Posit(ion)ing Human Rights in the Current Global Conjuncture

The practical discourse of human rights claims the burden of safeguarding the most fundamental features and conditions of our humanity. Insofar as this universalistic vocation can conflict with the state’s governance of its citizens, human rights discourse is the other way of giving a human face to globalization. This is why new theories of cosmopolitanism invariably point to human rights NGOs as an example of the new cosmopolitanism. The need to institutionalize human rights discourse at the level of international relations became more urgent after the Second World War, during which human rights violations by the totalitarian Nazi regime were so extreme that they were regarded not simply as crimes against individuals but as crimes against humanity as a whole. Hence, the general tenor of human rights discourse is moralistic. Violations brought into the phenomenon of public light via the global mass media also tend to be of the most extreme or exceptional kind, such as genocide or massacre. When aligned with neoliberal arguments about the power of globalization to unify us into a common humanity, the moral universalism of human rights discourse can, paradoxically, be used to justify economic globalization as a form of postcolonial civilizing mission. It can legitimize the predatory expansion of global capital as a fundamental mechanism for spreading the rule of law and the recognition of civil liberties purportedly ignored by “traditional” political cultures and “despotist” regimes outside the North Atlantic. This process of moralistic finger-pointing conveniently elides the less visible violations of human rights occurring in non-exceptional, quotidian settings outside the hegemonic North Atlantic that are directly caused by globalization.
In the second part of this book I outline an account of the normativity of human rights that acknowledges their contaminated nature without reducing them to ideological reflections of global capitalism.

In the current conjuncture of global capitalism, the deployment of human rights discourse by various key actors on the stage of international politics takes the general form of a performative contradiction. Existing human rights discourses claim a normative force that is unconditioned. Yet within the international frame of their invocation, these practical claims become radically contaminated and stretch the theories of normativity that have so far governed our understanding of human rights to the point where they become untenable. Does the contaminated normativity of human rights necessarily lead to nihilism, cynical pragmatism, or relativism? Or can normativity be both unconditioned and contaminated at the same time? In this chapter I suggest that the theoretical significance of the internationalization of human rights—the work that it does in the house of theory—is that it enjoins us to think of normativity as a response/responsibility to original contamination.

**Orientations**

Human rights are a crucial part of politics and international relations, ethical and political philosophy, law, and even comparative history and anthropology if we are concerned with the cultural or historical origins of the concept. I begin with several preliminary clarifications to orient the reader to my approach. First, the debate over human rights in international relations should be wrenched away from the common but mistaken approach that juxtaposes the plurality of cultures with the universal validity that makes human rights normative. This view suggests that human rights are inalienable entitlements which should belong to all individuals for the sole reason that they are human, then irresolvable tensions inevitably arise from the fact that individuals also exist as members of a plurality of collectives called "cultures," which have their own unique norms and rules. Such an argument can function to expose universalizing modes of thought as cultural forms of imperialism that serve the interests of a hegemonic culture. Thus, unwittingly or consciously, critiques of the ideological abuse of the doctrine of universal human rights are influenced by the early Karl Marx's critique of the formalism of bourgeois civil rights. They argue that the Universal Declaration of Human Rights (1948) sets forth a vision of rights that "reveal[s] a strong Western bias" and regards "human rights ahistorically and in isolation from their social, political, and economic milieu." Phrased more sharply, the Declaration, qua doctrinal basis for the U.S. government's drive for international human rights, is denounced as a mask for Realpolitik because it incorporates "all human beings across nations and cultures into an abstract universal community of which the U.S. government is the champion."

This is also the view of many Asian governmental actors in contemporary global politics. For instance, in his statement at the Vienna World Conference on Human Rights titled "The Real World of Human Rights," the foreign minister of Singapore argued that "the extent and exercise of rights varies greatly from one culture or political community to another . . . because [rights] are the products of the historical experiences of particular peoples." He cautioned against a harmful universalism, an artificially imposed and stifling uniformity, "which is used to deny or mask the reality of diversity." This staged resistance to Northern and Western imperialism is representative of the position of Asian states on human rights (see the Bangkok Declaration adopted by ministers and representatives of Asian states). The ostensible opposition between universalism and cultural relativism expressed here is also the insular focus of the greater part of cultural studies and postcolonial discourse analysis.

