, and the popular liberal movements. The first and most basic of all human rights was freedom of religion, which was further articulated as freedom of speech, of the press, and of assembly. Assertions of the free use of one's own natural capacities (the complex of rights to life, liberty, and the pursuit of happiness) and property (the complex of property rights) was based in Western societies on the struggle for religious freedom and toleration. This establishes the core unity of human rights, which was clearly stated, for example, in John Locke's *Second Treatise of Government* (Locke and Peardon, 1952).

Universal human rights are the ethical criteria for positive social rights. In philosophy, such an ethical justification of rights was sustained by Kant, Fichte, von Humboldt, and other representatives of German liberalism. A deviation from this trend, resulting in a more utilitarian interpretation of rights and the diminishing of the universal ethical meaning of human rights, can be traced to interpretations of basic subjective rights in the late Enlightenment (for example, in the works of Claude Helvetius and the physiocrats in France and the so-called "utilitarian liberalism" of Jeremy Bentham). Such utilitarian justifications of human rights are questionable from the normative point of view. The original meaning of human rights is overshadowed by such themes as economic independence, private property, free

enterprise, and a free market economy. As result, since the early 19th century, the concept of human rights has become a target of criticism from legal positivism, and from socialist, neoliberal, and neoconservative ideologies.

In opposition to this utilitarian interpretation, there have been efforts to regain the original meaning of human rights and of the development of strong ethical justifications of the subjective rights and liberties of the individual. Such efforts find their inspiration especially in Kant's philosophy (Kant, 1996, 1964).

Kant's political thought and philosophy of law are intrinsically related to his ethics. They were developed against utilitarianism in morality and paternalism in politics. Although the categorical imperative (universal moral law) is a single principle, Kant distinguishes its three formulations: the principle of universality, the principle of the intrinsic value of each person, and the principle of autonomy. For Kant, morality and right (*Recht*—legal right) are intrinsically related, and both can be expressed as the categorical imperative. Transcendental ethics has from the very beginning contained a powerful theoretical-juridical potential, and Kant's philosophy of law provides its closest conceptual-juridical continuation. Morality and right in the transcendental-practical doctrine function as two equally important and complementary parts of a single liberal deontology. For Kant the notion of right is ethically grounded, and it requires the idea of a constitutional state.

Kant's categorical imperative was a critical response to the heteronomous and utilitarian view of morality, which he associated with authoritarian rule. Similarly, the categorical imperative of right was his reaction to the juridical views promoted by moralization and state-centered ideas (statism).

According to Kant, there is only one innate right: the birthright of freedom. "*Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity" (Kant, 1996, p. 30). This principle of innate freedom already involves the innate *equality* of every human being, the right to be independent, and to be one's own master (*sui juris*). In the context of the categorical imperative of right, Kant formulates the concept of human rights. He is talking about the right of an individual as freedom. *Freedom* is the sole original right; it is inherent to each human being by virtue of his or her humanity. From the concept of freedom the whole concept of an external right is derived. From the idea of freedom it follows that individuals living within the civil state as a state of law are free, equal and self-dependent. This concept is opposed to a more utilitarian interpretation of rights and political paternalism.

Kant's philosophy helps us to better understand the meaning of the definition of human rights as inherent and inalienable, as formulated by Thomas Jefferson in the United States Declaration of Independence. Kant makes these meanings explicit, and he elaborates on the moral-philosophical explanations of humanitarian rights. His transcendental-practical philosophy was able to adequately express the philosophical underpinning of this view. The term "inalienable rights" meant that fundamental human rights are "inherent" or "imprescriptible", thus recognized as belonging to man forever. The forgotten meaning of "inalienable" is that an individual himself is not allowed to surrender his rights or relinquish them for any pragmatic considerations. Since no citizen is allowed to relinquish his or her freedom, similarly, a nation as a whole can not to do so, either. Therefore, a human being, by recognizing his or her fundamental individual rights as "inalienable", has an obligation to exist politically free forever. Kant distinguishes between *natural* and *acquired* rights. The natural right is the sole original right, and it consists of freedom. It is an internal right. It is different from an acquired right—an external right, secured by a legal act. The human right to freedom indicates the original unity of meaning of human rights.

Kant emphasizes that a person, as the subject of a morally-practical reason, is not to be valued merely as a means to the ends of others or even to his own ends, but is to be prized as an end in himself; that he or she "possesses a *dignity* (an absolute inner worth)", deserving the respect of others, and reciprocating respect of their dignity as well. "And this *self-esteem* is a duty of man to himself" (Kant, 1996, p. 187).

He outlines the theory of right in accordance with the concept of freedom. A social relationship in freedom among individuals under coercive laws is implied in the concept of a civil constitution. Kant defines the civil state as a lawful state, based on *a priori* principles, according to which every member enjoys the *freedom* as a *human being*, the *equality* as a *subject*, and the *independence* as a *citizen* (Kant, 1991, p. 74).

Kant strongly opposed moral utilitarianism. Similarly, his philosophy of law was developed with systematic criticism of political paternalism (which is the flip side of dependence). Kant developed his definition of individual freedom in opposition to authoritarian paternalism, utilitarian arbitrariness, and the "despotism of paternalistic benevolence". Kant's formulation articulates the anti-paternalistic orientation of his view of right. For Kant, a *paternalistic* government, treating its citizens like immature children and thus infringing upon their freedom, is "the most despotic of all" (Kant, 1996, p. 94). When citizens are "paternalized" by government, they become dependent on it and lose their freedoms. For example, today under the pretext of providing security and protecting citizens from "terrorists," their privacy is invaded and their civil liberties infringed upon, or taken away. But who will protect them from Big Brother's tyranny?

Raising moral and legal objections against the abuse of power by rulers, Kant equally rejects servility on the part of the citizens, seeing it as the flip-side of paternalistic despotism. Citizens, who rely on the state and give up their civil liberties in exchange for the promises of protection and benefits, actually pander to the authoritarian trend of power. When the bubble of the unfulfilled promises bursts and the state policies and programs collapse, no one is held accountable; while the people shoulder the burden. Kant argues against considering autonomy as a bargaining chip: freedom must not be exchanged for welfare. No money in the world can buy human dignity and freedom. He philosophically justifies the individual's right to political freedom. The individuals have both the opportunity and the responsibility to make use of their minds, thus becoming enlightened and active citizens. Kant gives the individual firm ground for striving to realize his or her rights and thus the possibility to be the master of one's own destiny.

In contrast to paternalism, Kant elaborates a concept of autonomy, distinguishing its three varieties: moral, utilitarian, and civic. The opposite of paternalism is the rule of law, which is the basis for civil society. The rule of law is granted by three types of legal norms: human rights, legal guarantees of social equality, and democratic rights (or the rights of an active citizenship). The principles of right should guarantee the citizens' independence from paternalistic wardship and, on the other hand, guarantee their security within the state.

Since every society is related to all other societies, it needs peaceful outer conditions for its internal freedom; thus the free citizens of a republican state must seek peaceful relations with other peoples and establish peaceful alliances, and, ultimately, a voluntary federation of free states. The culmination of Kant's philosophy of law was his vision of lasting peace through the lawful alliance of states—which would serve as an alternative both to lawless anarchy and to Leviathan of a "world republic" (as despotic "universal monarchy"). Therefore, the categorical imperative is threefold: the imperatives of morality, right, and peace; and each of them is in

the form of a categorical imperative. This shows the genuine ethical foundation of law and politics.

