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TAKING RIGHTS LESS SERIOUSLY:
POSTMODERNISM AND HUMAN RIGHTS

ABSTRACT. This article aims to analyse the nature of postmodern discourse on human rights. The principal argument is that postmodernism appears to be incompatible with the idea of rights because of its hostility to the conceptions of autonomous subject and universality. On the other hand, the postmodern discourse does not underestimate the "modern" ethical issues like human rights. This brings about two controversial conclusions: the adoption of an unreflective pragmatism by postmodernists towards human rights, and the abandonment of foundationalist approach to rights adopted by some rights theorists.

KEY WORDS: autonomy, postmodernity, rights, subject, universality

I. INTRODUCTION

This paper seeks critically to examine the nature of postmodern discourse on human rights in order to show that the principles of postmodernism are not compatible with the idea of universal human rights. A few preliminary words on the controversial nature of the term "postmodernism" might be in order at the outset. Almost any study concerning postmodernism starts off with an opening remark that postmodernism is an ambiguous and elusive conception. The multifaceted aspects of postmodernism make it difficult, if not impossible, to talk of a single, unified understanding of the term.[1] Although it is difficult to determine what exactly postmodernism consists in, the concept, as Frederic Jameson puts it, has tended to be "negative (i.e., it isn't this, it isn't that, it isn't a whole series of things that modernism

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[1] See, e.g., A. Wellmer, "On the Dialectic of Modernism and Postmodernism", *Praxis International* 4 (1985), 337–362, p. 337; M. Featherstone, "In Pursuit of the Postmodern", *Theory, Culture & Society* 5 (1988), 195–215, p. 195; A. Carty, ed., *Post-Modern Law: Enlightenment, Revolution and the Death of Man* (Edinburgh: Edinburgh University Press, 1990), vii; C. Douzinas and R. Warrington, *Postmodern Jurisprudence: The Law of the Text in the Text of the Law* (London: Routledge, 1991), 14–15. For the ambiguity of the term "postmodernism" see also below note 67.

was)".[2] Postmodernism, then, is *against* certain conceptions central to modernism.

Thus the most important feature of the postmodern discourse which makes impossible a friendly relationship with human rights is its hostility to the concept of the autonomous subject and to the idea of universality. Postmodernists, it may be said, declared the end of humankind and of metaphysics, universality included. I will not directly take sides in this all-out war against the autonomous self and universality, even though it appears to be "a grand Either/Or choice".[3] In other words, it is not my intention here to develop or defend a particular argument for the idea that individuals have rights. Nor is it my intention to take sides with those who argue that human rights are nothing but nonsense, phantoms, or, in Baudrillard's words, one of the "soft, easy, *post coitum historicum* ideologies".[4] It will be argued, however, that both liberals and their challengers agree, albeit on the basis of different premises, about the necessity of a plural and tolerant framework in which individuals live without trying to kill each other. It goes without saying that such a plural framework is a *sine qua non* of human rights.

Before taking up the postmodern approach to rights and to the subject as the bearer of these rights, we shall look first at the historical background of pre-postmodern philosophical critique of the idea of human rights, noting the necessity of firm grounds and principles, notably that of universality, on which these rights are based, before concluding that the postmodern attack on the legitimating metanarratives and foundationalist approaches has shaken and even to some extent undercut the supposedly firm grounds on which the idea of human rights is based. The unhappy result of this attack is that some rights theorists have retreated into the citadel of an unreflective pragmatism.

II. The Idea of Human Rights: A Brief History

The era in which we live is described as the "age of rights".[5] The idea of human rights has indeed become, as Jeremy Waldron puts it, "the new

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[2] S. Stephanson, "Regarding Postmodernism – A Conversation with Fredric Jameson", in A. Ross, ed., *The Politics of Postmodernism* (Edinburgh: Edinburgh University Press, 1988), 3–30, p. 3.

[3] R.J. Bernstein, *The New Constellation: The Ethical-Political Horizons of Modernity/ Postmodernity* (London: Polity Press, 1991), 7–8.

[4] J. Baudrillard, *Cool Memories* (London: Verso, 1990), 223.

[5] See N. Bobbio, *The Age of Rights*, trans. A. Cameron (Cambridge: Polity Press, 1996), 32.

criterion of political legitimacy".[6] It is seen as a "discourse that legitimises and deligitimises power".[7] The fullfilment of human rights has become, in the words of John Rawls, "a necessary condition of a regime's legitimacy".[8] This development can be traced, at a historical level, to the French Declaration of the Rights of Man, Article 2 of which states that "the end in view of every political association is the preservation of the natural and imprescriptable rights of man".[9]

The doctrine of natural or human rights[10] as formulated by the French Declaration has been criticised by many theorists from various ends of the political spectrum. Even some liberal philosophers, as well as conservatives and socialists, have challenged it: examples include Bentham, Burke and Marx.[11] In his essay, "Anarchical Fallacies", Bentham notoriously attacked the view that the object of all governments was "the preservation of the natural and imprescriptable rights of man". "Natural rights", he declared, "is simple nonsense: natural and imprescriptable rights, rhetorical nonsense – nonsense upon stilts".[12] For him, they were "the mortal enemies of law, the subverters of government, and the assassins of security".[13]

As a conservative, Burke also objected to the idea of the Rights of Man, on the grounds that it stimulated revolutionary sentiments in the

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[6] J. Waldron, ed., *Nonsense Upon Stilts: Bentham, Burke, and Marx on the Rights of Man* (London: Methuen, 1987), 1.

[7] R. Gaete, "Postmodernism and Human Rights: Some Insidious Questions", *Law and Critique* 2/2 (1991), 149–170, p. 169.

[8] J. Rawls, "The Laws of Peoples", *Critical Inquiry* 20/1 (Autumn 1993), 36–68, p. 59.

[9] Declaration of the Rights of Man and the Citizen, French National Assembly, 27 August 1789, Article II, cited in T. Paine, *Rights of Man* (Harmondsworth: Penguin Books, 1969), 132. When referring to non-contemporary texts and authors I shall retain the term "man", in order to avoid de-historicizing them, without, of course, myself intending to exclude women from the relevant claims.

[10] For the sake of argument I use the terms "natural rights", "Rights of Man" and "human rights" interchangeably, although they have different connotations in different contexts. For the use of these terms see M. Cranston, "What are Human Rights?", in W. Laqueur and B. Rubin, eds., *The Human Rights Reader* (New York: New American Library, 1979), 17; J. R. Pennock, "Rights, Natural Rights and Human Rights: A General View", in J.R. Pennock and J.W. Chapman, eds., *Human Rights: Nomos XXIII* (New York: New York University Press, 1981), 7; J.W. Nickel, *Making Sense of Human Rights* (Berkeley: University of California Press, 1987), 6–12.

[11] See J. Bentham, "Anarchical Fallacies", in Waldron, ed., *Nonsense upon Stilts*, op. cit., 46–69; E. Burke, *Reflections on the Revolution in France* (Harmondsworth: Penguin Books, 1968); K. Marx, "On the Jewish Question", in D. McLellan, ed., *Karl Marx: Selected Writings* (Oxford: Oxford University Press, 1971).

