

# Human Rights from a Third World Perspective: Critique, History and International Law



Human Rights from a Third World Perspective:  
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Edited by

José-Manuel Barreto

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P U B L I S H I N G

Human Rights from a Third World Perspective:  
Critique, History and International Law  
Edited by José-Manuel Barreto

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

—Jorge Luis Borges, or Pascal

'The future demands thinking beyond the Greeks and Eurocentrism' and 'a radical reconceptualisation of the human rights paradigm'

—Walter Mignolo



# TABLE OF CONTENTS

Acknowledgements .....	x
------------------------	---

Introduction .....	1
Decolonial Strategies and Dialogue in the Human Rights Field	
José-Manuel Barreto	

## **Part I: Critique of the Theory of Human Rights**

Chapter One.....	44
Who Speaks for the “Human” in Human Rights?	
Walter Mignolo	

Chapter Two .....	65
Provincializing Human Rights? The Heideggerian Legacy	
from Charles Malik to Dipesh Chakrabarty	
Martin Woessner	

Chapter Three .....	102
The Legacy of Slavery: White Humanities and its Subject.	
A Manifesto	
Sabine Broeck	

Chapter Four .....	117
“Moral Optics”: Biopolitics, Torture and the Imperial Gaze of War	
Photography	
Eduardo Mendieta	

## **Part II: Signposts for an Alternative History of Human Rights**

Chapter Five .....	140
Imperialism and Decolonization as Scenarios of Human Rights History	
José-Manuel Barreto	

Chapter Six .....	172
Las Casas, Vitoria and Suárez, 1514-1617	
Enrique Dussel	
Chapter Seven.....	208
The Dual Haitian Revolution and the Making of Freedom in Modernity	
Anthony Bogues	
Chapter Eight.....	237
Love, Justice and Natural Law: On Martin Luther King, Jr.	
and Human Rights	
Vincent W. Lloyd	
Chapter Nine.....	256
Human Rights, Southern Voices: Yash Ghai and Upendra Baxi	
William Twining	
<b>Part III: Decolonizing Constitutional and International Human Rights Law</b>	
Chapter Ten .....	312
The Rule of Law in India	
Upendra Baxi	
Chapter Eleven .....	336
Eddie Mabo and Namibia: Land Reform and Precolonial Land Rights	
Nico Horn	
Chapter Twelve .....	353
Universalizing Human Rights: The Role of Small States	
in the Construction of the Universal Declaration of Human Rights	
Susan Waltz	
Chapter Thirteen.....	388
Forging a Global Culture of Human Rights: Origins and Prospects	
of the International Bill of Rights	
Zehra F. Kabasakal Arat	



Chapter Fourteen .....	419
<i>Mode d'assujettissement</i> : Charles Malik, Carlos Romulo and the Emergence of the United Nations Human Rights Regime Glenn Mitoma	
Postface .....	440
Contributors.....	441
Index of Names.....	444

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## INTRODUCTION

# DECOLONIAL STRATEGIES AND DIALOGUE IN THE HUMAN RIGHTS FIELD

JOSÉ-MANUEL BARRETO

Some Christians encountered an Indian woman, who was carrying in her arms a child at suck; and since the dog they had with them was hungry, they tore the child from the mother's arms and flung it still living to the dog, which proceeded to devour him before the mother's eyes.

—Bartolomé de las Casas

A dog trained to attack the flesh, and torture, kill, and gorge a man and a child in front of the mother connects Fernando Botero's *Abu Grahیب* with Bartolomé de las Casas' *Short Account of the Destruction of the Indies*. In this scenario of colonial wars a dog is turned into a beast—a torture dog or a war dog—by the inhumanity of conquistadors and invaders. The dog becomes a powerful machine for terrorizing and destroying the body, and for dehumanizing the colonized—and the colonizer. Five hundred years apart these two images or stories are bind together by their origin: the history of the advance of modern imperialism, and the sensibility of their authors for the suffering of the victims. The violence and dread of these events resonates in the global consciousness and moral sentiment of our times. It is the drive for survival and dignity, the consciousness about the imperative for independence and justice, and the sympathy for the victims what has brought natural or human rights to bear the force of such a capacity for destruction.

Botero's *Abu Grahیب* paintings are placed in the collision-point where the current wave of imperial mobilization meets the world-wide urge and stand for human dignity, and are taken to the forefront of human rights discussion by Eduardo Mendieta (Chapter 4). Setting the scenario for this collection of essays, Mendieta's interpretation of Botero's work relies on the notion of "empathic vision"—"a conjunction of affective and critical

ways of looking”.<sup>1</sup> A door is opened here towards a marriage of intellection and emotion, suggesting perhaps one of those “lost paths for thinking”. Where does the power of representation in Botero’s *Abu Grahیب* reside? The series makes visible the humanity denied to the vanquished—it reveals “the humanity of those who are not allowed to be represented as humans”. By the power of unflinching vision Botero rescues from old newspapers, and for moral and political history, images that depict the human/bodily dignity being trashed by the “physicality of torture”, and brings to light some of the deliberate—not collateral—effects of contemporary imperialism.

The body of the victims is trapped within the logic of war—the imperial logic—and torture and suffering are placed in front of everybody to be recognized as blatant “embodiments” of neo-colonialism. For Mendieta, Botero’s *Abu Grahیب* poses a set of questions for the analysis of biopolitical power beyond the conventional understanding of biopolitics and the biopolitical state, namely the biopolitical empire or the biopolitics of imperialism. In addition, Botero’s *Abu Grahیب* enables the spectators “to feel morally while seeing”. The power of these paintings resides in a capacity for eliciting moral emotions like outrage and sympathy from the public in its different instantiations—the national public opinions and civil societies, the international community, the citizens or the peoples of the world, the global sentiment or the structure of feeling of our epoch. By teaching how to be witness of human suffering and enabling present and future viewers to be moral subjects, Mendieta says, Botero constructs a morality out of “ways of seeing and feeling”—a truthful “moral optics”.