This Kantian concept of the human right to freedom and his political philosophy provides us with an indispensable key for making sense of the complexity of the human rights issue today. To put it simply, today's task of regaining robust democracy is inseparable from the necessity of restoring the genuine meaning of human rights and of the role of citizens in striving for their implementation. Kant's proposed solutions—establishment of the rule of law within society and in the international arena, a peaceful federation of free states, enlightenment of the citizenry and their representatives, and the foundation of a cosmopolitan of law in accordance with the idea of Human Rights—remain apt and urgent.

Human Rights Versus “Humanitarian Interventionism”

Scholars distinguish several phases in the discourse of human rights, which are more or less correlated with the major “turning points” in the history of the twentieth and twenty-first centuries. The First World War urged nations to establish the League of Nations (1919), which was the first attempt to implement a Kantian project of perpetual peace. After the Second World War there was the second attempt – the formation of the United Nations in 1945, whose express purpose was to maintain world peace and to promote human rights. It became an alternative to politically organized violence. The International Bill of Human Rights was the expression of the notion that human freedom and dignity is the nucleus from which a multidimensional, universally valid system of human rights might be derived. The morality of individual rights was crystallized in international law, which was adopted by consensus by the UN as the most authoritative international body, thus establishing the foundation upon which the idea of human rights can rest.

The end of the Cold War opened new opportunities for amelioration of international relations and created expectations of the implementation of human rights in the world. However the neoconservative “revolution” and the shift in U.S. policy to hegemonic unilateralism derailed this process. Human rights discourse obtained a new function, that of the justification of sanctions and “humanitarian” military invasions, framed as “enforcement” of international human rights law. The traditional “transcendental” or normative aspect of human rights was obfuscated, and they became viewed as firmly seated in concrete political communities, governmental institutions, and positive law. Legality was in this way replaced with a “moralization” of international politics grounded in the ethos of a hegemonic superpower (Demenchonok, 2010, p. 346-348; see also, Demenchonok, 2009).

“Global War on Terror” as President Bush's political doctrine and the U.S. invasion in Iraq in violation of international law were accompanied by the grave abuses of human rights, including Guantanamo and Abu Ghraib, the policies on detentions, harsh interrogations which amount to torture, and warrantless wire-tapping. The attempts to justify the policies violating human rights were made by reinterpreting and challenging the Geneva Conventions and habeas corpus, as well as by claims to set the new norms.

This policy and ideology, threatening to reverse the achievements in the area of human rights, provoked deep concerns among philosophers, political scientists, and human rights activists. They are concerned about the challenges which today come from certain policies of human rights which instrumentalize them and under pretext of a “global war on terror” claim the “supreme emergency” exception

against the principle of discrimination in war or justification of torture. They are also concerned about the ideologies challenging the core principles of human rights and provoking the so called "crisis of legitimization" with respect to human rights. This provided a new stimulus for discussions regarding the theory of human rights.

Attempts at the Religious Grounding of Human Rights in a Culturally Diverse World

The commonly accepted foundation of human rights is the dignity of the human person. Nevertheless, the ideal of human dignity is thought of as relying upon different aspects of the human being: on its nature, on reason, on social integration, or on relations toward the God. Among these approaches, the main division in the justification of the idea of human rights is between those which appeal in some way to religions, and, on the other hand, those seeking to provide a non-religious and non-metaphysical philosophical grounding.

In the West, the idea of human rights has been traditionally rooted in Christian theology and has grown beyond its theological origin. The religious interpretation emphasizes the genealogy of human rights discourse, which derives from assumptions about God as the central power of moral order in the universe and of human beings endowed by Him with certain inalienable rights.

The contemporary adherents of this interpretation attempt to show what they purport to be the necessary conceptual dependence of human rights upon one religious conviction or other. Their premise that the idea of human rights can and must be grounded religiously is accompanied by skepticism regarding all secular justification of human rights. Religious and secular approaches are viewed as mutually exclusive. However the attempts at the religious grounding of human rights are facing problems, given the culturally diverse world in which there are many religions as well as many peoples with non-religious worldviews. The religious arguments of justification may be convincing for some, yet not convincing for others. But regardless of the possible strengths and weaknesses of the religious arguments, the problem arises from claiming that only they provide the "true" justification as opposed to any secular philosophical justification.

The adherents of the religiously grounded concept of human rights – Nicholas Wolterstorff, Michael Perry, Hans Küng, and Max Stackhouse, among others – have in common their claims about the religious roots of the idea of human rights, and the dismissal of the nonreligious philosophical justification for human rights. This approach would create difficulties for the project of globalizing human rights, because in a culturally and religiously diverse world people with different views about religion and persons with nonreligious worldviews would have difficulties in accepting legitimacy of human rights.

The religious approach to justification of human rights is developed, for example, by Nicholas Wolterstorff. He traces the origins of natural inherent human rights back to the Hebrew Bible and the Christian scriptures and elaborates on their theological articulation. He argues that natural rights are grounded in the worth of the right-holders, in the equal and ineradicable dignity that we each have *qua* human being. Thus the theorists need to identify the feature or relationship of human beings on which that dignity supervenes, and that would ground human rights. He considers this feature as the relationship of human beings to God.

From this perspective, Wolterstorff criticizes the secular philosophical concepts of dignity for appealing to certain capacities that human beings possess. As an alternative, in looking for a theistic grounding of natural human rights that

would not in any way involve a reference to human capacities, he turns to the worth-imparting relation of human beings to God: to the idea of God's redemptive love of every creature who bears the *imago Dei*, bestowing each human being with great and equal worth. Natural human rights in here in the worth bestowed on human beings by God's love: "Natural human rights are what respect for that worth requires" (Wolterstorff, 2008, p. 352, 360). The conviction of God's love for each and every human being equally provides the believers with a distinct way of grounding natural human rights. Also the conviction is that God holds human beings accountable for doing justice; and human beings must treat each other justly, in ways that properly reflect their worth (Wolterstorff, 2008, p. 89, 361).

Wolterstorff further argues that "it is impossible to develop a secular account for human dignity adequate for grounding human rights" (2008, p. 325). He attempts to prove this thesis by targeting Kant's philosophy: "Almost all secular attempts at accounting for the dignity that grounds human rights do so by appealing to certain capacities that human beings possess, and almost all of those, in turn, follow Kant in appealing to the capacity for rational agency" (Wolterstorff, 2011, p. 148). His criticism is focused on the Kantian celebration of the human capacity for rational agency and autonomous legislation. He considers Kant "the paradigmatic representative of this approach" and asserts "the fatal flaw in Kant's capacities approach to human dignity", thus his critique is supposed to be the testing ground for the adequacy of secular philosophy (Wolterstorff, 2008, p. 325, 333).

Wolterstorff charges Kant's grounding of human rights with three problems. First, that Kantian ethics allegedly implies that rational beings differ in worth, thus in dignity. But Kant's second formulation of the categorical imperative around the concept of dignity (sometimes referred as the practical imperative or principle of dignity) clearly displays the intrinsic value of persons: "Act in such a way that you always treat humanity, whether in your own person or in the person of another, never simply as a means but always at the same time as an end" (Kant, 1964, p. 96). Kant sees humanity itself as possessing fundamental worth—dignity. Humanity in a human being is what makes each person worthy of being treated as an end. It has absolute value. In contrast to "things" as the objects of inclination, which have only a conditional and relative value, rational beings as "persons" have an intrinsic value: dignity. One possesses dignity by virtue of one's humanity, and all members of the humankind have it.