[12] Bentham, op. cit., 53.

[13] Ibid., 69.

common people, leading to "inexpiable war with all establishments".[14] For Burke, the "pretended rights of men" is nothing but "metaphysical abstraction" defying circumstantial evaluation.[15] Burke charged the theorists of rights with "considering their speculative designs as of infinite value, and the actual arrangement of the state of no estimation".[16] When the Rights of Man are viewed, Burke argued, as independent of the custom and tradition which are the essence of the eternal society, they become dangerous. No government or society is secure against such destructive rights:[17] "against these [the rights of men] there can be no prescription; against these no agreement is binding; these admit no temperament, and no compromise: any thing witheld from their full demand is so much of fraud and injustice".[18] "Against these their rights of men", he continues to warn, "let no government look for security in the length of its continuance, or in the justice and lenity of its administration".[19]

Karl Marx joined Burke in rejecting such rights, even though describing him as a "sycophant" and "vulgar bourgeois".[20] Marx's criticism of "the so-called rights of man" was grounded on their bourgeois contents: "[N]one of the supposed rights of man goes beyond the egoistic man . . . an individual withdrawn behind his private interests and whims and separated from the community."[21] Marx's critique, in his essay "On the Jewish Question", is of the idea of the political emancipation, which, as distinct from human emancipation, is "the reduction of man, on the one hand to a member of civil society, an egoistic and independent individual, on the other hand to a citizen, a moral person".[22] According to Marx, this leads us, in the bourgeois state, to a double life: one life in the political community and one in civil society. We are valued as "a communal being" in the

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[14] See Burke, op. cit., 184.

[15] Ibid., 90. Cf. D.G. Ritchie, *Natural Rights: A Criticism of Some Political and Ethical Conceptions* (London: Allen and Unwin, 1984), ix.

[16] Burke, op. cit., 90.

[17] See ibid., 148–149.

[18] Ibid., 148.

[19] Ibid., 149.

[20] The role of *Reflections on the Revolution in France* in earning Burke a pension in his retirement led some people to believe that he had "sold out". Marx, among others, accused Burke of selling himself "in the best market". In *Capital*, Marx stated that "Burke was a sycophant who, in the pay of the English oligarchy, played the romanticist against the French Revolution, just as, in the pay of the North American colonies, at the outset of the American troubles he had played the liberal against the English oligarchy. To the very marrow he was a commonplace bourgeois." – *Capital*, Vol. II, trans. Eden and Cedar Paul (London: Everyman Library, 1930), 843.

[21] Marx, "On the Jewish Question", op. cit., 54.

[22] Ibid., 57.

former, whereas in the latter we are active as "a private individual", treating others as means, and degrading ourselves to a means.[23] "The *recognition of the rights of man* by the *modern State*", asserted Marx, "has only the same significance as the *recognition of slavery* by the *State in antiquity*".[24] True emancipation, Marx argues, could be achieved only by people taking control of the material conditions of their lives.[25] This proposal involves the unity of individual and society. In the words of Marx, "man must recognise his own forces as social forces, organise them, and thus no longer separate social forces from himself in the form of political forces".[26] To sum up, Marx attacked human rights because he believed they represented a false view of human nature as selfish and egoistical, and of the social structure as consisting of isolated monads separable from and atomically constitutive of the community.[27]

Partly on account of the influence of these criticisms by Bentham, Burke and Marx, the idea of human rights suffered a decline in the nineteenth century.[28] The present century, however, has witnessed a revival of this idea, and for two reasons. First, the maltreatment of human beings by totalitarian governments during the second quarter of the twentieth century brought about a popular, and eventually political, demand for the protection of basic rights.[29] Second, further development of democratic doctrine through the extension of the ideal of equality found its expression not only

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[23] Ibid., 46. For a comment on Marx's critique of bourgeois "double life" see also J. Charvet, "A Critique of Human Rights", in Pennock and Chapman eds., op. cit., 44–45.

[24] K. Marx, "The Holy Family" (1845), in T.B. Bottomore and M. Rubel, eds., *Karl Marx: Selected Writings in Sociology and Social Philosophy* (Harmondsworth: Penguin, 1963), 224 (emphases in original): cf. 225.

[25] It appears that, on that point, Marx turned Hegelian philosophy upside-down. Hegel himself was sceptical about human rights, regarding them as an "empty abstraction". He argued that a social order founded on such abstractions will be unable to secure human freedom. There must be "a well-constituted ethical life", which will remedy the "principle of atomicity". Though Marx concurred with Hegel on the question of atomicity, he nevertheless rejected Hegel's solution to the problem. Marx believed that the real obstacle to human emancipation was poverty and exploitation rather than the lack of ethics. See A. Wood, "Introduction" to *Hegel's Elements of Philosophy of Right*, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991), xvi–xvii. See also Waldron, op. cit., 122; J. Plamenatz, *Man and Society, Vol. III: Hegel, Marx and Engels, and the Idea of Progress* (London: Longman, 1992), 89–90.

[26] Marx, "On the Jewish Question", op. cit., 57.

[27] See K. Marx, "Critique of the Gotha Programme", in *K. Marx and F. Engels: Selected Works in one volume* (London: Lawrence and Wishart, 1968), 324.

[28] See K. Minogue, "The History of the Idea of Human Rights", in Laquer and Rubin, op. cit., 18. See also M.N. Shaw, *International Law*, 2nd ed. (Cambridge: Grotius Publications, 1986), 117.

[29] Minogue, op. cit., 19.

in national constitutions but also in the Universal Declaration of Human Rights.[30]

III. THE UNFINISHED SYMPHONY OF HUMAN RIGHTS: THE QUEST FOR FOUNDATIONS

The revival and popularity of human rights has increased the urgency of finding a philosophical foundation for them, as Hart argues in "Between Utility and Rights".[31] He argues that political philosophy has, for much of this century, been based on a "widely accepted old faith that some form of utilitarianism, if only we could discover the right form, must capture the essence of political morality".[32] According to Hart, however, this old faith is finally being replaced by a "new faith" which is "that the truth must lie not with a doctrine that takes the maximisation of aggregate or average general welfare for its goal, but with a doctrine of basic human rights, protecting specific basic liberties and interests of individuals, if only we could find some sufficiently firm foundation for such rights to meet some long familiar objections".[33] For a long time, rights theorists have tried to develop arguments in defence of this "new faith".[34] But to find firm foundations for individual rights is much more difficult than to claim that we have human rights: "[A]lthough everyone proclaims the sanctity of 'freedom' and 'human rights'", as Masters has it, "the foundations of these principles are unclear".[35] Even some prominent rights theorists acknowledge this fact. Michael Freeden, for example, emphasises that "it is impossible to prove conclusively that human beings have rights in the existential or moral senses".[36] Ronald Dworkin also concedes the difficulty.[37]

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[30] See J.R. Pennock, "Rights, Natural Rights, and Human Rights: A General View", in Pennock and Chapman, op. cit., 4.