We would, however, be wrong to interpret this scene in terms of the sterile opposition between universalism and cultural relativism, for at least two reasons. First, the critique of the historical limits of the Western concept of human rights is also a universalistic argument that remains within a human rights framework. Far from being monolithic, the concept of human rights includes first-, second-, and third-generation rights. The Asian governmental position on the cultural limits of the Western vision of human rights is invariably linked to an argument about the need to subordinate political and civil rights to the right to development. It thus depends on an assertion of the universal right to self-determination of all peoples. Second, the claim to cultural difference by Asian states is itself questionable since the figured face of statist cultural difference is not identical to the cultural diversity of its peoples. The very governments that claim to be the custodians of Southeast Asian cul-
turers are responsible for the destruction of the cultures of indigenous peoples who stand in the way of the deforestation and mining projects of state-supported capitalist development. Therefore, the question should not be whether universal human rights exist or not. Instead, we should focus on the nature and limits of the normative claims being made by various actors—Northern and Southern states and NGOs—when they appeal to human rights within the theoretical framework of established human rights discourse.

A third reason makes the attempt to move beyond the question of universalism versus cultural relativism particularly important. Prior to the Asian financial crisis of 1997, the spectacular economic growth of the Asia-Pacific region led to the rise of the "East Asian" path of development as a competing model of global capitalism. China's current breathtaking rate of economic growth is gradually eroding the power of American influence in Asia. Both then and now, some Asian conglomerates are outperforming U.S. and European multinationals in private sector investment in the Asia-Pacific region. The message in the business pages of the New York Times then was that U.S. companies should "plug themselves into local conditions" by "finding the right partner, someone to guide you through the maze of Asia," much as Arradine guided Theseus. But then we know what befell Ariadne once she had served her purpose. After the correct moans and groans were made about East Timor, the Clinton administration wooed then-President Suharto of Indonesia for support for market-opening progress at the APEC (Asia-Pacific Economic Cooperation) meeting in Osaka: "He's our kind of guy," a senior Administration official who deals often on Asian policy said. . . . [T]his is the kind of relationship we want to have with China. This odd conjugal vocabulary, which is also evident in the negotiations leading to China's entry into the WTO, indicates that what is at stake in the elaborately media-staged skirmishes between states over international human rights is not really Western or Northern imperializing universalism versus Eastern or Southern cultural difference. The two poles of this binary opposition are complicitous. The fight is between different globalizing models of capitalist accumulation attempting to assert economic hegemony. The coding of this fight in terms of cultural difference diverts our attention from the subsuming line of force of global capital that brings the two antagonists into an aporetic embrace against the possibility of other alternatives of development, feminist or ecological-subalternist. Hence, any analysis of the normative claims of appeals to human rights within established discourse ought to ask: What do we mean when we post human rights? How are these various positings positioned in or by the current global conjuncture?

As I argue in the concluding section of this chapter, the irreducible imbrication of all claims to human rights within the force field of global capitalism requires us to rethink the understanding of normativity that is the basis of currently existing human rights discourse. Here, let me offer a schematic working definition of "normativity" for a non-specialist readership. Simply put, normativity is that which confers the status of norm upon a maxim of action or a desired state of affairs. It is the being-normative of norms, that which makes a norm normative. Thus, normativity is that quality that makes us regard ourselves as obligated to bring about a certain state of things or as being bound—etymologically, obligation derives from ligature—by an imperative commanding or restraining a certain course of action.

In contemporary Western thought, there are different criteria for the rational determination of different sources of normativity just as there are different types of normativity. The common analytical distinctions are between legal, ethical, and moral normativity. According to legal positivism (the dominant position in analytical jurisprudence), a specific rule is legally valid if it conforms to an internalized, rationally accepted set of social standards that operates within a territorial political community. Such conformity makes the rule a rule of law because its enforcement by coercive mechanisms will be upheld by popular social sanction. Yet as morally evil laws such as Nazi laws illustrate, legal normativity is distinguishable from ethical and moral normativity because it is concerned only with the day-to-day operations of a legal system and not with the moral value of that system beyond the minimum content of natural law that is fundamental to the social life of a particular political community, for instance, some prohibition on killing, provision of basic resources and protection of property, and so on.

By contrast, the normativity of morality is unconditional. After Kant, a maxim is said to possess moral force, to be morally binding, only if it is universally valid for all rational creatures or humanity in general. But as Hegel astutely pointed out in his critique of Kant, the problem with the unconditional, atemporal, "pure" normativity characterizing morality (Moralität) is twofold. First, because it is articulated at such an abstract
level of universality, the moral law is deprived of all determinate objective content. Second, the abstraction "humanity," the collective carrier and agent of morality's norms, cannot be politically effective because it is not embodied in a sociocultural institutional context in which meaningful action can take place. Hence, in Hegel's view, morality risks degenerating into the bad infinity of destructive absolute subjectivism whose type case is the Terror of the French Revolution. The third type of normativity—the ethical—can be seen as a bridge that mediates between mere legality and abstract universal morality. As distinguished from morality, ethical normativity (Sittlichkeit) refers to binding substantive forms of ethical self-understanding that are arrived at through consensual procedures of law enactment and political decision making. Thus, at the same time that the procedural consensus of their articulation (procedural justice) reflects universal rationality, ethical norms also express and give objective embodiment to the concrete life of a political community, thereby reconciling the universal and the particular. The ethical realm has also been characterized as the political morality of the state or its (national) public sphere (Öffentlichkeit). It is the site where morality can exert an influence over the political and legal processes of the state. The important point to note, however, is that notwithstanding their differences, these three types of normativity all compute normativity in terms of rational obligation. Legality, morality, and ethical life are respectively determined by and express legal-political rationality, universal reason, and the ethical self-understanding of the national political community. Indeed, legality, morality, and ethics are interrelated and form a continuum only because they share this rationalist determination of normativity.