Kant explained human dignity in relation to reason. It is because of the gift of reason that human beings have dignity. They are capable of understanding the implications of the universality of the maxims of their actions. Humanity itself is considered a dignity because of its rationality. Humans are dignified as autonomous, capable of legislating moral law into themselves. Humanity means the capacity to make autonomous rational choice, to set ends for oneself, and to guide one's actions by values one considers reasonable to accept. Dignity is associated with the respect to the categorical imperative, giving it an account of its unconditional authority by grounding it in the nature of free rational agency. The principle of morality gets its authority from the fact that it is by acting from the principle that we exercise our free agency. According to the categorical imperative, none may be reduced, or reduce themselves, to mere means or objects. In the language of rights, it means that every member of the human race possesses human rights. The dignity of the human beings must be considered in the way in which they are entitled to be treated.

Second, Wolterstorff attempts to relativise the Kantian concept of intrinsic human worth and to present it as implying so called "differentiated dignity." In mentioning the differences of the intellectual performance of people, who have a varying amount of technical skills and whose rational capacities develop as they

mature, he argues that "the capacity for rational agency comes in degrees, so the worth a human being has on account of possessing the capacity also comes in degrees," which violates "the equal-worth proviso" (Wolterstorff 2011, p. 148). He further concludes that because the capacity for rational agency comes in degrees, resulting in different worth, it is "intrinsically related to the differential dignity that supervenes on the particular extent of the capacity one possesses and one's competence in exercising it" (Wolterstorff, 2011, p. 149). Wolterstorff attributes this "highly differentiated dignity" to the capacity approach, as a contrast to the idea of equal dignity. But this opposition is rather constructed by Wolterstorff himself, and the capacity approach does not imply inequality in worth and dignity.

Technical skills, intellectual abilities, as well as moral wisdom should not be taken for granted, but rather need to be developed, and this takes effort. Thus the importance of education, for example. What matters is to see the differences in exercising rational capacities from the point of view of the necessity for each person to develop them and to make efforts for intellectual growth and moral self-perfection (and also in the Enlightenment sense of learning how to think for oneself). But this level of analysis concerning the diverse and dynamic aspects of developing and using one's intellectual abilities should not be confused with more general and higher levels of analysis. The philosophical approach to the rational nature of human beings leads to conclusions regarding the general capacity of a person to set ends and act according to reason, to have the intrinsic worth and dignity of humanity. Kant's ethical theory is grounded in the idea of the dignity of the rational nature of every human being.

Third, Wolterstorff criticizes philosophical justifications for human rights for grounding the moral worth of human being not only with reference to the specific human capacity for rational agency and autonomous legislation but also ontologically distinguishing human from nonhuman animals and the differences in their capabilities. He accuses the capacity approach of not including into the "circle of dignity" those human beings whom he considers lacking the capacity for rational agency (such as Alzheimer's patients who are no longer capable, and the mentally impaired who have never been capable, or infants). He uses the so called the argument from "marginal" cases, practiced by *species-ism* in the discussions regarding "nonrational" human beings (the marginal cases of humanity) and the rights of nonhuman animals (some which are highly intelligent and sociable such as dolphins) (Wolterstorff, 2011, p. 146-147). According to this argument, not all humans are rational, yet if such humans are morally considerable it would be inconsistent to deny animals with similar capacities a moral consideration, therefore, either marginal humans and animals are both morally considerable or neither are. This apparent dilemma implies that the nonreligious idea of human rights presupposes either that animals do not have rights of their own or that human rights will always trump animal rights. He concludes that due to the undeniable variation among our possession and use of the relevant capacities, the capacities approach cannot adequately protect the equal moral worth of all human beings. It also would elevate some animals having the capacities above the threshold of moral dignity, while it would depreciate those human beings who lack the capacities, and thus "fall outside the circle of dignity" (Wolterstorff, 2008, p. 330).

Wolterstorff's arguments are questionable. The exceptional ("marginal") cases he referred to still do not disprove the fundamental characteristic of humans as rational beings. Reason is considered to be a definitive characteristic of human nature, and it is closely identified with the ability to self-consciously change attitudes and therefore with the capacity for freedom and self-determination. The argument from marginal cases has been criticized by those who consider it too blunt to explain

why animals have rights and it is insensitive regarding cases of human beings who lack certain rational capacities.

According to Kant, treating a person as an “end-in-himself” means treating him or her as a rational being. Rational beings are those who are capable of reasoning about their conduct and who freely decide what they will do based on their understanding of what is best. They are treated as responsible and may be rewarded or punished for their actions. Children or mentally ill persons are not considered lacking their human dignity, and they must be expected to be treated properly. Children are included in the Kantian moral universe, considering that childhood is a stage in the life of a person who normally develops to autonomy. The proper treatment of children should fully consider the rational capacities that they are in the process of developing. With regard to the children with intellectual disabilities, in contrast to the argument from “marginal” cases, many theorists prefer more inclusive approaches and more adequate strategies that provide guidance about the moral responsibilities adults have towards children. They agree that the potential of children with intellectual disabilities is morally considerable, and explore the moral significance of intellectual capacities, the capacity for welfare, and the interests of others (Mullin, 2011, p. 291-305).

The moral standing of mentally ill or incapacitated human beings comes from their membership in a species in whom rational capacity is the norm. The criteria of their proper treatment differ from those for fully competent agents, considering their interests and respect for their level of self-government. This includes a differentiation between those who are responsible for their actions and those who are not, such as mentally ill people, who are not in control of themselves and therefore cannot be “held accountable”. Thus people do not address them as autonomous individuals but rather treat them properly in a manipulative way.

Kant believed that our moral duty to animals are merely “indirect duties toward humanity”, and if we mistreat animals cruelly, this might damage our moral character and ultimately lead to inappropriate treatment of other human beings. This opinion needs to be viewed within the historical context of his time. The “indirect duties” are criticized by contemporary defenders of direct duties to animals and “animal rights”. However, some philosophers separate Kant’s theory from his opinion about the moral status of animals, and defend his theory and most of his conclusions. They view in Kant’s approach alternative perspectives, supporting views in the sense that we have duties to every human being and significant duties regarding non-human animals, duties which involve direct concern for animals because of their nature (Wood, 2008). Some philosophers consider that the issues of the moral status of animals should be discussed not as variations on traditional ethical theories, but rather require new ethical theories. The questions arise whether any theories that were originally developed to explain relations among human beings are transferable without loss to non-humans. When the traditional ethical theories, taken out of context, are applied to non-humans, they may give animals too much or too little credit. In any case, regarding animals it is reasonable to say that to hold that autonomy confers special moral standing on persons is not to deny that there are other forms of value or that there are other kinds of entities that can make claims on us. Thus certain ways of treating non-rational creatures are morally deficient.

Moreover, Wolterstorff warns that the practical implementation of the Kantian approach would have negative consequences for society and would result in greater inequality. “So in a society founded on Kantian principles, where it is widely held that nothing else than rationality determines worth”,—he writes, — “we must expect that the less rational among us will be systematically demeaned” (Wolterstorff, 2008, p. 391).

But Kant's concept of human rights does not imply any hierarchy or inequality in worth among people based on the levels of rationality, or any other capacity. Kant formulated the concept of human rights based on the innate right of an individual for freedom. This principle of innate freedom already involves the innate equality of every human being, the right to be independent, and to be one's own master. Existing inequality in social status and wealth, or dependence of individuals upon the will of others, however, is "in no way opposed to their freedom and equality as *human beings*, who together make up a people" (Kant, 1996, p. 92).