But what do we mean when we decide to embrace the quest to decolonize human rights? We have here in mind a particular form of critique, Decolonial Theory, which has been developed by Latin American thinkers out of concepts gained in the fields of the philosophy of history, social theory and epistemology. Modernity cannot be identified exclusively with emancipation, the Renaissance and the Enlightenment, but it is also historically evident that colonialism was another of its central foundations. The conventional conception of modernity needs to be revisited to accommodate the legacy of modern imperialism: the conquest

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<sup>1</sup> Jill Bennett, *Empathic Vision: Affect, Trauma, and Contemporary Art* (Stanford: Stanford University Press, 2005).

and colonization of the world—a vast enterprise of domination marshaled through wars of aggression, genocides, slavery, plunder and exploitation.<sup>2</sup>

Decolonial Theory has also elaborated a “geopolitics of knowledge”, an epistemology that can be characterized as materialist, in contradistinction to the transcendental or idealist dialectics between subject and object in the ambit of the consciousness—as in Descartes, Kant and Hegel’s subjectivism. The geopolitics of knowledge is a contextualist epistemology in as much as it finds in politics and history the grounds of knowledge. However, the geopolitics of knowledge does not locate the source of “truth” in a socioeconomic framework with implicit national borders, but in the milieu of the history of the modern world considered as a whole—it departs from the history of world capitalism or, what is the same, modern imperialism, ie the history of the relations between empires and colonies since the late Fifteenth century. In this view, the history of modern ideas—modern rationality itself, conceptions of the state, even Marxist and other critiques of capitalism—runs interrelated to the history of modern imperialism. For a geopolitical analysis of knowledge, the cultural colonization of world civilizations, rationalities and intellectual disciplines ended in the crucial assumption according to which the origin of legitimate thinking is confined to a certain geopolitical location—Europe—excluding the existence of other sites of knowledge generation.<sup>3</sup>

The way human rights are commonly understood is a consequence of this dynamic. Egotism has blinded Europe. Being born out of European events and schools of thinking, the standard theory of human rights ignores or rejects the possibility of non-Eurocentric or Third-World approaches. The decolonization of human rights can be seen as part of the wider task of decolonizing knowledge. The decolonization of the humanities, the social sciences and culture in general is both an intellectual and political project that emerges from the standpoint of the Third World, and aims at opposing colonialism and abuse of power. The quest to decolonize human rights can be summed up in two statements made by Walter Mignolo: “the future demands thinking beyond the

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<sup>2</sup> Arturo Escobar centers his analysis of the main features of Decolonial Theory in the re-conceptualization of the conventional notion of modernity. See Arturo Escobar, “Worlds and Knowledges Otherwise,” *Cultural Studies* 21 (2007).

<sup>3</sup> Walter Mignolo, “The Geopolitics of Knowledge and the Colonial Difference,” *The South Atlantic Quarterly* 101 (2002), 59 & 63-74.

Greeks and eurocentrism”<sup>4</sup> and “a radical reconceptualization of the human rights paradigm”,<sup>5</sup> so that human rights continue to be a hindrance to imperial projects today and in the future.

The development of the critique of Eurocentrism has antecedents in the five hundred year-long resistance to modern imperialism. From the late Twentieth century onwards it has been renovated and strengthened by a number of schools of thinking, among them Postcolonial Theory and Orientalism, Subaltern Studies, Decolonial Theory, Critical Race Theory, Black Radical Theory, Black Atlantic Studies and Third World Feminism. Within this epochal stream of thinking, some insights developed by the Third World Approach to International Law (TWAIL)<sup>6</sup> are especially relevant for the construction of a Third-World interpretation of human rights. In a fruitful dialogue with a marginal strand of the Western tradition of international law that runs throughout the writings of James Brown-Scott<sup>7</sup>, Carl Schmitt<sup>8</sup> and David Kennedy<sup>9</sup>, Antony Anghie has shown how the modern tradition of international law was not developed exclusively from the writings of Grotius, Pufendorf and Vattel, and from

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<sup>4</sup> Walter Mignolo, “Philosophy and the Colonial Difference,” in *Latin American Philosophy*, ed. Eduardo Mendieta (Bloomington and Indiana: Indiana University Press, 2003), 85.

<sup>5</sup> Walter Mignolo, “The Many Faces of Cosmo-polis: Border Thinking and Critical Cosmopolitanism,” *Public Culture* 12 (2000): 739.

<sup>6</sup> Balakrishnan Rajagopal has examined the capacity of human rights for working as a counter-hegemonic force in world politics. See B. Rajagopal, “Counter-hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy,” *Third World Quarterly* 27 (2006), 767-783. In the same horizon of questioning see U. Baxi, “What may the ‘Third World’ Expect from International Law?” *Third World Quarterly* 27 (2006), 713-725; O. Chinedu, “Poverty, Agency and Resistance in the Future of International Law: An African Perspective,” *Third World Quarterly* 27 (2006), 799-814; I. Mgbeoji, “The Civilised Self and the Barbaric Other: Imperial Delusions of Order and the Challenges of Human Security,” *Third World Quarterly* 27 (2006), 855-869; and V. Nesiiah, “Resistance in the Age of Empire: Occupied Discourse Pending Investigation,” *Third World Quarterly* 27 (2006), 903-922. More recently, Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: CUP, 2011).