[31] H.L.A. Hart, "Between Utility and Rights", in M. Cohen, ed., *Ronald Dworkin and Contemporary Jurisprudence* (London: Duckworth, 1983).

[32] Ibid., 214.

[33] Ibid.

[34] For an overview of these arguments see J.J. Shestack, "The Jurisprudence of Human Rights", in T. Meron, ed., *Human Rights in International Law: Legal and Policy Issues* (Oxford: Clarendon Press, 1984), 65–113.

[35] R.D. Masters, "The Problem of Justice in Contemporary Legal Thought", in R.D. Masters and M. Gruter, eds., *The Sense of Justice* (London and New Delhi: Sage Publications, 1992), 5.

[36] See M. Freeden, *Rights* (Milton Keynes: Open University Press, 1991), 28.

[37] See R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), 81.

A further difficulty with the idea of human rights lies in the concept of universality. The term "human rights" suggests "the rights of all human beings anywhere and anytime":[38] in other words, they are, by definition, rights that belong to everyone.[39] This stems from the suggestion that there are or ought to be some moral principles common to all individuals.[40] But, whatever their intended scope, many theorists believe that human rights are a Western ideological notion[41] and not a universal one, claiming that they have their historical origin in the relationship between the bourgeoisie and the theory of rights during the French Revolution and afterwards. Habermas argues that "from the very beginning an intimate relationship existed between philosophy [natural law] and the bourgeois revolution, no matter how much philosophers since then may have entertained suspicions as to the illegitimate nature of this relationship".[42] He also draws a distinction between classical natural law and modern natural law, and defines the latter as the positivisation of the former,[43] going on to argue that "the act by which the positivisation of Natural Rights was initiated, in America as well as in France, was a declaration of fundamental rights".[44] The most significant examples of this act of positivisation in the present century are the Universal Declaration of Human Rights of 1948 together with later covenants which supplement it, and the European Convention on Human Rights of 1950.[45]

However, it is argued that the ideal standard erected in the Universal Declaration for all peoples reflects the values and institutions of liberal-

[38] L. Henkin, "The Universality of the Concept of Human Rights", *The Annals*, 506 (November, 1989), 10–16, p. 11.

[39] Gewirth, for example, defines human rights as "rights that all persons have simply insofar as they are human". See A. Gewirth, "The Basis and Content of Human Rights", in Pennock and Chapman, op. cit., 119. Cf. J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 1989), 12.

[40] See A.J. Milne, *Human Rights and Human Diversity* (London: Macmillan, 1986). Milne suggests that there is morality everywhere, but there is not everywhere the same morality. Even though he acknowledges that there always exists a diversity of morals, he nevertheless claims that there are some moral principles which are essential for social life in every form of community: see 45–61.

[41] See, for instance, A. Pollis and P. Schwab, "Human Rights: A Western Concept with Limited Applicability", in A. Pollis and P. Schwab, eds., *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger Publishers, 1979), 1–17.

[42] J. Habermas, *Theory and Practice*, trans. J. Viertel (London: Heinemann, 1974), 82.

[43] Ibid., 84. On the positivisation of human rights see also T. Campbell, "Introduction: Realising Human Rights", in T. Campbell, ed., *Human Rights: From Rhetoric to Reality* (Oxford: Basil Blackwell, 1986).

[44] Ibid., 85.

[45] For the texts of these documents, see I. Brownlie, ed., *Basic Documents on Human Rights*, 3rd ed. (Oxford: Clarendon Press, 1992).

democratic society.[46] Milne claims that the Preamble of the Declaration[47] is "by implication calling upon all nations to become liberal-democratic industrial societies".[48] Given the differing cultural patterns, ideological underpinnings and developmental goals of non-western countries, it is said that attempts to impose the Declaration, as it currently stands, "reflect a moral chauvinism and ethnocentric bias".[49] Similarly, it is argued that the European Convention "is based on a western, liberal conception of human rights and liberties".[50]

None of these arguments, however, radically disturbs the actual fact that the human rights as formulated in these documents are universally accepted (even if often in their breach).[51] In other words, as Donnelly emphasises, "the historical particularity of the idea and practice of human rights" is not incompatible with the universality of these rights.[52] Today there is a wide-spread consensus, at least in verbal terms, about the importance of these rights. "All states", says Donnelly, "regularly proclaim their

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[46] See Milne, op. cit., 2. Cf. B. Russell, *Authority and the Individual* (London: George Allen and Unwin Ltd., 1949), 68: "…the 'liberty' and the 'rights' …could only be secured by the State …that is called 'Liberal'. It is only in the West that this liberty and these rights have been secured."

[47] The Preamble states that "(Now therefore the General Assembly proclaims) *This Universal Declaration of Human Rights* is a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society keeping this declaration constantly in mind, shall strive by teaching and education to secure respect for these rights and freedoms, and by progressive measures national and international, to secure their effective recognition and observance …". See Brownlie, op. cit., 22.

[48] Milne, op. cit., 2–3.

[49] See A. Pollis and P. Schwab, "Human Rights: A Western Concept with Limited Applicability", in Pollis and Schwab, op. cit., 14. See also M. Lazreg, "Human Rights, State and Ideology: An Historical Perspective", ibid., 32–34.

[50] J. Colwill, *Universal Human Rights? The Rhetoric of International Law*, Centre for the Study of Democracy (University of Westminister Press), Research Papers, No. 3, Autumn 1994, 14. Cf. J. T. Wright, "Human Rights in the West: Political Liberties and the Rule of Law", in Pollis and Schwab, op. cit., 18.

[51] It must be noted that although the idea of human rights as formulated in the "western" human rights documents are the product of a specific historical culture, that is liberalism, the ideal of human rights *per se* can be found in most non-western cultures. On this point see, e.g., Y. Khushalani, "Human Rights in Asia and Africa", *Human Rights Law Journal*, 4 (1983), 403–442, and Pollis and Schwab, "Human Rights: A Western Concept with Limited Applicability", op. cit., 15.

[52] Donnelly, op. cit., 49. Cf. D. Weissbrodt, "Human rights: an historical perspective", in P. Davies, ed., *Human Rights* (London: Routledge, 1988), 1–20, p. 1.

acceptance of and adherence to international human rights norms":[53] they are in a way "the *lingua franca* of modern democracy".[54]

To sum up: as with most moral issues of our time, two broad theoretical positions may be discerned with respect to the foundation of human rights. On the one hand, there are those "foundationalists" who attempt to ground the rights on such ideals as equality,[55] rationality[56] and autonomy.[57] They argue that since human beings are equal, rational and autonomous moral agents they are entitled to certain rights and liberties to realise these fundamental values. The so-called "anti-foundationalists", on the other hand, reject any foundational explanation for the ethical or political norms.[58] Some of these theorists deny the existence of human rights,[59] while others recognise the necessity of the rights, provided that they are not grounded in transcendental or otherwise metaphysical claims.[60]

IV. MODERNITY, POSTMODERNITY AND HUMAN RIGHTS

Human rights are the off-spring of modernity. They are one of the central truth claims or "grand narratives" of the Enlightenment,[61] typical examples

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[53] Donnelly, op. cit., 1.