Kant champions the principle that each human being, as rationally self-governing, has dignity or absolute worth, and the worth of all persons is fundamentally equal. He views reason as the capacity to regulate our conduct by universal principles of respect and concern shared with others. It means respect for yourself as a rational being, arising from the recognition of rational nature in your own person as an end in itself, which at the same time requires you to respect rational nature in the person of every other human being. Reason is also the capacity for self-government according to universally valid norms. It is oriented toward a realm of human ends, that include the dignity and welfare of all people and thus can be rationally shared between them.

Kant's philosophy contains a radical critique of social life, which remains in many respects relevant. According to it, through the faculty of reason we have the capacity to criticize or correct everything, including our own misunderstandings of reason itself. Kantian ethics is critical toward the dehumanizing tendencies in modern society. Kant saw grounds for hope regarding the gradual success toward perpetual peace in three tendencies: the "spirit of commerce" and the unifying power of world trade; the republican constitution and the peaceful character of republics; and the function of the political public sphere and the "publicness" of all lawful claims (Kant, 1991, p. 114, 100, 126). The political public sphere is the public use of reason, which is not restricted by authorities, but makes it possible for us to address a broad audience and to form justifications that anyone may accept. Kant insists that public reason must always be free: "it alone can bring about enlightenment among people".

Wolterstorff's fears about "a society founded on Kantian principles" are off target. In today's world, the demarcation of inequality among people lies not along the line of "rationality" (as Wolterstorff suggests), but mainly is determined by the power structures, which concentrate wealth and economic-political domination in the hands of the power elites, leaving the rest of the people dependent and their rights infringed upon. The problem is not that a society is founded on the rational principles of Kantian ethical, legal, and political philosophy, but rather that these principles were not implemented consistently and decisively enough. Thus the Kantian project of a lawful society and a peaceful world order of perpetual peace has been derailed by the counter-tendencies of anti-democratic domination, ideological manipulation, power politics, and globalized violence. Today's neoliberal "free market" economy and its politics, dominated by big corporations, imposes technocratic "instrumental rationality", which effects are depersonalization and dehumanization. It is the opposite of human reason and values promoted by humanistic philosophical and political thought. Kant starts his inquiry into politics from the standpoint of the free individual, resisting the controlling and repressive practices of social power structures. He proposed the core human right—freedom—as a principle, based on which an individual can be his own master, and thus independently pursue his own happiness. His philosophy, representing humanistic thought, provides with powerful intellectual means and inspiration to those who are striving for human rights.

During the last decades philosophers tried to develop more novel philosophical accounts of human rights as alternatives to a more traditional natural rights account. One of them is an account of human rights from the perspective of “discourse ethics”.

The Discourse Ethics Approach to Human Rights

Kant’s ideas have been rethought and creatively developed by the theorists of “discourse ethics” and cosmopolitanism. Discourse ethics, following a tradition of critical theory, is critically rethinking and reassessing the traditional concepts of human rights. The discourse ethics approach to human rights is developed by Karl-Otto Apel and Jürgen Habermas and more recently by Rainer Forst, Seyla Benhabib (2011), and James Bohman. It aims to provide a rational account of human rights free from controversial philosophical or religious assumptions that could hinder reaching a broader consensus. In contrast to a “moralizing” conception of human rights as a set of fixed moral rights that can be determined independently of the collective deliberation in a public sphere, discourse ethics seeks to promote a discursive approach and intercultural dialogue.

Karl-Otto Apel, in undertaking his project of a transformation of philosophy, elaborates on a philosophical grounding of discourse or communicative ethics. In contrast to the traditional paradigm of grounding through deriving something from something else (i.e., deduction, induction, or abduction), the new approach is based on a strict transcendental-pragmatic reflection on the presupposition of arguing. Apel argues for unconditional normativity as a possible and necessary condition for ethics. He is concerned with the transcendental and ultimate grounding of discourse ethics. The theory of discourse ethics emphasizes intersubjectivity, moving from the monological voice of Kantian ethics toward the dialogical voice of communicative action. This approach transformed Kant’s transcendental argumentation into a transcendental-pragmatic argumentation that looks at the procedures for the justification of ethical judgments in terms of pragmatic consistency and not in terms of logical consistency (Apel, 1997). Universality is understood as procedural and not as substantive. Within such analysis, performative self-contradiction is a crucial test for the universality both of the real communication community and of the counterfactual ideal communication community. Discourse ethics is both universalistic and teleological. By referring to the transcendental-pragmatic ultimate foundation of ethics, Apel asserts that morality can be grounded on the elucidation of the norms of meaningful argumentation. It also indicates the inherent correlation between the structure of rational discourse and the intrinsic rules and norms that are morally relevant for human interaction. The normative contents of discourse ethics include the principles of justice, reciprocity, respect, tolerance, solidarity, and co-responsibility.

Jürgen Habermas highlights a paramount importance of human rights as “the sole recognized basis of legitimation” for the international politics in a diverse and conflicting world. However, the human rights discourse, which has been argued on normative terms, raised questions about the validity and content of human rights and the relevance of their legitimation, as developed in the West, to the other cultures. Habermas analyses the hermeneutical reflections on the starting point of a human rights discourse among participants of different cultures. In critically assessing their differing and sometimes opposite views, he draws a fine line between tradition and innovation, between Western and non-Western concepts, and between the universal meaning of human rights and the local conditions of their realization. He highlights what he considers sound ideas both in the Western heritage and in the

ideas of non-Western theorists, contrasting them with the extremes of Eurocentric or any ethnocentric pseudo-universality and of religious fundamentalism.

His assumption that the standards of human rights emerged from the attempt to answer challenges posed by a social modernity – experienced first in Europe and later on in other regions of the world as multiple versions of modernity – helps to better understand the common roots of these standards. Thus human rights and their legitimation is not exclusively an invention of Western civilization, but rather an answer to general social challenges faced by the contemporary world. In the socially-culturally diverse world, the answer found by the West is not the only one, or even necessarily the best one.

Habermas argues that human rights are not simply moral rights, but are “Janus-faced”, related simultaneously to morality and to law: they have both their moral content and the form of legal rights (Habermas, 2001, p. 118). The core of the debate lies in the individualism and secular character of human rights that are centered in the concept of autonomy. Habermas analyses the controversy between the individualistic character of human rights and the collectivist “Asiatic values.” The latter emphasizes the priority of the community over the individual, has no clear distinction between law and ethics, and insists on the individuals’ subordination to the community-based ethos rooted in a cultural tradition. On the one hand, Habermas points out the blind spot of the neoliberal individualism, which ignores the fact that legally protected human rights are derived from intersubjectively recognized norms of a legal community. On the other hand, he shows the failure of the collectivist thesis that claims of the legal community have priority over individual legal claims. Instead, an opposition between individualist and collectivist views of human rights can be avoided if an approach to fundamental legal concepts considers “the dialectical unity of individuation and socialization processes” (Habermas, 2001, p. 126).

Within the discourse-theoretical approach to human rights Habermas analyses the role of religion in the public sphere. Especial attention to this theme resonates with the recent resurgence of religion, which stirred discussions [among scholars] about the meaning of the public and its relation to the private, and about the very categories of secularism and religion. The concept of multiple modernities questions the relation of modernization to secularization. Despite increasing technological development and modernization, religion has not “withered away,” and thus an analysis of its role in public deliberations is very relevant. These discussions involve rethinking of issues of justice, toleration, and human rights.