<sup>7</sup> James Brown-Scott, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* (Oxford: Clarendon Press, 1934).

<sup>8</sup> Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum* (New York: Telos Press, 2006).

<sup>9</sup> David Kennedy, “Primitive Legal Scholarship,” *Harvard International Law Journal* 27 (1986), 1-98.

dealing with the problem of regulating relations between European sovereign powers. The modern law of nations also has its origins in the expansion of Europe and the colonization of the world, a theoretical and historical scenario that gave birth to the works of Francisco de Vitoria.<sup>10</sup>

Seeking to combine critical consciousness and moral sensibility, this preface focuses on methods of interpretation or hermeneutical strategies that have already advanced, and can continue to support, the project of decolonizing human rights. In emphasizing new analyses and perspectives that enable us to decipher the deceptions and biases at work in Eurocentric understandings of the subject, this introduction provides a tool-box for creating new decolonial or Third-World discourses. Towards the end of this Introduction, an overview of the topics investigated in this book and how they are organized will be offered.

## **Critique of Eurocentrism and the Third World Perspective on Human Rights**

The labor of constructing a Third World interpretation of human rights entails a departure from Eurocentric theories, i.e. the corpus of today's dominant conceptualizations of rights inspired by different schools of thought, among them modern—Contractarian, Kantian, Hegelian, Marxist—and postmodern theories of human rights. Pointing to the Eurocentric character of a certain body of knowledge is simultaneously an epistemological and a geopolitical issue, as it comprises the unveiling of a genealogical link between knowledge and history. Inasmuch as such a

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<sup>10</sup> Antony Anghie, 'Colonial Origins of International Law', in E. Darian-Smith and P. Fitzpatrick, eds, *Laws of the Postcolonial* (Ann Arbor: University of Michigan Press, 1999), 89-90. This debate has been enriched by contributions from scholars such as Fitzpatrick, Kochi and Koskenniemi, who work from the perspective of the European Critical Legal Studies. Peter Fitzpatrick, "Latin Roots: Imperialism and the Making of International Law," in *Law as Resistance: Modernism, Imperialism, Legalism* (London: Ashgate, 2008). Tarik Kochi, *The Other's War: Recognition and the Violence of Ethics* (London: Birkbeck Law Press, 2009). Martti Koskenniemi, "Colonization of the 'Indies': The Origin of International Law?" in *La idea de América en el Pensamiento Ius Internacionalista del Siglo XXI*, ed. Yolanda Gamarra (Zaragoza: Institución Fernando el Católico, 2010), and "Empire and International Law: The Real Spanish Contribution," *University of Toronto Law Journal* 61 (2011), 1-38. Koskenniemi includes within this tradition the work of Ernest Nys, in particular his *Les Origins Du Droit International* (Charleston: Nabu Press, 2012).

connection is made, it is evident that the hegemonic theory of human rights is the offspring of a particular perspective grounded on a historical and geographical context. As such, modern and postmodern theories of rights that inform today's scholarly debate and orientate activism are to be seen as a few among the various contingent possibilities for understanding rights.<sup>11</sup> These theories conflate a wealth of perspectives on rights, as well as the limitations proper to the space and time coordinates the European epistemic standing point and the European philosophical understanding of history. In consequence, they are biased conceptions and partial accounts of the history of human rights.<sup>12</sup>

However, the Eurocentric theory of human rights presents itself as objective and universal and, while it assumes exclusive authority and legitimacy, it condemns a Third World approach to impossibility or silence.<sup>13</sup> Hiding crucial aspects of their genealogy, the eurocentric theories of rights afford little or no significance to the history of the relations between modern empires and colonies or the Third World. This predisposition is accompanied by a tendency to give a notorious and unfair weight to the events occurring in Europe. This is the case in Hegel's philosophical notion of "universal history", from which Asia, Africa and the Americas are excluded.<sup>14</sup> By framing human rights in conceptions of history based exclusively on European milestones the theory of rights remains within a Eurocentric horizon of understanding. Having been born out of the experience of bourgeois revolutions, European theories of human rights deal mainly with relations between state and society, or between governments and individuals, putting aside the problematic of interactions between empires and colonies.

The critique of Eurocentrism and the challenge to its hegemony do not just thematize the question of the "what"—human rights as the object of reflection; it is also and mainly concerned with interrogations about the

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<sup>11</sup> Peter Beardsell, *Europe and Latin America: Returning the Gaze* (Manchester: MUP, 2000), 35-37.

<sup>12</sup> The question of Eurocentrism has also been seen as a relevant issue for international law from a European perspective. See Martti Koskeniemi, "Histories of International Law: Dealing with Eurocentrism," *Rechts Geschichte-Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte* 19 (2011), 152-176.

<sup>13</sup> Arturo Escobar, "Imperial Globality and Anti-Globalisation Movements," *Third World Quarterly* 25 (2004): 210.

<sup>14</sup> G.W.F. Hegel, *The Philosophy of History* (Mineola: Dover Publications, 1956), 8-102.



“for whom”, “what for” and “from where”—the geopolitical context in which human rights theories are elaborated—and develops a self-understanding of the historical framework in which they are enunciated—Twentieth century, Post-Holocaust or Post-Conquest history. This hermeneutical and geopolitical reflection creates the possibility of thinking of human rights from the “stand point” of those in the South and of setting up decolonial goals. A Third World approach to human rights arises from another geographical space and a different historical horizon of understanding—from the “exteriority” of Europe, an outside that is inextricable from the inside and thus constitutes it.<sup>15</sup>

This distinct historical and geopolitical background can modify the terms, concepts and agenda of the theory and practice of human rights. The interpreter is also conscious of the fact that her perspective—that of the Third World—stands at variance with another perspective—that of Europe. The critique occurs in this shifting of viewpoints, which at the same time creates the conditions for attempting a novel and independent approach to the tradition of natural and human rights, as well as for making possible a dialogue between these two points of view. It encompasses a different interpretation of the philosophy of history in which human rights theory has been customarily or implicitly based on, and gives birth to a new paradigm in which the events of the Conquest of America and the colonization of the world are also recognized as key signposts of modern history. Developing a new version of the history of rights in the context of world history, it brings into consciousness five hundred years of utopian mobilization of natural rights, the Rights of Man and human rights to resist imperialism.