This working taxonomy of normativity helps us position the practical discourse of international human rights more exactly. The anomalous status of international human rights instruments is well known. On the one hand, they are regarded as part of public international law. They are commonly invoked to justify humanitarian intervention in areas under the jurisdiction of sovereign states on the grounds of illegality under the provisions of international treaties. Thus, their normativity would appear to be legal in nature. "Public international law" is, however, a misnomer. Within the current interstate system, where nation-states largely retain their sovereignty and there is no supranational executive body capable of enforcing decisions independently of the compliance of individual states, public international law cannot be law in the strict sense. On the other hand, to the extent that humanitarian interventions also invoke the universality of human rights, they might be seen as examples of moral normativity. Yet, unlike moral claims, human rights claims have a normative force that is institutionally grounded. Since these claims are codified in the UN Charter and other international covenants and resolutions, human rights claims can rightfully expect to rely on the limited policing mechanisms which are available to ensure that the claimed rights are being observed. Consequently, it may be more appropriate to regard international human rights practical discourse as expressing a kind of political morality on an international scale. Indeed, transnational human rights NGO networks regard themselves as forming an international public sphere (Öffentlichkeit). Primarily deriving its normative force from quasi-formal codifications that center on and elaborate the Kantian principle of moral respect for humanity, such an emergent transnational Sittlichkeit, or ethical community, seeks to influence the actions of particular states.

We see from the foregoing that theories of political morality of modern German philosophy are far from obsolete. They have become institutionalized and continue to exert a tenacious influence through the operational logics of states and other collective actors. As I will later suggest, Asian states asserting sovereignty in defense against foreign intervention over human rights issues take a position that is not unlike Hegel's communitarian critique of Kant's cosmopolitanism. The claim that transnational human rights networks constitute an international public sphere should therefore be understood as a response to a Hegelian communitarian critique of neo-Kantian human rights talk. Yet these philosophies of normativity also find themselves deformed in their historical performance in contemporary globalization. I will show that arguments about the existence of an international public sphere or transnational political morality are implausible because they are grounded in a rationalist conception of normativity that the actually existing capitalist world system renders untenable. But against neo-Hegelian statism, I will also suggest that international human rights have a very real normative force and do not merely take "the form of an ought-to-be [es Sollen]." The question, then, is how to think this normative force, how to philosophize otherwise.

One final clarification about the genre of my argument: The preferred
human rights discourse the most famous articulation and justification of the idea of rights: the justification of rights by natural law in the preamble to the Declaration of Independence. But in fact, as Louis Henkin points out, universal human rights reflect no particular political philosophy; “International human rights instruments do not affirm rights as ‘natural.’ They do not necessarily assume that a person is originally, or in principle, autonomous, that rights antedate society and government. . . . As justification for human rights, they simply assert truths—or rhetoric—that no one has bothered to question. Rights derive from the ‘inherent dignity of the human person.’”16 The phrase “dignity of the human person” comes from the Preamble and Article 1 of the Universal Declaration of Human Rights. The Preamble begins with the statement that the recognition of “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Article 1 elaborates this inherent dignity in terms of an anthropological thesis: “All humans are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

The minimal philosophical justification of the human entitlement to rights in these sections of the Universal Declaration seems to be as follows: Humans are born with an inherent dignity. This is, however, not a natural justification of human rights. Since rights come into existence only via political instruments that specify and protect them, dignity by itself is not the source of rights. Dignity is rather some contentless human attribute that is the basis of freedom in the world. In the second sentence of Article 1 introduces “reason” and also “conscience” for the first time. The three terms, “dignity,” “freedom,” and “reason,” are related as follows: Because dignity is contentless, it involves a practical orientation. Reason is the operator of normative human action (because humans “are endowed with reason and conscience,” they “should act”) that protects and fleshes out dignity by specifying determinate rights via political instruments. Now, precisely because dignity is contentless, the work of reason is open-ended and interminable, and this links reason to freedom. Freedom is the ideal state of not being blindly constrained. Reason co-belongs with freedom because it constitutes the persistent ability to question and transform the external situations in which we find ourselves. In other words, human rights are the enterprise by which reason persistently affirms human dignity. We are entitled to them be-