[54] A. Heller, "Rights, Modernity, Democracy", in D. Cornell et al., eds., *Deconstruction and the Possibility of Justice* (London: Routledge, 1992), 353.

[55] See, e.g., R. Wasserstrom, "Rights, Human Rights, and Racial Discrimination", *The Journal of Philosophy*, 61/20 (October, 1964), 628–641, and G. Vlastos, "Justice and Equality", in J. Waldron, ed., *Theories of Rights* (Oxford: Oxford University Press, 1990), 41–77. For a criticism and refutation of Vlastos' arguments see K. Nielsen, "Scepticism and Human Rights", *The Monist*, 52 (1968), 573–594.

[56] See, for instance, T. Machan, "Towards a Theory of Individual Human Rights", *The New Scholasticism*, 51/1 (Winter 1987), 43, and A. Rand, *Capitalism: The Unknown Ideal* (New York: Signet Books, 1967), 18 and 320–328.

[57] See A. Ingram, *A Political Theory of Rights* (Oxford: Clarendon Press, 1994).

[58] For a collection of papers on the anti-foundationalist views of practical reason in socio-political, moral, and legal spheres see E. Simpson, ed., *Anti-Foundationalism and Foundationalism in Practical Reasoning* (Alberta: Academic Publishing & Printing, 1987).

[59] See J.O. Nelson, "Against Human Rights", *Philosophy*, 65 (1990), 341–348, p. 347; A. Quinton, *The Politics of Imperfection* (London: Faber, 1978), 61, and A. MacIntyre, *After Virtue* (London: Duckworth, 1981), 67: "the truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns".

[60] See, for example, R. Rorty, "Human Rights, Rationality, and Sentimentality", in S. Shute and S. Hurley, eds., *On Human Rights* (New York: Basic Books, 1993).

[61] R. Gaete, *Human Rights and the Limits of Critical Reason* (Aldershot: Darthmouth, 1993), 1.

of modernity's human-centered vision. As Bassam Tibi points out, "human rights law is a product of the cultural project of modernity. It has been a product of establishing the principle of subjectivity, i.e. of a man-centered view of the world and of the related legal underpinning which is part and and parcel of modernity."[62] This subjectivist view of human rights is severly criticised and rejected by the postmodernists. They argue that the liberal conception of the self as autonomous moral agent is merely an abstraction, even an illusion; and they celebrate "the end of humanity" and all "foundations", emphasising cultural relativism and contextuality. The postmodern critique of the subject points to an historically familiar description of the negative aspects of modernity encapsulated in such notions as exploitation, alienation, fragmentation, disenchantment, anomie and so forth.[63] The critique raged against the rationality of the Enlightenment has been shared by many thinkers in a broad spectrum ranging from Marx to Weber, and Critical Theorists to Postmodernists. For Marx, this rationality in the form of capitalism creates a situation where "All that is solid melts into air."[64] For Weber, it leads to the bondage of a bureaucratic "iron cage".[65] For Critical Theorists the Enlightenment's aim to "disenchant the world" turned out to be a "mass deception".[66]

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[62] B. Tibi, "Islam and Individual Human Rights", *Universitas*, 35/1 (1993), 17–26, p. 25. See also M. Erdogan, "İnsan Hakları Nedir?", *Polemik* 12 (March–April 1994), 3–5, p. 3.

[63] For a comprehensive treatment of these conceptions in the social theory, see, e.g., R. A. Nisbet, *The Sociological Tradition* (London: Heinemann, 1966), 264–312.

[64] K. Marx and F. Engels, *The Communist Manifesto* (1888), trans. S. Moore (London: Penguin Books, 1967), 83. See also M. Berman, *All That is Solid Melts into Air* (London: Verso, 1982).

[65] M. Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. T. Parsons, (London: George Allen and Unwin Ltd., 1930), 181.

[66] See T.W. Adorno and M. Horkheimer, *The Dialectic of Enlightenment*, trans. J. Cumming (London: Verso, 1979), 3, 120–167. See also H. Marcuse, *One Dimensinal Man* (London: Abacus, 1964) for an exposition of the negative results of "technological" and "political" rationality as the "mere stuff of domination" (14).

Postmodernity,[67] as a reaction to the negative effects of modernity, is conceived "as modernity emancipated from false consciousness".[68] In this sense it is "parasitic" on modernity.[69] Postmodernists tend to accuse the older critics of the Enlightenment, perhaps with the possible exception of Weber, of being blind to the destructive and oppressive nature of *all* totalising ideologies.[70] Marxism, as an offspring of modernity, is itself a "meta-narrative" and therefore no less "dangerous" than liberalism.[71] Postmodernism's "incredulity toward metanarratives"[72] rejects any foundational or universalist account of our condition. Thus according to Rorty,

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[67] "Postmodernity" and "postmodernism" are ambiguous and vague concepts. They mean different things to different people. For various use of these terms see, e.g., A. Giddens, *The Consequences of Modernity* (Oxford: Polity Press, 1990), 45–52; M. Sarup, *An Introductory Guide to Post-Structuralism and Postmodernism*, second edition (New York: Harvester Wheatsheaf, 1993), 130–132; H. Bertens, *The Idea of the Postmodern: A History* (London: Routledge, 1995), 3–19. In this paper, I use "postmodernity" in its general sense to refer to a putative new epoch which comes after modernity, irrespective of the question of whether such an epoch really exists or is a mere illusion. The term "postmodernism" is used to describe the cultural, political, intellectual movements in the "postmodern epoch" that can be seen as an attack on the rationality of the Enlightenment and on all "totalising" techniques and ideologies. For a similiar usage of these concepts see S. Best and D. Kellner, *Postmodern Theory: Critical Interrogations* (London: Macmillan, 1991), 5. The term "poststructuralism" is often used side by side, even interchangeably, with "postmodernism". It is commonly believed that the postmodernist intellectual movement is inspired by the poststructuralism which roughly refers to the textualism of Derrida and the genealogy of Foucault. See J. Sturrock, *Structuralism and Since* (Oxford: Oxford University Press, 1979), 81–116, and 154–180. For a collection of literary critical essays by post-structuralists see J.V. Harari, ed., *Textual Strategies – Perspectives in Post-Structuralist Criticism* (London: Methuen & Co. Ltd., 1979).

[68] Z. Bauman, *Intimations of Postmodernity* (London: Routledge, 1992), 188.

[69] See A. Heller and F. Féher, *The Postmodern Political Condition* (Oxford: Polity, 1988), 11.

[70] See S.K. White, *Political Theory and Postmodernism* (Cambridge: Cambridge University Press, 1991), 119–120.

[71] J-F. Lyotard, *The Postmodern Condition: A Report on Knowledge* (Manchester: Manchester University Press, 1984), 37. For Marxist responses to postmodernist critiques (Lyotard in particular) see T. Eagleton, "Capitalism, Modernism and Postmodernism", *New Left Review* 152 (1985), 60–73; A. Callinicos, *Against Postmodernism: A Marxist Critique* (Oxford; Polity Press, 1989); J. O'Neill, *The Poverty of Postmodernism* (London: Routledge, 1995).