### **Re-contextualization and Contextualization of Human Rights**

The interpretative tool of re-contextualization also can advance the project of decolonizing human rights theory. Drawing from hermeneutics, Rorty adopted a contextualist notion of knowledge, a conception in which ‘meaning is a function of context’. In Rorty’s Neopragmatic hermeneutics, contextualism is the consequence of abandoning realist and representational notions of truth in which knowledge seeks to grasp the ‘real thing’, or to

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<sup>15</sup> Enrique Dussel, “Democracy in the ‘Center’ and Global Democratic Critique,” in *Democracy Unrealized. Documenta 11 Platform 1*, ed. O. Enwezor et al. (Ostfildern-Ruit: Hatje Cantz Publishers, 2002), 274.

produce an adequate representation of objects. As there are no context-independent or pre-contextual ideas, the content of a concept stems from the situation in which it is used. Thus, the meaning of a word is already determined by its context, which most of the time remains latent or implicit. As meaning is a variable of context, the substance of a concept changes if this is located in a different intellectual, cultural or historical framework. If meaning does not follow Saussure's principle of stability and context is contingent, then the search for knowledge can be described with Rorty as the product of the endeavor for re-contextualizing concepts, and not as the result of the search for objectivity, right meaning or 'truth'.<sup>16</sup>

Conventional human rights theory is routinely situated either in the background of European history, or in no context at all. As to the first interpretative practice, single events or series of events can be brought to mind when we think of the historical horizon in which the standard theory of human rights is located. Among the more popular and influential are the Enlightenment, the Hegelian 'world history', the Holocaust,<sup>17</sup> and the sequence constituted by the Renaissance, the Reformation, the English Parliament and the French Revolution, as in Habermas' account of the crucial moments in the formation of modern subjectivity in which history has its beginnings and meaning in Europe and it is realized there, while the events occurring outside are minor episodes or simply are not part of history.<sup>18</sup> This intra-European milieu allows and calls for a re-contextualization of human rights in another historical and geographical

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<sup>16</sup> Richard Rorty, "Inquiry as Recontextualisation: An Anti-Dualist Account of Interpretation," in *Objectivity, Relativism and Truth. Philosophical Papers I* (Cambridge: CUP, 1991), 99 & 110. See also Richard Rorty, "Is Derrida a Transcendental Philosopher?" in *Essays on Heidegger and Others. Philosophical Papers II* (Cambridge: CUP, 1991), 127.

<sup>17</sup> This is the case with Rorty who states that we live in a Post-Holocaust human rights culture. Richard Rorty, "Human Rights, Rationality and Sentimentality", 115. In a similar sense, Costas Douzinas writes that 'ours is the epoch of massacre, genocide, ethnic cleansing, the age of the Holocaust'. Costas Douzinas, *Human Rights and Empire. The Political Philosophy of Cosmopolitanism* (Abingdon: Routledge-Cavendish, 2007), 71. For a critique of the Post-Holocaust interpretation of human rights see José-Manuel Barreto, "Human Rights and the Buried Crimes of Modernity," in *Critical International Law: Post-Realism, Post-Colonialism, and Transnationalism*, ed. Prabhakar Singh and Vik Kanwar (New Delhi: Oxford University Press, forthcoming 2013).

<sup>18</sup> Jürgen Habermas, *The Philosophical Discourse of Modernity* (Cambridge: MIT, 1990), 17.

landscape that extends beyond the borders of Europe—the backdrop of the globe or the modern world as a whole. This task can be undertaken by thematizing a wider and more comprehensive geopolitical setting, one in which the Conquest of America and the colonization of the world, as well as the movements of resistance against modern imperialism, are at the core of the genealogy of rights.

The standard theory of human rights is sometimes situated in no context at all—it is kept entirely separate from the historical and geographical circumstance in which was constructed. The dominant human rights theory is usually presented as “the” theory of rights as such, or as the “universal” conception of rights. Having roots in Medieval theology and still today significant as a component in the European mindset and theory, the metaphor of universal concepts was developed by the transcendental philosophy of consciousness in its different versions—among others those of Descartes, Kant, Hegel and Husserl. Subjectivism constructed the figure of universal notions such as “pure a priori concepts” and “absolute knowledge” by locating knowledge in an abstract world in which material conditions do not apply, and by getting rid of the human faculties that can take account of it—the senses, the body, intuitions and emotions. Idealist epistemology showed how to avoid of the ways in which the subject spontaneously approaches “material things”—Kant’s “ordinary rational knowledge” and “popular moral philosophy”; Hegel’s “sensory certainty” and “common sense”, and Husserl’s “natural attitude”—and sought to reach a point of view from which everything could be seen as it is—the modern version of the scholastic God’s eye. Enabling aspirations to universal validity, metaphysical theories of knowledge hide their locus of enunciation by proscribing any reference to the context—epistemic, historical, geographical, political—from which they emerged. European thinking in this stream justifies its claims to objectivity and universal truth by denying that it was born in Europe. Santiago Castro-Gomez describes the grounds and consequences of this variety of epistemology with the metaphor of the “the hubris of the point zero”.<sup>19</sup>