mode of philosophical discourse on human rights is deontological talk. But formal philosophizing inevitably ends up confirming the rationalist determination of normativity that we should question because it presupposes ideal rational actors. Hence, I have chosen to approach the philosophical question of normativity by way of a sociohistorical analysis of the human rights practices of finite institutional actors within the text of global capitalism. It should, however, be clear that I am not suggesting that human rights practical discourse in global capitalism is bereft of any normative element. That would be a lapse into sociological determinism and historicist relativism. My wager is that normativity should be thought outside both historicist relativism and rationalist-teleological conceptions of history.

The Three Voices of Existing Human Rights Practical Discourse and Their Philosophical Basis

Existing human rights practical discourse can be divided into three voices. What I call the first voice is the position of governments in constitutional democracies in the economically hegemonic North. The second voice refers to the position of Asian governments. The third voice refers to the position of human rights NGOs in the South. My taxonomy is meant to be heuristic. Its immediate frame of reference is the assertion of cultural difference by Asian governments in response to charges of human rights violations. I have not considered the position of former Eastern bloc countries in a post-Cold War scenario, although it is arguable that they have been assimilated into the South. My concern here is with the universal validity of human rights in general, the normative force claimed by the three voices of human rights. This is not quite the same as the validity of specific human rights. The latter refers to the determination of negative or positive rights laid out in conventions, covenants, or declarations. The former refers to something more primary and more difficult to determine: the right to human rights. Obviously, any articulation of why the constitution of human beings gives them a right to rights will influence the specific rights that flow from this universal entitlement. The crucial point is that unlike specific rights, which can be challenged, the right to rights is not contestable because it has no specific historical, political, or cultural content.

The United States prides itself on having contributed to international
cause we are born with dignity but also, more important, because we possess the rational capacity needed to reaffirm dignity. The open-ended nature of the human rights enterprise is expressed in the exhortatory nature of the Declaration, which involves a pledge by all signing nations to achieve a non-exhaustive common standard. This open-endedness is also reflected in the subsequent increase in human rights instruments and in ongoing debates about different views of human rights.

I have suggested that the normative force of human rights belongs to the realm of political morality rather than morality per se. But the axioms of political morality are derived from morality. Thus, whether self-consciously or by historical osmosis, the philosophical justification of human rights found in the Declaration is indebted to Kant's definition of the dignity of man in his second formulation of the categorical imperative. Seeking a law for moral action that would be universally valid for all rational creatures, Kant resorted to the postulate of human dignity as something that is an end in itself. For Kant, inclinations can have only a conditional or relative validity. The object of an inclination constitutes a merely subjective end because it appeals to sensuous desire. In contradistinction, dignity is an objective end because it is of absolute or intrinsic worth. Hence, respect for dignity can serve as a universal law for moral action:

Now I say that the human being and in general every rational being exists as an end in itself [Zweck aus sich selbst], not merely as a means [Mittel] to be used by this or that will at its discretion; instead he must in all his actions, whether directed to himself or also to other rational beings, always be regarded at the same time as an end. All objects of the inclinations have only a conditional worth [Wert]. . . . Thus the worth of any object to be acquired by our action is always conditional. Being the existence of which rests not on our will but on nature, if they are beings without reason, still have only a relative worth, as means, and are therefore called things, whereas rational beings are called persons because their nature already marks them out as an end in itself, that is, as something that may not be used merely as a means, and hence so far limits all choice (and is an object of respect (Achtung)). These, therefore, are not subjective ends, the existence of which as an effect of our action has a worth for us, but rather objective ends, that is, beings the existence of which is in itself an end, and indeed one such that no other end, to which they would serve merely as means, can be put in place, since without it nothing of absolute worth would be found anywhere; but if all worth were conditional and therefore contingent, then no supreme practical principle for reason could be found anywhere.29

What is interesting for us is that Kant proceeds to distinguish between dignity qua end-in-itself and merely subjective ends by means of a mercantile metaphor even though, technically speaking, human practical action is ontologically prior to historical commerce because it is the "rationality" behind historical commerce, trading, or commodification. In the kingdom of ends (Im Reiche der Zweche) constituted by human action, Kant writes:

Everything has either a price [Preis] or a dignity [Würde]. What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.

What is related to general human inclinations and needs has a market price [Marktpreis]; . . . but that which constitutes the condition under which alone something can be an end in itself has not merely a relative worth, that is, a price, but an inner worth [einen innern Wert], that is, dignity.30

As an intrinsic worth, dignity transcends all relative values, all exchange, all equivalence, and has no market price. Hence, any being with dignity cannot be treated instrumentally, as the means to another end.