[72] Lyotard, op. cit., xxiv. The postmodern distrust of foundationalism can be traced to Nietzsche, who declared the end of all foundations with the "death of God". See G. Vattimo, *The End of Modernity: Nihilism and Hermeneutics in Post-modern Culture*, trans. J.R. Snyder (Oxford: Polity, 1988), 164 and 176–177 and I. Hassan, *The Postmodern Turn: Essays in Postmodern Theory and Culture* (Columbus: Ohio State University Press, 1987), 180: "We have killed our gods, and now we have nothing upon which to found our discourse."

"[T]hese metanarratives are stories which purport to justify loyalty to, or breaks with, certain contemporary communities, but which are neither historical narratives about what these or other communities have done in the past nor scenarios about what they might do in the future."[73] The postmodernists also reject the "ethnocentrism" of these "ahistorical" and "foundational" stories: "[W]e postmodernist bourgeois liberals", says Rorty, "no longer tag our central beliefs and desires as 'necessary' or 'natural' and our peripheral ones as 'contingent' or 'cultural' ".[74] In his postmodern manifesto Lyotard declares: "Let us wage war on totality, let us be witnesses to the unrepresentable; let us activate the differences and save the honour of the name".[75] This declaration (the concluding sentence of *The Postmodern Condition*) echoes the basic parameters of a possible ethico-political project of postmodernism,[76] the aim of which is "to create a theory of justice, while maintaining total opposition to all totalising techniques".[77] Although Heidegger, one of the most important intellectual sources of the postmodernist credo, rejected ethics as a metaphysical attempt,[78] postmodernists are nonetheless concerned with the ethical.[79] As Martin Jay has pointed out, the ethical consists for them of "resistance

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[73] R. Rorty, "Postmodernist Bourgeois Liberalism", in R. Rorty, *Objectivity, Relativism, and Truth: Philosophical Papers*, Vol. I (Cambridge: Cambridge University Press, 1991), 199. For Rorty, postmodern bourgeois liberalism, unlike Kantian liberalism, escapes the charge of metanarrative because it defends the institutions and practices of particular democracies (i.e. "the rich North Atlantic democracies") without using Kantian grounds such as "rationality" and "morality" (198). For a criticism of Rorty's arguments, see Bernstein, op. cit., 230–293, and R. Bhaskar, *Philosophy and the Idea of Freedom* (Oxford: Basil Blackwell, 1991), 97–108.

[74] R. Rorty, "On ethnocentrism: A reply to Clifford Geertz", in Rorty, *Objectivity, Relativism, and Truth*, op. cit., 203–210, p. 208.

[75] J-F. Lyotard, "Answering the Question: What is Postmodernism?", trans. R. Durand, in the Appendix to *The Postmodern Condition*, op. cit., 82.

[76] See F. Jameson, "Foreword" to *The Postmodern Condition*, op. cit., xx.

[77] Douzinas and Warrington, op. cit., 17. For a critical analysis of this project see also S. Raffel, *Habermas, Lyotard and the Concept of Justice* (London: Macmillan, 1992), especially 49–86.

[78] See M. Heidegger, "Letter on Humanism", in D. F. Krell, ed., *Basic Writings*, revised and expanded edition (London: Routledge, 1993), 258–259. A recent study of Heidegger argues that despite his rejection of it, the question of ethics remains central to Heidegger's thought: J. Hodge, *Heidegger and Ethics* (London: Routledge, 1995).

[79] M. Jay, *Force Fields: Between Intellectual History and Cultural Critique* (London: Routledge, 1993), 39. See also P. Goodrich, C. Douzinas, and Y. Hachamovitch, "Introduction: Politics, ethics and the legality of the contingent", in C. Douzinas et al., eds., *Politics, Postmodernity, and Critical Legal Studies: The Legality of the Contingent* (London: Routledge, 1994), 1–35, p. 22, and Z. Bauman, *Postmodern Ethics* (Oxford: Blackwell, 1993), 4.

to systematic moral codes and integrated forms of life".[80] This "resistance" is based on the postmodern distrust of foundational narratives, which inevitably lead to domination, coercion and repression. Yet they accept the necessity of moral commands, even though the question of the author (of these commands) is left out: thus Lyotard says that "[T]he position of the sender, as authority that obligates, is left vacant, that is, the prescriptive utterance comes from nothing: its pragmatic virtue of obligation results from neither its content nor its utterer."[81]

Such a "groundless" conception of ethics offers only a pragmatic answer to the question of why I should obey the moral commands. For Levinas, the Jewish thinker who has exerted a considerable influence on the thoughts of postmodernists, most notably on Lyotard and Derrida,[82] it is the transcendental divine source which delivers ethical commands.[83] For Kantians, the moral autonomy of individuals (as ends in themselves) justifies the moral commands. The postmodern ethical thinker, however, repudiates these "metaphysical"[84] grounds of morality, even while admitting to the influence of their authors. Whatever the "ground (lessness)" of their moral thoughts, the postmodernists value the plurality of cultural, ethnic and religious "small narratives".[85] They aim to (re)conceptualise a "pluralistic justice" which will take account of the postmodern concern for the "Other", the "unknown", "excluded", "unrepresented" or "marginalised":[86] the postmodern ethico-political project constitutes a response to *difference, exclusion and marginalisation*" produced by modernity.[87]

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[80] Jay, *Force Fields*, op. cit., 44. See also White, op. cit., 116.

[81] J-F. Lyotard and J-L. Thebaud, *Just Gaming*, trans. W. Godzich (Minneapolis: Minnesota University Press, 1985), 72.

[82] Jay, op. cit., 40.

[83] See E. Levinas, "Revelation in the Jewish Tradition", trans. S. Richmond, in S. Hand, ed., *The Levinas Reader* (Oxford: Blackwell, 1989), 191–210.

[84] The term "metaphysical" generally refers to the arguments that involve "speculative, a priori and totalising formulations": S. Crook, *Modernist Radicalism and Its Aftermath* (London: Routledge, 1991), 220–221. Crook argues that postmodernism has failed to escape from "metaphysics" because it adopts an "irrational monism" based on "the speculative assertion that 'everything' is the result of the proliferation of a single principle, perhaps power, or intensity, or discourse". In this sense, for Crook, postmodernism "offers only a monistic and nihilistic reversal of modernist [metaphysical] radicalism": 221 and 17.

[85] Heller and Féher, *The Postmodern Political Condition*, op. cit., 5; Bauman, *The Intimations of Postmodernity*, op. cit., 36–37, and H.F. Haber, *Beyond Postmodern Politics: Lyotard, Rorty, Foucault* (London: Routledge, 1994), 119.

[86] See White, op. cit., 116–117.

[87] A. Giddens, *Modernity and Self-Identity: Self and Society in Late Modern Age* (Oxford: Polity Press, 1991), 6 (emphasis in original).