It is precisely in this claim to universality made possible by the suppression of its own context that the power of subjectivism resides. The universality of a concept transforms it into the only valid one, and precludes the likelihood of other notions having equal or even some

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<sup>19</sup> Santiago Castro-Gómez, *La Hybris del Punto Cero. Ciencia, Raza e Ilustración en la Nueva Granada, 1750-1816* (Bogotá: Editorial Universidad Javeriana, 2005).

objectivity. As when engaged with Foucault's Power/Knowledge, we are here faced with a reflection on what can be called "Power/Epistemology". It is not only knowledge that creates power, or that power resides in knowledge, as in Foucault. As knowledge that "precedes" or justifies knowledge, epistemology always remains in close contact or fused with power. Already in the portrayal of the conditions in which knowledge is possible, epistemology enables domination. In the case of modern subjectivism, it has operated as a metaphysics of colonization when taken across the seas by modern imperialism. The metaphysical epistemology of the West is full of world-political consequences: it has advanced and sustained imperialism by choosing the holders of truth, dictating the colonization of cultures and propelling the West to world hegemony.

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

## **Alternative Geographies and Provincializing Human Rights**

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

and anti-colonial geography maps new loci of enunciation. Martin Woessner (Chapter 2) describes this political and argumentative strategy as one that attempts to “map out a different conception of human rights altogether, one that looks not just at the clean centers of cosmopolitan power, but at the messier margins of provincial suffering” too. Nevertheless, whereas it establishes ignored regions as valid sources of human rights concepts, it refuses to turn marginal areas into centers. Thus, no center can be found in this new paradigm. This is a truly Borgesian sphere whose “center is everywhere and the circumference nowhere”. This awareness is not confined to the past and the present, but it also pinpoints “no-places”—a cartography of utopias indeed—or draws a map of the “futures of human rights”, to use Baxi’s terms.<sup>20</sup>

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

In addition, inasmuch as human rights—in a Habermasian line of thinking—are a “realistic utopia”,<sup>21</sup> or exemplars of the material and world-producing tension between theory and praxis, they are part of the global political landscape. In the words of Woessner, “human rights have become real”. When discourses on rights are active forces in political debates, social conflicts, legal decisions and cultural processes, they become a crucial factor in politics and beacons of contemporary world and local cultures. Mapping human rights is synonymous not only with the construction of a “geography of ideas”, but also with the elaboration of a topography of “physical accidents of the landscape”—of the geopolitical situation at a given historical moment.

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<sup>20</sup> Upendra Baxi, *The Future of Human Rights* (Delhi and Oxford: OUP, 2002)

<sup>21</sup> Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” *Metaphilosophy* 41 (2010): 464-80.

In the horizon of these elaborations on human rights the quest to provincialize Europe turns into one of provincializing the mainstream ‘universal’ conception of rights. Woessner translates Chakrabarty’s critique of transcendentalist European thinking<sup>22</sup> into the field of law, and proposes “provincializing human rights”. Building on Heidegger’s ideas on thought and dwelling, Chakrabarty’s work removes the philosophical universalist mask that hides the spatial and historical attachments and limits of European thought by building on Heidegger’s ideas on thought and dwelling according to which there is an irresolvable link between ideas and “modes of belonging”. The analytical tradition that wipes out the remains of experience and local inheritances in order to arrive at universal concepts is the object of this critical uncovering. For Chakrabarty, the European way of thinking becomes “inadequate” because of its characteristic aspiration to universalism. The consequences for the understanding of human rights are acute. Human rights cannot be based anymore in a priori universal principles detached from geopolitics and history, and Europe—the traditional centre of human rights theory and history—is transformed into one of the provinces in which such histories occur. This is not to dispute that Western thinking remains “indispensable”, but rather that as a matter of urgency it needs to be “renewed from and for the margins”.<sup>23</sup>

Drawing upon Hollinger’s insights, Woessner understands the goal of provincializing human rights as a matter of finding “the field of concrete possibilities that stretches between the abstract notions of provincialism and cosmopolitanism”. As every notion of rights comes from provincial loci of enunciation scattered throughout the extended landscape of world geography, the new paradigm of human rights is to be constructed by a conversation between provincialized Europe and notions emerging from those provinces that have been kept marginalized or excluded. The enlarged discussion may be thought of as a multiple exchange between provinces—European and Non-European—a new gestalt or constellation in the making offering enhanced power to speak to all contributors. As geographically grounded interlocutors can however enunciate both locally valid and globally significant<sup>24</sup> theories of rights, provincializing human rights requires a dialogue between provincial and less provincial

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<sup>22</sup> Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2008).

<sup>23</sup> Ibid., 16.

<sup>24</sup> Ibid., x & xi.

views—or between local notions of human rights with both provincial validity and international or worldwide significance.

### **Deparochializing Legal Theory and the Quest for a Cosmopolitan Jurisprudence**

Apparently opposed to the idea of provincializing human rights, the project of deparochializing Western human rights concepts is guided by the same telos. While the former traces so-called universals to their roots in the European local circumstances, the latter is well aware of how Western thinking remains circumscribed to its all too familiar horizon of understanding and needs to see beyond its limits. The placement of European theories in their particular geographical context and the questioning of European claims to universality are complemented here by a certainty about the parochialism of the origins and content of Western jurisprudence. This is the accomplishment of a self-critiquing European consciousness, and it is one of the key tenets of the thinking of William Twining on globalization, law and human rights.<sup>25</sup> Thus, while the provincialization of Europe and human rights are the declared ends of Chakrabarty and Woessner's projects, parochialism is the point of departure for Twining's enterprise.