Although narrower in scope than Kant's universal moral law, the philosophical justification of the right to human rights inherits these axiomatic oppositions between absolute and relative worth, dignity and market price, and the philosophical baggage that goes with them. We will see that human rights discourseliteralizes the quasi-metaphorical opposition between dignity and market price. The important point here is that as a result of this Kantian legacy, "dignity" in the Declaration is not identical to the civil and political liberties that are invoked by the United States when it accuses Singapore or China of violating human rights. Dignity subsumes every specific human right but is not reducible to any specific right because it is its philosophical ground. The concept of dignity refers to nothing less than the peculiar nature of human nature qua rational nature to be free of natural or arbitrary human constraint, the leitmotif of philosophical modernity. This means that all vi-
sions of specific human rights are open to contestation if they are found to obstruct the affirmation of dignity.

This separation of dignity from specific rights indicates that the official position on human rights set out in the Bangkok Declaration (1993) and the individual statements by Asian ministers at the Vienna Conference (1993) do not depart from the normative framework of established human rights discourse. The universality of human rights derives from the shared condition of being human, that is, being endowed with dignity and reason. Dignity and reason constitute the common ground for the civil and political liberties associated with Western constitutional democracies as well as the questioning of this vision of human rights by Asian governments as myopic and narrow because it does not live up to the spirit of international cooperation specified in the UN Charter and falls to take into consideration the economic problems and cultural specificity of Asian societies. There is thus a tacit agreement by both sides that there is some positive thing called "human dignity" that must be affirmed and protected even if there is disagreement about the best way to protect it. For instance, the official Singapore position is that "poverty makes a mockery of all civil liberties," that "economic growth is the necessary foundation of any system that claims to advance human dignity," that "order and stability are essential for development," and, hence, that "good government is necessary for the realization of all rights." Even the additional claim to cultural diversity of nations is not, on its face, cultural relativism since Article 29, section 1, of the Universal Declaration stipulates that "everyone has duties to the community in which alone the free and full development of his personality is possible." Indeed, the official Asian position or second voice seems eminently reasonable in its insistence that "the promotion of human rights should be encouraged by co-operation and consensus, and not through confrontation and the imposition of incompatible values." Not entirely without justification, Asian governments accuse Northern governments of using a double standard and of applying a limited vision of human rights as a power ploy to sabotage the economic success of East Asia. Emphasizing "the interdependence and indivisibility of economic, social, cultural, civil and political rights," the Asian governments claim to be the voice of reason and seek to resist intervention by Northern governments over human rights issues by reaffirming the principles of respect for national sovereignty and territorial integrity.

Asian governments therefore argue that communitarian values and national-territorial integrity are necessary conditions for the concrete maximization of human dignity. Thus, where the first voice is isomorphic with neo-Kantianism, the second voice more or less expresses a version of Hegel's statist-communitarian critique of Kantian moral politics. For Hegel, morality is merely universal reason in its subjective and abstract form. The nation-state is universal reason in its objective actuality: "The nation state [das Volk als Staat] is the spirit [Geist] in its substantial rationality and immediate actuality, and is therefore the absolute power on earth; each state is consequently a sovereign and independent entity in relation to others. The state has a primary and absolute entitlement to be a sovereign and independent power in the eyes of others, i.e., to be recognized by them." Thus, "the immediate existence of the state as the ethical substance [sittliche Substanz], i.e., its right, is directly embodied not in abstract but in concrete existence, and only this concrete existence, rather than any of those many universal thoughts which are held to be moral commandments, can be the principle of its action and behaviour." Consequently, Hegel argued that Kant's idea of a world federation of states, the historical model for the UN qua human rights enforcer, could never be fully actualized. Resting "on moral, religious, or other grounds and considerations, [such a federative agreement between states] would always be dependent on particular sovereign wills, and would therefore continue to be tainted by contingency." Likewise, Asian governments counterpose the concrete or actual universality of the national political community against the false abstraction of "humanity" that Northern governments arrogantly deploy. Singapore's statement at the Vienna Convention is titled "The Real World of Human Rights."