It stands for the rights of "Other" against the individual. The postmodernists seek "the revenge of the marginalized 'other' against the individual and associated selves and their capacities for quasi-autonomous, quasi-efficacious self-articulation",[88] a "revenge" which requires nothing less than the abolition of the subject. In a word, the human subject is condemned to death.[89]

Demoted "from constitutive to [the] constituted status",[90] the human subject is constructed by language or power:[91] the self-constitutive, autonomous individual is "the great mythic figure of the modern age".[92] It is an "illusion" which is anchored in the "fundamental feeling ... that man is the free being in a world of unfreedom".[93] Or consider Foucault's thesis that "the individual is not a pregiven entity which is seized on by the exercise of power. The individual, with his identity and characteristics, is the product of a relation of power exercised over bodies, multiplicities, movements, desires, forces."[94] With reference to his own mentor, Nietzsche, Foucault declares the end of the human subject:

> [R]ather than the death of God – or, rather, in the wake of that death and in a profound correlation with it – what Nietzsche's thought heralds is the end of his murderer; it is the explosion of man's face in laughter, and the return of masks; ... it is the identity of the Return of the Same with the absolute dispersion of man.[95]

Not all postmodernists seem to agree on the issue of abandoning the subject, however. Derrida, for instance, argues that we must retain, at

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[88] J. Fekete, "Descent into the New Maelstrom: Introduction", in J. Fekete, ed., *The Structural Allegory: Reconstructive Encounters with the New French Thought* (Manchester: Manchester University Press, 1984), xv–xvi.

[89] See F.R. Dallmayr, *Twilight of Subjectivity: Contributions to a Post-Individualist Theory of Politics* (Amherst: The University of Massachusetts Press, 1981), 21–29.

[90] Callinicos, op. cit., 87. Cf. C. Norris, *The Truth about Postmodernism* (Oxford: Blackwell, 1993), 30.

[91] See K. Asher, "Deconstruction's Use and Abuse of Nietzsche", *Telos* 62 (Winter 1984–1985), 169–178, p. 171: see also D. Macdonell, *Theories of Discourse: An Introduction* (Oxford: Blackwell, 1986), 36–42.

[92] P. Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992), 34.

[93] F. Nietzsche, *The Wanderer and His Shadow* (1880), sec. 12, in *A Nietzsche Reader*, selected and trans. R.J. Hollingdale (London: Penguin Books, 1977), 199. For Nietzsche's refutation of the subject see also his *On the Genealogy of Morals*, trans. W. Kaufman (New York: Vintage Books, 1969), 45.

[94] M. Foucault, *Power/Knowledge*, *Selected Interviews and Other Writings 1972–1977*, trans. C. Gordon et al. (Sussex: The Harvester Press, 1980), 73–74, and 98: "The individual is ... not the *vis-á-vis* of power", but "one of its prime effects".

[95] M. Foucault, *The Order of Things: An Archaelogy of the Human Sciences* (London: Routledge, 1971), 385. Foucault concludes *The Order of Things* by stating that "man would be erased, like a face drawn in sand at the edge of the sea" (387).

least for the time being, the (name) subject in order not to undermine the foundations of democracy. According to Derrida, "the time and space of this displacement [of the subject] opened up a gap, marked a gap, they left fragile, or recalled the essential ontological dragility of the ethical, juridical, and political foundations of democracy and of every discourse that one can oppose to national socialism . . .".[96] "These foundations", he asserts, "were and remain essentially sealed within a philosophy of the subject". The subject is important, because it is also "a principle of calculability for the political (and even, indeed, for the current concept of democracy . . .) in the question of legal and human rights (including the rights of man . . .) and in morality".[97]

Incredulous of foundational truth claims, the postmodernists reject the idea that human beings have certain rights simply by virtue of being human. Foucault for instance claims that, like the individual, civil liberties are nothing but expressions of governance and disciplinary power.[98] Gaete writes:

[A] Post-Modern perspective would assume that human rights are neither the expression of a universal truth nor a denial of it and regard their truth claims as only local moves in a game the subject enters when formulating his/her relationship to power in the language of fundamental rights.[99]

The postmodern hymn of relativity rules out the possibility of any universal claim to human rights. In the postmodern condition, it would be impossible to argue that individuals have some basic rights irrespective of their nationality or geography. The inevitable consequence of the relativisation of "truth-claims" is to undercut any universal, "principled, normative basis" for claiming that human rights simply exist.[100] But without such a basis, we are left in a situation in which we lack any criteria to distinguish between

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[96] J. Derrida, " 'Eating Well,' or the Calculation of the Subject: An Interview with Jacques Derrida", in E. Cadava, P. Connor, J-L. Nancy, eds., *Who Comes After the Subject?* (London: Routledge, 1991), 96–120, p. 104. Yet Derrida appears to (de)construct the subject so as to embrace literally everything, including animals (106). For Derrida, although Heidegger and Levinas ridiculed the classical notion of humanism, they have fallen prey to a different kind of humanism by excluding the animals from the concept of the subject. He writes: "The subject (in Levinas' sense) and the *Dasein* are 'men' in a world where sacrifice is possible and where it is not forbidden to make an attempt on life in general, but only on the life of a man, of other kin, on the other as *Dasein*" (113).

[97] Ibid., 108.

[98] For criticism of Foucault on this issue see J. Habermas, *The Philosophical Discourse of Modernity*, trans. F. Lawrence (Cambridge: Polity, 1990), 290.

[99] Gaete, op. cit., 168.

[100] See M. Salter, "The Impossibility of Human Rights within a Postmodern Account of Law and Justice", *Journal of Civil Liberties* 1 (1996), 29–66, p. 56.

right and wrong. This ethical vacuum may easily lead to the apparent legit-
imation and justification of almost any belief and practice in the realm of
rights. This conservative support of the prevailing status quo is an obvious
rejection of the "revolutionary" nature of universal human rights. At the
end of the day, the notion of rights is forced to surrender its power as a
legitimating factor of political regimes. With the demise of the subject and
his/her rights, the postmodernists in fact undermine any possible resistance
against oppressive orders. As Touraine asserts, "[T]he idea of the subject
is a *dissident* idea which has always upheld the right to rebel against an
unjust power."[101] Touraine also reminds the murderers of the subject what
a subject-less world would look like:

> [T]he day when the Subject is debased to meaning introspection, and the Self to meaning
> compulsory social roles, our social and personal life will lose all its creative power and will
> be no more than a post-modern museum in which multiple memories replace our inability
> to produce anything of lasting importance.[102]

The postmodern defence of "uncertainty" and "contingency" is equally
problematic. The very idea of "uncertainty" itself implies the existence of
a certainty, after all: "[I]f you tried to doubt everything, you would not
get as far as doubting anything. The game of doubting itself presupposes
certainty."[103] Human beings live with their values, and need to rank them.
Their highest values, or what Charles Taylor calls "hypergoods",[104] play
a central role in our lives. Individuals define and are defined by these
hypergoods, be they a divine being, Brahma, Nirvana, Justice, Reason,
Science, Progress, Cogito or Superman. To kill our hypergoods therefore
means an attempt to kill the sources of the self, sources which confer
meaning on the lives of human beings. The need for hypergoods points
to the necessity of "an absolute truth", to use Sartre's phrase.[105] This
necessity is also the precondition of *any* critique. Thus Habermas claims

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[101] A. Touraine, *Critique of Modernity*, trans. D. Macey (Oxford: Blackwell, 1995), 213
(emphasis in original).