Of note is that John Rawls (1999) anticipated the problem of how to accommodate the resurgence of religion and significantly contributed to the philosophical discussion on the role of religion in the public sphere. This theme became an aspect of his focus on issues of justice. He asserted the view that we should not confuse the secularization of the state with the secularization of society (the view which serves today for the critique of the attempts to review political theology). He distinguished between the comprehensive and the political. Thus a secular position could be and was as comprehensive as any religious position. For Rawls, the idea of public reason is that it does not criticize any comprehensive doctrine, religious or nonreligious, except insofar as it is incompatible with a democratic polity (Rawls, 2002, p. 149-151). While citizens do not expected to compromise their religious or non-religious views, they must not attempt to impose them or to change the constitutions so as to establish their religions’ hegemony. According to Rawls, the grounding of the idea of human rights does not need to invoke any “comprehensive doctrine” and they are rather based upon a person’s status as a citizen within a well-ordered society. Human rights are derived from a basic understanding of public reason. The “original position” can provide the necessary level of generality. Thus in

the sphere of public reason the members of different religious denominations and nonbelievers can come together to achieve consensus about human rights. Rawls's latest works are focused on the problem of reconciling pluralism with global justice.

Habermas follows Rawls's approach to religion in the public sphere, while critically revising it and going beyond. He thinks that in modernity politics shifted to civil society based on the public use of reason. Civil society, however, should refer also to religious sources, if they are "translated" in a way understandable to secular people. Habermas stresses the importance of cultivating a "postsecular" stance, which considers religious sources of meaning and motivation as helpful in confronting the negative consequences of hegemonic globalization. As he explains, "postsecular" is used as a sociological predicate to describe not society itself, but a change of consciousness in it, referring to an altered self-understanding of the largely secularized Western societies, which are dealing with the continuing existence of different religious groups and traditions (Habermas, 2010).

Nevertheless, the crucial difference between faith and knowledge remains. Because the public sphere is a realm of rational argumentation, it requires the ability and willingness to participate in open debate. Habermas is concerned that religious ideas may be expressed in language that is not accessible to those outside their traditions, and thus the need to translate them into secular reason. He suggests that the potential "truth contents" brought by religious people to public discourse be translated into a secular idiom and into a "generally accessible language" (Habermas, 2008, p. 130-131). This will facilitate the incorporation of the ethical insights of religious traditions into a "postmetaphysical" philosophical perspective. This translation is a task that falls to both religious and secular citizens engaged in the public use of reason.

Habermas explores discursive mediation in democracy and the capacity to share common beliefs to solve the problems. Nonreligious persons should realize the limits of secular reason and seek to understand what is said on religious grounds as best they can. But not all that religious citizens may say can be translated, and for this informal public discourse would be appropriate. Thus Habermas considers it necessary to stay in the realm of what could be shared.

For Habermas, the discussion about secularization is a starting point for clarifying the self-understanding of postmetaphysical thinking. This suggests favoring a dialogical relationship with all religious traditions open to learning. At the same time, the postmetaphysical thinking is secular thinking which distinguishes faith and knowledge as two different modes of taking-to-be-true: "we may call 'postsecular' the situation in which secular reason and a religious consciousness that has become reflexive engage in a relationship, in which, for instance, the dialogue between Jaspers and Bultmann is exemplary" (Habermas, 2010, p. 5).

Habermas points out that universal principles for the public role of religion have to be specified and institutionalized differently according to each local context, such as the differences in political cultures between Europe and the US. His criticism is directed against the "laicist" understanding of the separation of church and state typical for Europe. Thus his emphasis on greater tolerance or even accommodation within the public sphere of arguments which religious citizens could make. In contrast (apparently referring to the US), he says that in the "country, in which the President publicly prays in office, the criticism that orients itself by the same principle should aim in the opposite political direction". This is because the forces, which are unwilling to subject the political influence of religious voices to formal constraints, "blur the limits without which a secular state cannot maintain its impartiality". Similar criticism should be directed against fundamentalist doctrines. As the safeguard against these extremes, the decisions of the legislative, the executive,

and the judiciary branches should be “not only *formulated* in a universally accessible language, but also *justified* on the basis of universally acceptable reasons” (Habermas, 2010, p. 9).

In analyzing the communicative action and the use of reason, Habermas indicates that the sphere of validity of a rightness claim varies according to the boundaries of a social world, but “moral imperatives (and legal norms such as human rights that can only be justified morally) claim absolute validity, that is, universal recognition”. Thus, according to Kant, valid moral laws must be “universalizable”. The idea of a morally ordered community implies “the counterfactual extension of the social world in which we find ourselves to a completely inclusive world of well-ordered interpersonal relationships: all human beings become brothers and sisters” (Habermas, 2008, p. 47).

Habermas further tries to clarify the position of postmetaphysical thinking between naturalism and religion and to come to terms with religious and ideological pluralism. He examines the “clash” between two conflicting intellectual trends—the spread of naturalistic scientific worldviews and the growing political influences of religious orthodoxies across the world. Neither of these two trends shows a willingness to engage in self-reflection, thus resulting in ideological polarization. Referring to the US, he writes: “A political culture that polarizes itself irreconcilably along the fault-line of secular versus religious conflicts, whether over issues of human embryo research, abortion, or the treatment of comatose patients, challenges civic common sense even in the world’s oldest democracy”. In contrast to this, “The ethos of liberal citizenship demands that both sides should determine the limits of faith and knowledge in a reflexive manner” (Habermas, 2008, p. 2).

The constitutional state is supposed to ensure that different communities of belief can coexist peacefully on the basis of equal rights and mutual tolerance. These problems should be approached from the perspective of egalitarian universalism, which orients civic solidarity toward a solidarity among “others”, universalistic constitutional principles and human rights (Habermas, 2008, p. 290). Mutual recognition implies that religious and secular citizens are willing to listen and to learn from each other in public debates. The political virtue of treating each other civilly cannot be prescribed, but can only be learned. The “politics of recognition” cannot be implemented through the legal medium, if mentalities remain unchanged. Habermas emphasizes that the mutual recognition of the equal status of all members requires a transformation of interpersonal relations through communicative action and discourse and ultimately by way of public debates over identity politics.

The concept of autonomy, including the liberties of citizens vis-à-vis the state and third parties, is challenged by fundamentalism – Islamic, Christian, Jewish, etc. In drawing on Kant’s concept of autonomy as the capacity to bind one’s own will by normative insights that result from public use of reason, Habermas explains that citizens are autonomous when they give themselves their laws. This idea of self-legislation is implemented, for example, in the model of a constitutional assembly which establishes basic rights. It is also underpinning the procedure of democratic will-formation that establishes political authority “on a mode of legitimation that is neutral toward worldviews”. As a result, “a religious or metaphysical justification of human rights becomes superfluous”. The political autonomy of citizens implies “a secularized political authority uncoupled from religious or cosmological worldviews” (Habermas 2001, p. 127). This mode of legitimation grants equal rights to all citizens regardless of their beliefs. In contrast, fundamentalists insist that their own truth claim is absolute and should be enforced by political power. This leads to an exclusive character of polity, and thus legitimations based on this kind of religious worldviews “are incompatible with the inclusion of equally entitled non-believers or persons of other persuasions” (Habermas 2001, p. 127).