Let us now consider how the third voice circumvents this statist-communitarian argument that the sovereign nation-state alone is the concrete embodiment of universality. In a formal response to the Bangkok Declaration, human rights NGOs in the Asia-Pacific region have distanced themselves from both official positions. Like the second voice, the third voice also advocates a holistic and integrated approach to human rights and affirms the right to self-determination of all peoples. Yet it deploys these claims against Asian governments that violate human rights. In sketchy summary, the third voice stresses that a holistic approach to human rights means that one set of rights cannot be used to bargain for another. It asserts that all governments must observe the
right of peoples to freely determine their political status and pursue their economic, social, and cultural development and specifically mentions indigenous groups within Asia-Pacific nations which are denied the right to self-determination because they have not been recognized by their governments. But what distinguishes the third voice of human rights discourse from the first voice is its attribution of the poor state of human rights to the current global economic order. These NGOs connect domestic oppression to international exploitation by pointing to the collaboration between local elites, transnational corporations, and international aid agencies. They reject the capital-intensive and inherently wasteful statist view of development and argue for a more humane “balanced and sustainable development” that maximizes the social development of the people.19

The heterogeneity of this third voice is most evident in the feminist claim that the international human rights movement reiterates conceptual biases in focusing on the public realm as the primary site of human rights violation.20 Feminist NGOs have asserted the need to consider all violence against women as a human rights issue, regardless of the public or private status of the perpetrator. They have proposed a more flexible theory of culture as an antidote to the abuse of women in patriarchalized national culture.21 They have also criticized statist development for the additional reason that growth-policy-oriented models of development are incompatible with the rights of women in development because such models seek to integrate women into state-centric plans of economic growth instead of addressing systemic economic, political, and ideological biases against women.22 In sum, the third voice articulates a new universalism that is mindful of systemic economic inequality, genuine cultural diversity, and gender. It does not regard the advocacy of human rights as an encroachment upon national sovereignty. Indeed, the Bangkok NGO Declaration claims an entitlement to international solidarity that transcends national borders to protect human rights throughout the world: “We are entitled to join hands in solidarity to protect human rights world-wide. International solidarity transcends the national border to refute claims of State sovereignty and of non-interference in the internal affairs of the State.”23

But notwithstanding the immense doctrinal differences among them, all three voices share the same normative framework. All existing human rights practical discourses are grounded in the Kantian notion of moral respect for dignity as an end in itself and something of absolute worth. Thus, they all exhibit three key characteristics. First, because the point of departure is the concept of human dignity as the supreme value that transcends all material interests or empirical inclinations, each vision of human rights is seen to be separate from the realm of particularistic political or economic interests. Each of the three voices within existing human rights practical discourse credits its opponent by pointing out that the opponent’s vision of human rights is in fact contaminated by its particular site of emergence, that it is an ideological mask for some insidious particularistic interest: Northern domination or global capitalism in the case of the first voice; industrializing Oriental despotism or statist capitalist development in the case of the second voice. Each of the three voices claims to be the pure voice of reason representing genuine universality in which respect for human dignity can be maximized: the autonomous individual (the first voice); a community of nations that respects cultural differences and the right to development (the second voice); and a polymorphous global community within an equitable international economic order that is genuinely sensitive to sexual difference and cultural diversity (the third voice). Second, this separation of genuine universality from particularistic interests in turn implies a distinction between material reality and rational form. Here, practical primacy is accorded to rational form. It is presumed that a holistic system of rights in which human dignity is respected embodies a total rational form for the ordering of social and collective interaction between individuals and states and in interstate relations. Respect for dignity also involves a practical injunction for the persistent rational transformation of existing institutional structures. Through the act of respect, the enjoined agents are elevated beyond their particularistic interests into a state of rational universality, simultaneously (trans)forming themselves and their world according to a moral image prescribed by reason alone.

Finally, each of the three voices claims that through the prescription of rational form, critique is able to change institutional structures that oppress or fail to foster human dignity. A lot of faith is placed in both the neutrality and the paramount effectivity of the good conscience/raison of various institutional actors, that is to say, the political morality of states in the act of interpreting the appropriate rights or restrictions necessary in a given situation, or international public opinion as the moral
voice criticizes the preceding vision for being contaminated by particularistic interests and sees its vision of human rights as subsuming and transcending (in German, aufheben: to destroy and preserve at the same time) the preceding vision. This drive toward self-purification—or what amounts to the same thing, this denial of inscription, of being part of an uncontrollable network of forces—is another manifestation of the notion of pure human dignity that exists outside equivalence, exchange, and market price. To reiterate, because dignity is contentless, it can be given content only by rational action. The open-ended nature of the human rights project is said to reside in the power of reason to take changing world contexts into account in its articulation of a moral world-image. In the first and last instance, this rational world-image is anterior to politics and economics although it must subsume them in its concrete realization. This is, of course, a literalization of the Kantian quasi-metaphorical opposition between dignity and market price. Each voice of human rights discourse claims to be the pure voice of reason representing genuine universality and to serve as an external check on particularistic interests and material forces.