[102] Ibid., 210.

[103] L. Wittgenstein, *On Certainty* (Oxford: Blackwell, 1974), para.115. (I am indebted
here to A. Bradney, who reminded me of the arguments of Wittgenstein.)

[104] C. Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge:
Cambridge University Press, 1989), 63: "[Hypergoods are those] goods which not only
are incomparably more important than others but provide the standpoint from which these
must be weighed, judged, decided about."

[105] Referring to the certainty of Cartesian cogito, Sartre said: "Before there can be any
truth whatever, then, there must be an absolute truth, and there is such a truth which is
simple, easily attained and within the reach of everybody; it consists in one's immediate
sense of one's self." – J.P. Sartre, *Existentialism and Humanism*, trans. P. Mairet (London:
Eyre Methuen Ltd., 1973), 44.

that "Nietzsche's critique consumes the critical impulse itself"; for "if thought can no longer operate in the realms of truth and validity claims, then analysis and critique lose their meaning". [106] Oddly, perhaps, Derrida seems to agree with Habermas when he says that he "cannot conceive of a radical critique which would not be ultimately motivated by some sort of affirmation, acknowledged or not".[107]

Postmodernity, despite its dream of a "godless" epoch,[108] cannot escape the necessity we have explored. Such a dream itself anyway reflects, however implicitly and unintentionally, the belief in linear progress, one of the hypergoods of modernity.[109] Postmodernism turns out to be a new grand narrative: "*a grand narrative of postmodernity*".[110] Even Lyotard comes close to acknowledging the existence of this new metanarrative. He states that "the great narratives are now barely credible. And it is therefore tempting to lend credence to the great narrative of the decline of great narratives."[111] As a new "totalising" project, postmodernism reproduces the very predicaments of modernity,[112] and its rejection of metaphysics becomes a merely "rhetorical" claim.[113]

The real question now is how to establish a socio-political framework in which people's hypergoods might peacefully live side by side without people trying to kill each other. This is the project of political liberalism: but it is also *to certain extent* the project of postmodernism itself, as we

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[106] J. Habermas, "The Entwinement of Myth and Enlightenment: Re-Reading Dialectic of Enlightenment", *New German Critique*, 26 (1982), 13–30, p. 25. Cf. D. Walsh, *After Ideology: Recovering the Spiritual Foundations of Freedom* (New York: HarperCollins Publishers, 1990), 29.

[107] J. Derrida, "Dialogue with Jacques Derrida", in R. Kearney, ed., *Dialogues with Contemporary Continental Thinkers* (Manchester: Manchester University Press, 1984), 118.

[108] See O'Neill, op. cit., 197.

[109] See D. Lyons, *Postmodernity* (Buckingham: Open University Press, 1994), 18.

[110] A. Gurnah and A. Scott, *The Uncertain Science: Criticism of Sociological Formalism* (London: Routledge, 1992), 148 (emphasis in original).

[111] J-F. Lyotard, "Universal history and cultural differences" in A. Benjamin, ed., *The Lyotard Reader* (Oxford: Blackwell, 1989), 318.

[112] See, e.g., P.A. Bové, *Intellectuals in Power: A Genealogy of Critical Humanism* (New York: Columbia University Press, 1986), 3: "Essentially, despite the attempts by Nietzsche and Foucault to undermine the major formations of humanistic practice, especially by questioning the status of the metaphysical subject …, their alternative practices cannot entirely avoid reproducing the tradition they hope to deconstruct."

[113] See G. Rose, *Dialectic of Nihilism: Post-Structuralism and Law* (Oxford: Blackwell, 1984), 208. See also her "The postmodern complicity", *Theory, Culture & Society*, 5/2–3 (1988): 357–371, p. 362.

have earlier seen.[114] In other words, pluralism is the common value which in fact pervades the writings of liberals and postmodernists alike,[115] even though it is expressed in different terms, and on different epistemological grounds, amounting, ironically, to both the "ethical relativism" of John Keane[116] and the "moral universalism" of Habermas.[117] Keane writes:

[T]o defend relativism requires a social and political stance which is throughly modern. It implies the need for establishing or strengthening a democratic state and a civil society consisting of a plurality of public spheres, within which individuals and groups can openly express their solidarity with (or opposition to) others' ideas.[118]

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[114] It is argued by some that the postmodern ethical project inevitably merges into Kantian moral imperatives. R. Boyne, for instance, argues that "[I]f the task is to find a practical rule to guide the application of *other*-directed insights towards transgressive practices of social change, we are implicitly enjoined, by both Foucault and Derrida, to look to the Kantian formulation of the categorical imperative." According to Boyne, "Kant saw the necessity of thinking different forms of reason, in particular of thinking in a practical-ethical way. Foucault and Derrida, from their respective standpoints, finally approach the same conclusion." – R. Boyne, *Foucault and Derrida: the Other Side of the Reason* (London: Unwin Hyman, 1990), 168–169.

[115] For the "affinities" between liberals and postmodernists on ethical issues such as tolerance see, e.g., D. Cornell, *The Philosophy of the Limit* (New York and London: Routledge, 1992), 186, n. 3: "Derrida's ethics is based on a tolerance of difference which is the very basis of liberalism."

[116] J. Keane, *Democracy and Civil Society* (London: Verso, 1988), particularly 228–241.

[117] J. Habermas, *Autonomy and Solidarity: Interviews with Jürgen Habermas*, revised edition, P. Dews, ed. (London: Verso, 1992), 240.

[118] Keane, *Democracy and Civil Society*, op. cit., 238. For Keane, "ideologies are the enemy of democracy, for they each contain a fanatical core". Like Lyotard, he also wages war on all these ideologies in the name of democracy. He concludes that "[T]o defend democracy against these ideologies is to welcome indeterminacy, controversy and uncertainty" (241). Again, like all other postmodernists, Keane fails to escape the necessity of "certainty", or of truth claims. Why should we defend democracy against ideologies or metanarratives? Any answer to this question will inevitably make democracy vulnerable to the charge of being a metanarrative, for it will inevitably reproduce the very binary oppositions which are rejected by postmodernism (see 241). According to Keane, democratic procedures with the help of the rule of law and an independent judiciary "minimize the risk of *despotism*" (237, emphasis added). Democracy, as "a condition of freedom from ideology", he elsewhere argues, is "the means by which a plurality of groups with different and often conflicting beliefs can live their differences and get along without murdering or dominating each other": J. Keane, "Power-Sharing Islam?", in A. Tamimi, ed., *Power-Sharing Islam?* (London: Liberty for Muslim World Publications, 1993), 28. This argument is almost identical to the political neutrality of Kantian liberalism. Like political neutrality, Keane's argument of democracy and plurality rests on *a priori*, "determinate" and "certain" judgement, that is, the necessity of democracy. He himself argues that not all beliefs and conducts are acceptable within the discourse of democracy and plurality, because "to tolerate ideology is to stifle and potentially undermine the very plurality of language games" – *Democracy and Civil Society*, 235. In other words, the ideas are tolerable only to