However, the secular legitimation faces challenge not only from fundamentalists, but also from intellectuals who are skeptical about official politics of neutrality of the state regarding worldviews and, as in the case of Islamic and Hindu religious cultures, who rely more on their mutual toleration and cross-fertilization. Habermas emphasizes that toleration doesn't mean to compromise the authenticity and truth claims of religions, but rather it enables their "equally entitled coexistence" within the community. The conflict of cultures in a globalized world requires that peoples, regardless of their cultural and religious differences, agree on norms of coexistence. He notices the growing awareness that one's own religious truths must conform to publicly recognized secular knowledge and be defended in the same universe of discourse. He views in this tendency toward what Rawls described as "an ethical worldview and self-understanding that has become reflexive, open to reasonable disagreement with other belief system, but also able to reach an understanding with them on the rules of equal coexistence" (Habermas, 2001, p. 128).

Intercultural dialogue is essential for justifying and interpreting human rights. It is alternative to solipsistic reflection in solitude on one's own worldview and culture attempting to unilaterally identify the norms that can be justly universalized. Habermas elaborates on a deliberative framework for intercultural dialogue to determine the content of human rights. There is a need for philosophical reflection on the hermeneutic situation of the participants in the debate and their presuppositions. Engaging in intercultural dialogue requires participants from different cultural backgrounds to seek mutual understanding. According to Habermas, the discussions on human rights among representatives of different cultures confirm the normative contents of the tacit presuppositions of any discourse whose goal is mutual understanding. They are aware that a consensus based on conviction can be reached only under conditions of symmetrical relations among them – "relations of mutual recognition, mutual role-taking, a shared willingness to consider one's own traditions with the eyes of the stranger and to learn from one another" (Habermas, 2001, p. 129).

But the relations between the rich "center" and the poor "periphery" of the world system are far from being symmetrical: the nations that concentrate power and wealth also dictate the terms of the normative structure of global society. They also have a record of misusing the universal language of human rights for nefarious purposes. Therefore striving for a more symmetrical dialogue on human rights also implies the necessity of more symmetry in economical and political relations, of abandoning hegemonic unilateralism and establishing the multilateral cooperation among sovereign nations as equals.

Human Rights and an Ethical Discourse in Latin American Philosophy

Human rights are one of the central themes underpinning Latin American philosophy, and expressed in many ways both directly and indirectly. The human rights problem is related to the other themes, such as the philosophical identity of Latin America, the conceptual liberation of its thought, as well as social and human liberation. It serves as the basis for an ethical-political critique of the "human condition" and the policies of human rights in the context of the "exclusive globalization", economic polarization, ecological crisis and other regional and global problems which affect the lives of millions. Enrique Dussel, Arturo Roig, Raúl Fornet-Betancourt and other Latin American philosophers, in dialogue with the philosophers of other countries, contribute to the search of a universally valid ethics as a rationally grounded normative base for the solution to the social and global problems.

An Argentinian philosopher Arturo Andres Roig contributes to the philosophical grounding of human rights through elaborating on the concepts of human dignity and the "emerging morality". He himself witnessed human rights violations during the military dictatorship in Argentina (1976-1983) and was among the many philosophers forced into exile, and he analyses the problem of human rights in Latin America. He observes in society since 1983 self-critical moral reflection and "an explosion of moral consciousness" mainly due in part to the Association of Human Rights and first of all of the Mothers of May Square. Unfortunately, since 1983 the process of the restoration of democracy still didn't lead toward the establishment of the rule of law, but rather a situation of "the state of impunity", indulgent toward those who committed atrocities, in which the government ignores requests for justice coming from human rights organizations. Although the laws which bestowed an indulgence to the militaries sentenced by the [tribunal] courts of justice, looked legal, nevertheless they were intrinsically antijudicial and immoral. These laws were justified ideologically by the doctrine of the "two demons", which declared guilty both the perpetrators of repressions and those who were repressed, i.e., the executioners and their victims. This ideology represents "the ethics of power" (Roig, 2000).

Roig elaborates on the concept of the "emerging morality" (*la moral emergente*). He distinguishes between the ethicalness (*eticidad*) as objective morality and morality (*moralidad*) as subjective morality. The ethicalness or the "ethics of power" is associated with the State and a "rational egoism" and is frequently used as means for control and oppression. In contrast, the subjective morality expresses the individual's needs and is related to the resistance against domination and to protest movements, and it is philosophically expressed in the tradition of "the principled humanism" (*el humanismo principista*). Within this tradition of liberation and humanistic thought an alternative "emerging morality" arises. Roig traces the emerging morality to the moral-philosophical ideas of Juan Bautista Alberdi, Eugenio Maria de Hostos and José Martí in Latin America, as well as to Kant's theory of the categorical imperative and his ideal of the cosmopolitan humanity.

Roig points out as a remarkable phenomenon of our time a new return toward Kant, related to his *Metaphysics of Morals* (Kant, 1964) and especially to the validity and meaning of the theory of the categorical imperative. As an analogy to the Kantian logical-formal or epistemological a priori, Roig postulates an "anthropological a priori" of the subject as a philosophical principle. It refers to an empirical subject whose temporality is founded not in the consciousness or a concept, but rather in the historicity as a capacity of each human being to shape one's own life, to be "an actor and an author of one's own history" (Roig, 1981, p. 12, 15). In certain sense it resonates with Kantian concept of an individual's right to be autonomous, independent, and one's own master. The anthropologic a priori implies self-recognition and the recognition of others. In order to be a truly genuine human being, it is necessary for one to accept the dignity of the others and to view them as valuable. This is possible only if one recognizes oneself and others as the ends in themselves. Roig rejects the subordination of the subjectivity to the objectivity. He emphasizes the collective dimension of the anthropologic a priori, namely that the subjective is not merely reduced to a singular individual, but includes also the relationship with the others. Philosophy, which starts with the self-affirmation of a subject as valuable for oneself, further broadens its social function in contributing to the regaining people's self-consciousness, as the collective recognition of "us" by ourselves as valuable (Roig, 1981, p. 14-15)

Among the various aspects of the new return to Kant, the Argentinian philosopher emphasizes two of them: First is Kant's clear distinction between morality and legality. This is in contrast to their confusion in Hegel's *Philosophy of Right* (Hegel,

1952), in which the ethicalness ends up absorbing all the subjectivity, adducing the universality to the ethicalness and irremediable particularity to the subjectivity. In contrast to Hegel's statement that subjective morality should subordinate itself to objective ethics, Roig criticizes "the ethics of power" and supports "the morality of protest". The "emerging morality" manifests itself precisely through the complex history inseparable from the social struggles, and in an ongoing conflict with the ideological "universal" as the basis of the ethics of power (Roig, 1997, p. 12-13).

The second aspect of the return to Kant is Kantian formalism. Hegel claimed that Kant's version of a rational principle, the categorical imperative, was so formal and devoid of content that it could not coherently guide the appropriate actions. Critics of ethical formalism equate it with lack of content or with emptiness, thus nullifying the theory of the categorical imperative. But in transcendental ethics, "formal" means universal claims proved and formed by reason. According to transcendental philosophy, the form could be only that which carries the quality of universality and is of a general significance for everybody. Universal form does not exclude variety of content. For example, a legal right as a form is a universal and equal guarantee, clearly fixed by the law. Within this space, a variety of opportunities and individualities can be realized. Research shows that two normative contents are proved by the method of transcendental formalism. One is: do not commit deception (lie, defraud, betray, perjure, or break a promise or agreement). The other is stated in the second formulation of the categorical imperative, or the principle of dignity, which prescribes as a strict duty not to violate the dignity of persons as rational agents (Kant, 1964, p. 96). This entails a prohibition against treating another person as a "thing", or as a servant for the master's will, and a prohibition against imposing our belief, will, and goal on another. These prohibitions imply the idea of individual autonomy as an inalienable right. An autonomous will must be one that is free, being a cornerstone of a sense of justice. Kant emphasized the ethical norms because he understood the negative consequences of their violation, and in his concern he was prophetic. In our time we witness the oppression of human dignity originating in alienation and objectification of human activity, as well as ideological manipulation and control over the individual's way of thinking. That is why we so treasure the values of freedom and human rights.