But what if the globalization of capital is uncontrollable? What if it establishes a de facto, oppressive universality that cannot be transcended by normative action? What if, all claims to the contrary, normative institutional action finds itself reinscribed within a weave that includes the very particularistic material forces it seeks to transcend or check precisely because it is generated by this weave of forces? More specifically, if the three voices of human rights are complicit or cannot differentiate/extract themselves from one another by virtue of their constitutive imbrication in global capital, then their original contamination means that the normativity of human rights can no longer be thought in terms of an ideal universal form that is grounded in the co-belonging of pure human dignity and reason. We would then need to rethink normativity otherwise, from the ground up.

The contamination of the first voice by global capital is obvious enough. For instance, when the United States conceptually relates human rights issues to trade negotiations by presupposing that human rights and commercial/industrial growth are causally dependent, this link means that the latter can sometimes override the former as a result of lobbying by corporations. Furthermore, the first voice can also serve Northern economic hegemony indirectly. It can cover up the scandalous

Global Capitalism as a Case of Original Contamination

Human rights NGO networks may dream of living in an undivided but also diverse world. The essential problem with the normative framework of human rights practical discourse, however, is that it cannot account for the original contamination of the three voices by virtue of their constitutive inscription within the force field of global capital. In the existing framework, different visions of human rights are explained in terms of a progression toward a more encompassing totality. Each successive
open secret that the resource-intensive and inherently wasteful macro-policies of economic development and market economy-led linear models espoused by international development agencies and financial institutions such as the World Bank and International Monetary Fund force some countries of the South deeper and deeper into debt, thereby maintaining an unjust global economic order controlled by a handful of elites, transnational corporations (TNCs), and Northern states. In the current conjuncture, these Bretton Woods institutions are inadequate to prevent the erosion of the technological and economic bases of power of the Group of Seven nations in the face of East Asian economic success. The World Trade Organization, which was established after the Uruguay round of GATT negotiations, is the main institutional structure for the execution of an elaborate plan to reorganize global production and production capacities by vastly extending the scope of rules for the protection of intellectual property rights throughout the world by means of multilateral agreements that link these rights to trade. The most notable of these agreements is the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, which is part of “a policy of technological protectionism” aimed at consolidating an international division of labour wherein Northern countries generate innovations and Southern countries constitute the market for the resulting products and services. The TRIPS agreement is effectively a “neo-mercantilist” attempt to destroy the emergence of competition from outside the hegemonic North. By restricting access to key technologies and pursuing aggressive policies to open up foreign markets in Asian and Latin American NIEs (newly industrialized economies) via export promotion and reciprocal market access, industrialized countries seek to control industrial development in the South and to expand the space and freedom of TNCs at the same time. They seek to produce a global division between knowledge-rich and knowledge-poor countries, relocalizing the latter by permanently blocking them from acquiring the knowledge and capacity to accumulate wealth. It is, of course, not a nice thing to steal the ideas of others, especially when these ideas can lead to great profits. But then, no Northern government is suggesting that the wealth accumulated by Northern countries after centuries of colonial and imperialist theft be returned to the South.

Indeed, the global expansion of intellectual property protection can also be a legalized form of late capitalist theft. As Vandana Shiva points out, international patent and licensing agreements facilitate a new era of bio-imperialism since they are used by Northern-based transnational pharmaceutical and agribusiness corporations to monopolize the biological resources of the Third World, which can be developed into drugs, food, and energy sources. Shiva argues that “the U.S. has accused countries of the Third World of engaging in ‘unfair trading practice’ if they fail to adopt U.S. patent laws which allow monopoly rights in life forms. Yet it is the U.S. which has engaged in unfair practices related to the use of Third World genetic resources. It has freely taken the biological diversity of the Third World to spin millions of dollars of profits, none of which have been shared with Third World countries, the original owners of the germ plasm.” Furthermore, with worldwide patent protection, agribusiness and the seed trade are trying to achieve truly global reach. While the rhetoric is agricultural development in the Third World, the enforcement of strong patent protection for monopoly ownership of life processes will undermine and underdevelop agriculture in the Third World in a number of ways. . . . Patent protection displaces the farmer as a competitor, transforms him into a supplier of free raw materials, and makes him totally dependent on industrial supplies for vital inputs like seeds. Above all, the frantic cry for patent protection in agriculture is for protection from farmers, who are the original breeders and developers of biological resources in agriculture. It is argued that patent protection is essential for innovation—however it is essential only for the innovation that brings profits to corporate businesses.