In an interview, Habermas explains what his "moral universalism" stands for:

> [W]hat does universalism mean, after all? That one relativizes one's own way of life with regard to the legitimate claims of other forms of life, that one grants the strangers and the others, with all their idiosyncrasies and incomprehensibilities, the same rights as oneself, that one does not insist on universalizing one's own identity, that one does not simply exclude that which deviates from it, that the areas of tolerance must become infinitely broader than they are today – moral universalism means all these things.[119]

At the core of this pluralism required by "ethical relativism" and "moral universalism" alike lies the conception of autonomy.[120] Indeed, as Raz puts it, pluralism is a necessary requirement of the value of autonomy.[121] Autonomy, however, is inextricably connected with rights. An autonomous individual who is "the author of his own life" has certain rights.[122] In Raz's words "autonomy is constituted by rights and nothing else: the autonomous life is a life within unviolated rights".[123] Since it is an essential part and parcel of human being (or being human), autonomy constitutes a "sufficient ontological justification" for rights and thus gives an invaluable support to those who seek for a justificatory ground for them.[124]

Autonomy *requires* the existence of the Other(s).[125] The Other is not simply external to me, but he or she at the same time constitutes my identity: I am in a way parasitic on the Other. My autonomy makes sense only insofar as there exist others. As Sartre puts it, "[T]he other is indispensable to my existence, and equally so to any knowledge I can have of myself."[126] And unless I in turn recognise others as autonomous beings I shall end up in the fundamental predicament of "absolute loneliness and terror".[127]

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the extent that they are compatible with democracy. This blurs the very distinction between democracy and its enemies, i.e, ideologies, grand narratives, or metalanguage-games.

[119] Habermas, *Autonomy and Solidarity*, op. cit., 240.

[120] I use the term "autonomy" as having two aspects: the treatment of people as an end in themselves, and the capacity to reflect on and choose between alternatives. The term "radical autonomy" is sometimes used to express these two aspects of autonomy: see, e.g., M.J. Detmold, *Courts and Administrators: A Study in Jurisprudence* (London: Weidenfeld and Nicolson, 1989), 113.

[121] See J. Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 133.

[122] See L.W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), 98.

[123] J. Raz, "Right-Based Moralities", in Waldron, *Theories of Rights*, op. cit., 182–200, p. 191.

[124] Detmold, *Courts and Administrators*, op. cit., 114.

[125] See A. Bradney, *Religions, Rights and Laws* (Leicester: Leicester University Press, 1993), 27.

[126] Sartre, *Existentialism and Humanism*, op. cit., 45.

[127] Detmold, *Courts and Administrators*, op. cit., 124.

This points to the absolute necessity of living with others,[128] as a *"zoon politikon"* in Marx's words.[129]

Thus autonomy is a key value not only for "I", but also for others. The postmodernists must take into account autonomy, if they are to present an ethical/political project part of which involves rights, however "locally". They can do so, furthermore, without having to abandon their conceptual tools. Difference and otherness, the magical terms of postmodern discourse, are in fact quite compatible with such conceptions as autonomy and universality. As Lyotard himself argues, a human being has rights only if she is also an *other* human being. Likewise, as Terry Eagleton emphasises, universalism and difference are not mutually exclusive. Difference may need universalism. The idea of difference is indeed likely to be *undermined* by "certain militant particularisms of our day".[130]

V. Conclusion

Whatever the merits of the entirety of their arguments, the postmodernists emphasise the paramount importance of human rights: they are, after all, its starting-point. As Bauman points out, "[T]he great issues of ethics – like human rights . . . – have lost nothing of their topicality",[131] and he is well aware of the fact that "[m]oral issues tend to be increasingly compressed into the idea of 'human rights' ".[132] Lyotard himself likewise states that "[A] human being has rights only if he is other than a human being. And if he is to be other than *a* human being, he must in addition become an *other* human being."[133]

More importantly, influenced by the communitarian and postmodern critique of metaphysical grounds for ethical and political claims, some liberal rights theorists such as Ronald Dworkin and John Rawls adopt a kind of "apologetic" attitude towards the theoretical foundation of rights,

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[128] For a general account of "being-with-others", see J. Macquarrie, *Existentialism* (Harmondsworth: Penguin Books, 1972), 75–92.

[129] K. Marx, *Grundrisse*, trans. V. Nicolaus, (London: Pelican, 1973), 84: "The human being is in the most literal sense a *zoon politikon* . . . an animal which can individuate itself only in the midst of society."

[130] T. Eagleton, *The Illusions of Postmodernism* (Oxford: Blackwell, 1996), 113–119. For a review see G. Calder, "Postmodernism and its Ironies" *Res Publica*, 3/2 (1997), 221–228.

[131] See Bauman, *Postmodern Ethics*, op. cit., 4.

[132] Z. Bauman, "Morality in the Age of Contingency", in P. Heelas, S. Lash and P. Morris, eds., *Detraditionalizations* (Oxford: Blackwell, 1996), 55.

[133] J-F. Lyotard, "The Other's Rights", in Shute and Hurley, *On Human Rights*, op. cit., p. 136.

refusing to play the traditional role of moral magician by plucking ethical claims out of a metaphysical hat. In a recent essay, Rawls makes it clear that

[T]hese [human] rights do not depend on any particular comprehensive moral doctrine or philosophical conception of human nature, such as, for example that human beings are moral persons and have equal worth or that they have certain particular moral and intellectual powers that entitle them to these rights. To show this would require a quite deep philosophical theory that many if not most hierarchical societies might reject as liberal or democratic or else as in some way distinctive of Western political tradition and prejudicial to other countries.[134]

This passage implies that in fact the idea of human rights is a product of the western liberal tradition, but in order to make it universally applicable we must refrain from any theoretical attempt to reveal this fact. Let's pretend that human rights are simply there. They do not need any moral or philosophical ground for justification.

But there need be no contradiction between the postmodernists and the liberals; nor need the latter apologize for "rights". For, as we have seen, the postmodernists have never underestimated the importance of human rights. They argue that ethical issues such as human rights "only need to be seen, and dealt with, in a novel way".[135] Yet the postmodernists have not presented us with any postmodern "novel way" in which human rights might be seen. It seems to be difficult, if not impossible, for them to show this novel way without taking into account the conceptions of autonomous self and universality. Perhaps they need to begin taking rights more seriously.

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[134] J. Rawls, "The Law of Peoples", in Shute and Hurley, op. cit., 56–57. Cf. Rorty, "Human Rights, Rationality, and Sentimentality", in ibid., 112–134.

[135] Bauman, *Postmodern Ethics*, op. cit., 4.