As Roig points out, Kantian formalism was not so formal as its critics may think, and that it presupposes a certain content. The value of human dignity is the value which gives content to the Kantian formalism. Roig, in referring to the second formulation of the categorical imperative, calls it "revolutionary": in Kant's time it was a manifestation of the "emergence" of a new consciousness and of waking up new social classes during Modernity, and it continues playing its role in defending human dignity against oppression. This formulation, the principle of dignity, requires a transformation of values, particularly considering our societies in which an instrumental use not merely of reason but also of human beings became law for those practicing "rational egoism" (Roig, 1997, p. 13). Thus this formulation implies the dissidence, resistance, and affirmation of change (*alteridad*) (Roig, 1994, p. 174). This moral philosophy is akin to what is demonstrated by the "emerging morals" of peoples. Roig argues that human dignity is closely related to necessities: first because dignity needs a human being in order to realize its own humanity, and then the dignity implies not only the necessities in general, but also the modes of their satisfaction (Roig, 1997, p. 14). Emerging morality affirms its own principles, and in it dignity is the first necessity (Roig, 1994, p. 178-179).

Arturo Roig develops the concept of the "emerging morality" as an alternative to the dominant ethicalness associated with technocratic rational egoism and neoliberal globalization. The emergent morality serves for the grounding of the

principles related to the category of human dignity. Human dignity is negated by the neoliberal and neoconservative "discourse of necessities", which follows the "forms of satisfaction" typical for a consumerist society (Roig, 1994, p. 180). As a contrast, for most of the Third World population, necessities are related to survival. In criticizing neoliberal and neoconservative ideologies, including Francis Fukuyama's conception of "the end of history" as the apology of the status quo, Roig states that the Latin American people do not want to "close history", but rather they want to improve their lives for the best and that liberation remains their purpose (Roig, 1993, p. 212).

Roig asserts that from the Latin American perspective, "the Enlightenment ideal of the cosmopolitan humanity of which Kant was dreaming in his time didn't vanish" (Roig, 1994 p. 183-184). Within the Latin American emerging morality the "cosmopolis" served as the ideal. Cosmopolitanism expresses a universality which is dialectically related with "our homelands, their peoples and their worlds". As Roig writes, these regulative ideas are not foreign but rather "express anthropological *a priori* and affirmation of ourselves as valuable, and at the same time they express our *moral* conviction which impels us toward a recognition of the human *dignity*" (Roig, 1994, p. 184).

Enrique Dussel contributes to a moral justification for the concept of human rights through elaborating on the "ethics of liberation" (1998). He analyzes the problematic of ethics in its foundation. He makes a critical analysis of existing ethical theories as representing the different types of grounding ethics. One is a "formal morality," developed by Kant and discourse ethics (with the principle of discursive validity). The other is "material ethics", expressed in various ways by Aristotle, Max Scheler, and more recently, Alasdair MacIntyre (with the universal material principle or practical truth). Dussel also analyzes "the universal principle of ethical feasibility", related to the possibility of obtaining the "good". He reviews them from the perspective of liberation ethics.

Dussel creatively develops Apel's discourse ethics, articulating a new level of architectonic distinctions. In addition to the distinction between Parts A (universality) and B (particularity) of discourse ethics, Dussel introduces a third "level C", namely "singularity". Thus, the "good", or an act with a goodness claim is neither merely the universality of principles nor the particularity of their mediations, but rather a concrete synthesis of the practical true-valid-possible. Liberation ethics is life-enhancing: the reproduction and growth of human life is the main criterion of truth (theoretical and practical), since it is the absolute condition of the possibility of human existence (Dussel, 1998, p. 140, 568). This criterion is internal to each culture and allows it to establish a dialogue from the universality of the value of human life. Liberation ethics provides a conceptual framework for addressing the issues of underdevelopment and other global problems.

The Latin American philosophers place the human being in the center of their analysis and considered as a criterion of judgment for the positive or negative effects of globalization. Arturo Roig, Enrique Dussel, and Raúl Fornet-Betancourt, among others, expand the moral concepts of human dignity and justice to the legal concept of human rights. They address the problem of human rights from the Latin American perspective, as well as from the perspective of the African and Asian countries in which the peoples suffer from the double yoke of political repressions and poverty. They assert the concept of human rights as a whole complex of political, social, and economic rights which would guarantee a decent human life for everybody in the planet.

The solution to the social and global problems, which threaten the future of humanity, requires a new mentality and a new political culture based on respect

for human rights, sovereign equality, dialogue, and collaboration. The ideas of the meta-ethics of humanity developed by the Latin American and other contemporary philosophers, serve as the philosophical framework for the discussions about these issues. Their search for the foundation of a universally valid ethics is in keeping with the quest for a rationally grounded universal normative base for the solution to contemporary world problems.

“Imperial” Versus Dialogical Cosmopolitanism

Many philosophers writing on human rights are viewed them within a cosmopolitan perspective: Karl-Otto Apel, Stephen Anthony Appiah, Daniele Archibugi, Kenneth Baynes, Ulrich Beck., Seyla Benhabib, James Bohman, Judith Butler, Jacques Derrida, Jürgen Habermas, David Held (2005), Walter Mignolo, Martha Nussbaum, and Amartya Sen, among others. Contemporary cosmopolitanism tends to be responsive to diversity and power relations in today’s global conditions. Amid the diversity of voices in the current debate on the philosophy of cosmopolitanism, two main tendencies can be identified: one toward an emphasis on identification with humanity as a whole and world-citizenship and the other toward an emphasis on the protection of the cultural diversity of nations and minority groups. To the “imperial” version of cosmopolitanism these philosophers oppose critical and dialogical cosmopolitanism. There is also a difference between more centered and more decentered models of legal and political cosmopolitanism. The discourse on cosmopolitanism helps to clarify some of its own normative claims, at the core of which is the dialectic of difference and identity, otherness and sameness. These philosophers elaborate a version of cosmopolitanism that is democratic, grounded, enlightened, reflexive, and dialogical. Dialogical cosmopolitanism “expands both vertically and horizontally, through local cosmopolitan iterations that defer it making it into a normative ideal that is guided by contextual universalism” (Mendieta, 2009, p. 255). Yet for all of these cosmopolitan philosophers, Kant serves as a source of inspiration in the search for solutions to today’s problems. And while most of them believe that Kant’s theory needs substantial modification, they all insist that it continues to possess normative relevance.

For example, David Held refers to Kant in sketching an idea of a “new cosmopolitanism” and what he calls “the cosmopolitan model of democracy”. He points out that solutions to social and global problems require “the recovery of an intensive and participatory democracy” at local levels and the development of transnational grass-roots movements with regional and global objectives, such as protection of human rights, of the environment, and the alleviation of disease. Held argues that we can specify a set of principles that express the idea of each person’s having equal moral significance. He identifies eight of these principles: equal worth and dignity; active agency; personal responsibility and accountability; consent; collective decision-making about public matters; inclusiveness and subsidiarity; avoidance of serious harm; and sustainability. Due to a hermeneutic complexity in moral and political affairs, while these principles are universal in scope, they are interpreted in local contexts in situated discussion. He termed this a “layered cosmopolitan perspective” (Held, 2005, p. 18).