Twining has developed an internal critique of Western jurisprudence on the basis, or as a consequence, of the experience of living and thinking of law outside Europe—arriving to the conclusion that his own tradition suffers the weakening effects of confinement and myopia. Making use of geographical and mental maps,<sup>26</sup> and through fruitful exchange with Boaventura de Souza Santos' contributions to mapping law and postmodern jurisprudence,<sup>27</sup> Twining (Chapter 9) calls into evidence the blinding effects of the parochialism of Western legal theory, which has been “developed and debated with at most only tangential reference to and in almost complete ignorance of the religious and moral beliefs and traditions of the rest of humankind”. Not only mainstream but also critical legal philosophy remains in a veritable soliloquy, ie engaged most of the

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<sup>25</sup> William Twining, *Globalization and Legal Theory* (London: Butterworth, 2000); William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge: CUP, 2009).

<sup>26</sup> Twining, *Globalization and Legal Theory*, 136-173.

<sup>27</sup> *Ibid.*, 194-244. Boaventura de Sousa Santos, *Towards a New Common Sense* (London: Routledge, 1995).

time only with those who belong to the same theoretical tradition or those living and working in the same Western-wide local parish. Twining not only bears witness to the shortsightedness of Western jurisprudence, but also points to the futility and inconsistency inherent in an insular thinking that claims to be universal:

Western jurisprudence has a long tradition of universalism in ethics. Natural law, classical utilitarianism, Kantianism and modern theories of human rights have all been universalist in tendency... How can one seriously claim to be a universalist if one is ethnocentrically unaware of the ideas and values of other belief systems and traditions?<sup>28</sup>

The need to deparochialize Western jurisprudence is not only a question of avoiding the cage and boredom of European closed-mindedness. If legal and human rights theory are to engage current processes of globalization they need to start to work in the direction of what Twining calls a “cosmopolitan general jurisprudence”. The nature of a cosmopolitan legal theory requires further elaboration here. The term “cosmopolitan” can be related to the scale of the topic under examination, as well as to the characteristics of the perspective from which the analysis is made. In the first case we are speaking about the world or the global political scenario, as when Kant proposes his “Idea for a Universal History with a Cosmopolitan Purpose”. The adjective “cosmopolitan” alludes here to the third of the orders into which Kant divides public right—the previous two being political and international right. When we speak of a “cosmopolitan perspective” we are considering something entirely different, ie the standpoint from which a subject approaches law or human rights, or the *world* geographical and historical circumstances in which the modern subject of this enquiry is always already immersed.<sup>29</sup>

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<sup>28</sup> Twining, Chapter 9. Anibal Quijano who, together with Enrique Dussel and Walter Dignolo set the foundations of “Decolonial Theory”, offers a similar critical insight: “Nothing is less rational... than the pretension that the specific worldview of a particular ethnics should be taken as universal rationality, even if such an ethnics is called Western Europe... [this would be just] to impose a provincialism as universalism.” Anibal Quijano, “Coloniality and Modernity/Rationality,” *Cultural Studies* 21 (2007): 177.

<sup>29</sup> Immanuel Kant, “Idea for a Universal History with a Cosmopolitan Purpose,” in *Political Writings* (Cambridge: CUP, 1991). The question of the best translation of the title of this work can further illustrate the difference between the two possible meanings of the words ‘cosmopolitan perspective’. There is another popular rendition into English of the same text that can be misleading: “Idea of a Universal History from a Cosmopolitan Perspective”. This title literally suggests that Kant



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

A truly cosmopolitan theory of human rights can only be constructed through a dialogue between the established Western approach and the other strand of contributions which has itself acquired a tradition in the colonized world since the Sixteenth century. This is precisely the place of encounter and the dialogical dynamics that Twinning has begun to assemble over the past decade, opening up his own Western legal tradition on human rights to contemporary scholarship that has emerged outside the dominant canon (see Critical Dialogue below). After a long period of close intellectual and personal contact with various human rights scholars born in Africa and Asia who have developed insights on human rights from the standpoint of “the South”, Twining has elaborated “introductions” to the

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develops a philosophical reflection on history from a cosmopolitan “point of view”. However, if we take into account the ideas presented in this text, the term “perspective” is to be read as a synonym of “context” or “horizon”, as it indicates the contours of the object of Kant's investigation—the cosmopolitan order. The first translation appears to be more faithful to Kant's thinking as, in the original title *Idee zu einer allgemeinen Geschichte in weltbürgerlicher absicht*, the last two terms can be more accurately rendered as “cosmopolitan intention”. For the second translation see Immanuel Kant, “Idea for a Universal History from a Cosmopolitan Perspective,” in *Toward Perpetual Peace and other Writings on Politics, Peace, and History* (New Haven: Yale University Press, 2006). See also Immanuel Kant, “Idea for a Universal History from a Cosmopolitan Point of View,” in *On History* (Indianapolis: The Bobbs-Merrill Co., 1963). Above all, the more consistent translation leaves us in front of a paradoxical “non-cosmopolitan” theory of cosmopolitanism, as Kant's reflection is transcendental—that of “metaphysics” and “universal natural laws”—or, what is the same, the European perspective that claims to be universal and valid for all. This Kantian performative contradiction is avoided in Twining's cosmopolitan jurisprudence.

work of Francis Deng, Abdullahi An Na'im, Yash Ghai and Upendra Baxi,<sup>30</sup> and has collected their writings on human rights.<sup>31</sup> The cosmopolitan theory of human rights being elaborated here forgoes the transcendental basis that sustains Kant's cosmopolitanism. It is rather grounded in the critique of Kantian transcendental understanding of natural law and human rights, and in a much wider horizon built through dialogue between the members of an increasingly cosmopolitan constituency situated in the geographical and historical contemporary world landscape.

## Universalization and Globalization of Human Rights

H.G. Wells is best known as one of the originators of Science Fiction—that 'literature of ideas' that imagines "possible alternative worlds" or that projects forward past or present tendencies in dystopian futures. Not so well known are his theoretical contributions to human rights. At the start of the Second World War he wrote *The Rights of Man or What We Are Fighting For*, and some years later he presented a draft bill of rights for the consideration of the United Nations when the Universal Declaration was being debated.<sup>32</sup> What is of special interest to us is his insistence upon the "importance of a de-Westernization and true universalization of human rights".<sup>33</sup> This is precisely the direction of decolonization of human rights in the sense of unearthing and recognizing the contribution made by Third World countries and cultures.

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<sup>30</sup> The studies on the works of Yash Ghai and Upendra Baxi are reproduced in this volume (Twining, Chapter 9), and the collection of all four of them was published in William Twining, "Human Rights: Southern Voices - Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi," *Review of Constitutional Studies* 11 (2006): 203-279.

<sup>31</sup> William Twining, ed., *Human Rights: Southern Voices: Francis Deng, Abdullahi An Na'im, Yash Ghai and Upendra Baxi* (Cambridge: CUP, 2009).

<sup>32</sup> H.G. Wells, *The Rights of Man or What We Are Fighting For* (London: Penguin, 1940). See also Roger Normand and Sarah Zaidi, *Human Rights at the UN. The Political History of Universal Justice* (Bloomington and Indianapolis: Indiana University Press, 2008), 144.

<sup>33</sup> Marina Svensson, *Debating Human Rights in China. A Conceptual and Political History* (Lanham: Rowan & Littlefield, 2002), 26. Wells had a consciousness about the meaning of empire for the history of violence, and some of his most known novels can be read as metaphors for the colonial world and wars, among them *The Time Machine*, *The Island of Doctor Moreau*, *The Invisible Man* and *The War of the Worlds*. On the critical import of Wells' work for Victorian imperialism see Sven Lindqvist, *Exterminate all the Brutes* (London: Granta, 1998), 75-81.

What does “universalizing human rights” mean, as Susan Waltz proposes in Chapter 12, when dealing with the Universal Declaration? According to the customary account of the antecedents and sources of the Declaration this document was the result of the unwavering will of the members of an exclusive club of hegemonic powers—chiefly the United States, Great Britain and France. There is also the popular belief that the Universal Declaration was the invention of a handful of European and US authors—René Cassin, Eleanor Roosevelt, John Humphrey and Jacques Maritain. These assumptions are based on the idea that the Universal Declaration is mainly a Western achievement. Dismantling these and other myths requires an interpretative strategy aimed at universalizing the Universal Declaration of Human Rights.<sup>34</sup>

“Universalizing the universal” or globalizing human rights means here, according to Susan Waltz and Zehra Arat (Chapter 13), unveiling and acknowledging the global origins of the Declaration, including the contribution made by Non-Western countries as active participants, advocates and partisans, and as leaders of the political and legislative process that culminated in the adoption of the Declaration. The Human Rights Commission—which debated and wrote a first draft of the Universal Declaration—, and the UN General Assembly—which discussed and approved it—were also composed of Asian, African, Muslim, communist and Latin American countries.<sup>35</sup> Chile, Cuba and Panama presented entire drafts of the Declaration,<sup>36</sup> while the original draft prepared by the Human Rights Commission drew “most heavily” on the one prepared by the Chilean jurist Alejandro Alvarez, as Waltz writes. In this sense, universalizing or globalizing human rights also means retrieving from the archives the contributions made to the edifice of contemporary human rights by individuals who represented Third-World

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<sup>34</sup> Susan Waltz, “Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights,” *Third World Quarterly* 23 (2002), 437-448.

<sup>35</sup> Asian countries: Burma, China, India and the Philippines; African countries: Egypt, Ethiopia, Liberia and South Africa; Muslim countries: Afghanistan, Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Turkey and Yemen; communist countries: USSR and Yugoslavia; Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. Fifty states in total participated in one way or another over a two years period proposing drafts of the Declaration, joining the debates, proposing amendments, wording the articles, voting for and against.

<sup>36</sup> Normand and Zaidi, *Human Rights at the UN*, 144.

countries, as in the cases of Charles Malik from Lebanon, and Carlos Romulo from the Philippines, a task undertaken in this collection by Glenn Mitoma (Chapter 14).

The globalization of human rights can also be accomplished by making more complex the way in which the cultural sources of human rights are described. For a judicious witness to the vicissitudes of the human rights saga they are not simply “a Western concept”. As historical evidence shows, the Occident has been also an enemy—the deadliest?—to their existence. As much as the West has produced treatises, manifestos and legal documents that enshrine rights, the Occident has also been the perpetrator of large scale and unspeakable crimes such as that of colonialism—an age long “violation of human rights”—as well as the Nazi atrocities. Towering figures of the European philosophical tradition of rights have also defended or condoned their outright negation, as in the cases of Aquinas, Locke and Mill. Locke, as Arat reminds us, has been uncovered as racist, sexist and classist. He justified slavery theoretically as a ‘right of nature’ and profited from it by monetary investment.<sup>37</sup>

The project of globalizing human rights can also move ahead by thinking of them not only in legal or philosophical terms but also in connection with the evolution of cultures and civilizations, as well as in relation to the modern anti-colonial tradition of rights. Christianity—a crucial component of Western civilization and a key institution for the preservation and development of the natural law tradition in medieval times—has been at different times a long standing campaigner for love, compassion and mutual respect between human beings, as well as for sexism, intolerance, torture, violence and the Inquisition. The West cannot