Similar to Apel, Habermas, and other theorists of discourse ethics, Seyla Benhabib develops her concept in relation to Kantian thought and the ideas of freedom, autonomy, and cosmopolitan order, rethinking them in a contemporary context. In referring to the Kantian “principle of right,” Benhabib writes that it establishes how a juridico-civil order, which would be in compliance with the moral law of respect to

the freedom of each, can emerge. Its features are *generality, formal reciprocity, and equality*. Thus a polity based on the principle of rights respects each individual as a moral being (Benhabib, 2011, p. 67). Benhabib is rethinking Kant from a dialogical discursive perspective and the idea of communicative freedom. In a justification of the principle of right, instead of reflecting on what each individual could will to be universal law for all, discourse ethics is focused on which norms could be considered valid by all those who would be affected as participants in discursive moral argumentations.

Benhabib's basic assumption is that all human beings are capable of "communicative freedom". This implies a basic *moral right*: as a moral being capable of communicative freedom each individual has a fundamental *right to have rights* (Benhabib, 2011, p. 68). This basic moral right is connected to a broader set of human rights. One has a "right", that is, a moral claim to be recognized by others as "a right-bearing person", entitled to a legally instituted schedule of rights. Benhabib extends her concept of democratic iterations beyond societies toward an international arena: "The interlocking of democratic iteration struggles within a global civil society and the creation of solidarities beyond borders, including a universal right of hospitality that recognizes the other as a potential cocitizen, anticipate another cosmopolitanism—a cosmopolitanism to come" (Benhabib, 2006, p. 177).

In conclusion, theorists whose work embodied a cosmopolitan perspective represent a heuristically fruitful approach to the problem of human rights. They endorse the constitutionalization of international law (with a pluralist understanding of constitutionalism) and the strengthening of international institutions, such as a properly reformed United Nations, as well as transnational democratic movements as vehicles for the realization of a cosmopolitan order. The analysis shows that the true solution to the problem of protecting human rights can be achieved only by peaceful means, based on strengthening international law and institutions and aiming for a gradual realization of the ideal of cosmopolitan order of law and peace.

References

- APEL, K-O. 1997. Kant's 'Toward Perpetual Peace' as Historical Prognosis from the Point of View of Moral Duty. In: J. BOHMAN; M. LUTZ-BACHMANN (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*. Cambridge, MTA Press, p. 79-112.
- BENHABIB, S. 2011. *Dignity in Adversity: Human Rights in Troubled Times*. Malden, MA, Polity Press, 298 p.
- BENHABIB, S. 2006. *Another Cosmopolitanism*. New York, Oxford University Press, 206 p. <http://dx.doi.org/10.1093/acprof:oso/9780195183221.001.0001>
- DEMENCHONOK, E. 2010. Human Rights: Imperial Designs versus Cosmopolitan Order. In: E. DEMENCHONOK, *Philosophy After Hiroshima*. Newcastle upon Tyne, Cambridge Scholars Publishing, p. 331-398.
- DEMENCHONOK, E. 2009. The Universal Concept of Human Rights as a Regulative Principle: Freedom versus Paternalism. In: E. DEMENCHONOK, *Between Global Violence and the Ethics of Peace: Philosophical Perspectives*. Malden/Oxford, Wiley-Blackwell, p. 273-301.
- DUSSEL, E. 1998. *Ética de la liberación en la edad de la globalización y la exclusión*. Madrid/México, Trotta, 664 p.
- HABERMAS, J. 2001. *The Post-national Constellation: Political Essays*. Cambridge, MIT Press, 190 p.
- HABERMAS, J. 2008. *Between Naturalism and Religion: Philosophical Essays*. Cambridge, Polity, 361 p.
- HABERMAS, J. 2010. A Postsecular World Society? On the Philosophical Significance of Postsecular Consciousness and the Multicultural World Society. An interview with Jürgen Habermas by Eduardo Mendieta. Available at: <http://blogs.ssrc.org/tif/wp-content/uploads/2010/02/A-Postsecular-World-Society-TIF.pdf>. Accessed on 03/30/2012.

- HEGEL, G.W.F. 1952. *The philosophy of right: The philosophy of history*. Chicago, Encyclopædia Britannica, 369 p.
- HELD, D. 2005. Principles of the Cosmopolitan Order. In: G. BROCK; H. BRIGHOUSE, *The Political Philosophy of Cosmopolitanism*. Cambridge, Cambridge University Press, p. 10-27. <http://dx.doi.org/10.1017/CBO9780511614743.003>
- KANT, I. 1996. *The Metaphysics of Morals*. New York, Cambridge University Press, 241 p.
- KANT, I. 1964. *Groundwork of the metaphysic of morals*. 3rd ed., New York, Harper & Row Torchbook.
- KANT, I. 1991. On the Common Saying: 'This May Be True in Theory, But It Does Not Apply in Practice'. In: H. REISS, *Kant's Political Writings*. 2nd ed., Cambridge, Cambridge University Press, p. 61-92.
- LOCKE, J.; PEARDON, T.P. 1952. *The second treatise of government*. New York, Liberal Arts Press, 139 p.
- MENDIETA, E. 2009. From imperial to dialogical cosmopolitanism. *Ethics & Global Politics*, 2(3):241-258. <http://dx.doi.org/10.3402/egp.v2i3.2044>
- MULLIN, A. 2011. Children and the Argument From 'Marginal' Cases. *Ethical Theory and Moral Practice*, 14(3):291-305. <http://dx.doi.org/10.1007/s10677-010-9241-z>
- RAWLS, J. 1999. The Idea of Public Reason Revisited. In: S. FREEMAN (ed.), *John Rawls. Collected Papers*. Cambridge, Harvard University Press, p. 573-615.
- ROIG, A.A. 2000. Ética del poder y moralidad de la protesta. La moral latinoamericana de la emergencia. Athens: Proyecto Ensayo Hispánico. Available at: <http://www.ensayistas.org/filosofos/argentina/roig/etica/>. Accessed on: 03/30/2012.
- ROIG, A.A. 1997. Prólogo. Las morales de nuestro tiempo: un reto para las nuevas generaciones. In: A.A. MENDOZA (comp.), *América Latina y la moral de nuestro tiempo. Estudios sobre el desarrollo histórico de la razón práctica*. Mendoza, EDIUNC, p. 7-14.
- ROIG, A.A. 1994. La "dignidad humana" y la "moral de la emergencia" en América Latina. In: A. SIDECUM (org.), *Ética do discurso e filosofia da liberação: modelos complementares*. São Leopoldo, Editora Unisinos, p. 171-186.
- ROIG, A.A. 1993. *Rostro y filosofía de América Latina*. Mendoza, EDIUNC, 229 p.
- ROIG, A.A. 1981. *Teoría y crítica del pensamiento latinoamericano*. México, Fondo de Cultura Económica, 313 p.
- WOLTERSTORFF, N. 2011. *Justice and Love*. Grand Rapids, William B. Eerdmans Publishing Co., 290 p.
- WOLTERSTORFF, N. 2008. *Justice: Rights and Wrongs*. Princeton, Princeton University Press, 400 p.
- WOOD, A. 2008. *Kantian Ethics*. New York, Cambridge University Press, 342 p.

Submitted on June 8, 2011
Accepted on October 9, 2012