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<sup>37</sup> Other European philosophers can also be found fractured by a twofold engagement with rights. While Kant showed ‘enthusiasm’ for the French Revolution, he kept silent about the Terror unleashed by Robespierre. Hegel, on his part, denounced the Terror but understood colonialism and colonial genocide as the materialization of the display and advance of the Spirit. A contemporary case in point is that of Žižek, who defended the banner of human rights against the Communist regime in the former Yugoslavia, but declares human rights quasi-bankrupt now when he is living under capitalism, and who criticises neo-colonialism as in Iraq, but salutes and commends the Terror and Robespierre—in a stark inversion of Hegel’s position. See Slavoj Žižek, “Against Human Rights,” *New Left Review* 34 (2005), 115-131; Slavoj Žižek, *The Obscenity of Human Rights: Violence as Symptom*, [http:// www.lacan.com/zizviol.htm](http://www.lacan.com/zizviol.htm); Slavoj Žižek, *Iraq: The Borrowed Kettle* (London: Verso, 2004) and Slavoj Žižek, *Introduction to Virtue and Terror*, by Maximilien Robespierre (London: Verso, 2007).

claim any sort of identification with, or exclusive parenthood of human rights because it has also been the agent and site of their ruin. In the words of Louis Henkin, quoted by Arat, “the idea of rights... is not more congenial to Western societies than to others”. Human rights are not “a Western concept”, any more than they are autochthonous for the Eastern or Southern regions of the world. While Non-Western cultures exhibit a record of wilful destruction of human lives, they have also produced concepts and traditions that oppose barbarism on the basis of a certain understanding of ‘human nature’ and humanity. This allows Arat to maintain that there are Non-Western values that match those impinging on natural law and human rights. In addition, since the very beginning of modernity, at different times and in different places, the ideas of natural rights and human rights have been seized upon by colonized peoples to oppose imperialism and abusive national regimes, a cultural and political endeavor that already constitutes a five centuries long tradition.

### **Re-writing the History of Human Rights**

The rationale of human rights cannot be grasped without considering the ancient European tradition of natural law. A connection between the ideas of *nomos* and *physis* was already present in Greek tragedy and Stoicism. The concept of rational law was central in Roman law and to the philosophy of Cicero. Medieval Europe produced notions of natural law in close association with Christian doctrine as in the case of Aquinas.<sup>38</sup> However, what can be described until the Middle Ages as a unitary tradition, would grow in different directions with similar or opposite rationales. The advent of modernity with the Renaissance and the Conquest of America gave birth to at least two distinct streams within the tradition of natural rights: that elaborated in Europe, and that emerging from the colonies in the wake of resistance to modern imperialism.

While the history of human rights in modernity is manifold, we are usually presented with a single historiography. When genealogical lines are traced in order to pinpoint the vicissitudes of the history and concepts that form the modern philosophy of natural law it is common to find a reiteration of a lineage formed by epoch-making events such as Magna

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<sup>38</sup> Costas Douzinas, *The End of Human Rights* (Oxford: Hart Publishing, 2000), 23-68.

Carta; the British Revolution and the Bill of Rights<sup>39</sup>; the US Revolution and the Declaration of Independence; the French Revolution and the Declaration of the Rights of Man; the Marxist critique<sup>40</sup> and the social rights proclaimed in the USSR Constitution; the Holocaust and the Universal Declaration; the emergence of a “genuine” human rights movement in the 1970s;<sup>41</sup> the end of the Cold War, and September 11 and the War on Terror. The key events of this history remain concentrated within the borders of Europe,<sup>42</sup> or are interpreted from the European horizon of understanding. Not surprisingly, the standard philosophy of rights continues to be assumed as “the” theory of human rights, as if no other possibility for thinking human rights would exist outside the history of ideas represented by names like Hobbes, Locke, Rousseau, Kant, Hegel, Marx, Habermas, Lyotard, Derrida, Rawls and Rorty.

And yet, there is another canon that remains marginalized or invisible—that of the theory of human rights that emerged in the context of history of the modern colonization of the world and the struggle against imperial violence. One of the key tenets of the historiography of rights in this horizon of understanding is the idea according to which the history of human rights in modernity starts with the Conquest of America (Barreto, Chapter 5). The tradition of natural law was taken to the forefront of the debate on the legitimacy and consequences of the conquest, for both the

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<sup>39</sup> Among the more recent accounts see A.C. Grayling, *Towards the Light. The Story of the Struggles for Liberty and Rights that Made the Modern West* (London: Bloomsbury, 2007). It should be noted that Grayling dedicates a chapter to the struggle against slavery.

<sup>40</sup> Louis Henkin describes contemporary human rights as ‘a kind of twentieth century synthesis of an eighteenth century thesis [the US Bill of Rights and the Rights of Man] and a nineteenth century antithesis [the Marxian critique]. Louis Henkin, *The Rights of Man Today* (Boulder: Westview Press, 1978), 5.

<sup>41</sup> According to Samuel Moyn, the ‘true origins’ of human rights are to be located in the 1970’s, and would have been brought about by US President Carter and his foreign policy, the struggle against communist regimes in Eastern Europe, and the crisis of both socialism and the newly independent states in the Third World. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010), 5-8.

<sup>42</sup> The proper name “Europe” is used here as a shortcut for the philosophical concept of Europe in a Habermasian sense: not only geographical Europe, but also the United States, Australia and Japan are part of the world that, because of the rationalization, democratization and industrialization of their cultures and societies, has reached an advanced degree of modernization. The term “Europe” also stands for the “West”.