The negative consequences of the globalizing/universalizing of intellectual property protection should therefore be seen in a continuum with the curious homology between the first voice’s use of human rights universalism to justify encroachments upon the national sovereignty of the developing South and the attempt of the postindustrial North to increase the freedom of TNCs from regulation by host governments. Political freedom and the liberalization/freeing of trade go hand in hand. The former secures assent for the globalizing of market mechanisms and the continuing fiscalization of the globe. Needless to say, the global spread of free-market mechanisms cannot lead to generalized development. It only exacerbates world polarization and leads, in some cases, to the formation of comprador states that subordinate development to the requirements of transnational capitalism and adjust their economies to
global restructuring. The compradorized state is no longer capable of actively shaping its own society and political morality. This handicapping of democratic national projects in the periphery from the start gives the lie to the neoliberal sermon that the global spread of free-market mechanisms will lead to global democratization.

The inequality of North-South relations is partly responsible for a seemingly undivided stand by Asian countries on human rights. The second voice's catechism on the right to development, however, is just as contaminated by global capitalism. For systemic reasons, the spectacular economic growth of some East Asian countries is not evenly distributed to every sector. Most of their governments are no longer comprador regimes in the strict Marxist sense. They are vocal in their policy disagreements with and ideological opposition to the North or the West. Yet their high economic performance, essential to their continued legitimation, depends on their willingness to accommodate transnational capital. These governments acquiesce in the exploitation entailed by profitable foreign investment: poor laboring conditions and low pay in Free Trade Zones compared to those in the countries of origin of TNCs. Indeed, the richer Asian countries are now investing in their poorer neighbors and preaching a competing "Asian" model of free trade there. In a visit to Manila in 1992, Lee Kuan Yew, former prime minister of Singapore, urged the Philippines to model itself after the economic policies of Indonesia, Malaysia, and Thailand, saying, "You will have to further liberalise the trade and investment regulations to stimulate activity." Thus, the real audience of the continuing human rights debate between Asian and Western governments is the disenfranchised in Asian countries whom their governments are trying to convince about the virtues of their authoritarian path to capitalist development. It is the disenfranchised who are caught in the aporetic embrace between a predatory international capitalism and an indigenous capitalism seeking to internationalize.

I come now to the most counterintuitive and politically incorrect part of my argument: the contamination of human rights NGOs. This third voice tries to extract itself from the miasmic complicity between domestic oppression and international exploitation by claiming the normative status of an international public sphere or, what is not quite the same thing, a global civil society. In topographical terms, both "civic society" and "public sphere" refer to zones that exhibit autonomy in relation to the territorial state. They are thus sites of struggle between dominant and counter-hegemonic forces. The normative status of civil society simply comes from this autonomy from the state that allows it to represent society to the state and to alleviate pressures that come from state institutions. By contrast, the concept of the public sphere (Offentlichkeit) is formulated by abstracting a universally valid procedural framework for the rational-critical articulation of norms from various historical manifestations of autonomy in relation to the state. The public sphere grows out of civil society but is not reducible to it. Its more exacting normativity comes from the rational universality of the procedures through which social norms are articulated. Thus, in contemporary social theory, "public sphere" is another name for the site where the substantive forms of ethical self-understanding that bind a territorial political community are generated from consensual rational procedures of political decision making and law enactment.

The normative status accorded to civil society and the public sphere has been challenged on various grounds, especially with regard to their claims to autonomy from the state and the rational transcendence of particularistic interests. What is important for us is that the compromised nature of these normative phenomena become even more pronounced when they are generalized on a global scale. For the claims by human rights NGOs to the normative status of a global civil society or an international public sphere are contaminated at various levels. First, the vocabulary of civil society or public sphere presupposes a state-versus-society topology within a territorially bounded entity where "civil society" or "public sphere" represents the "nation" side of the nation-state. Ideally, a global civil society or public sphere would transcend national interests because it would be the autonomous site of mediation between humanity and a global political order. But as I argued in Chapter 2, human rights NGOs do not possess the requisite autonomy. In the first place, transnational social movements occur in a decentralized political system where no supranational executive body independent of the compliance of nation-states for the enforcement of its decisions exists, and where mass-based loyalty to the world of humanity is insignificant. Thus, civil society institutions are constrained by and have to rely on the agency of nation-states and are largely defined in terms of national bases. Furthermore, Martin Shaw points out that social movements have very little leverage on the state and even less impact on interstate
relations because they rely more on cultural pressure than on elaborate institutional connections with the political system. At best, social movements with global networks can make national civil societies more globally aware. Indeed, even when NGOs invoke formal international human rights instruments to make their claims on behalf of humanity, these claims are always channeled through specific national sites, against specific nation-states.

This means that human rights NGOs have to negotiate with shifting interstate relations within an unequal global economic order. Their claims are thus irremediably susceptible to co-optation by competing states on both sides of the North-South divide the very moment they are articulated. In fighting against state violations of human rights, NGOs from the South are precariously balanced between, on the one hand, relying on Northern sources for funding and the risk of co-optation by the international media and the expansionist economic interests of wealthy postindustrial countries; and, on the other hand, criticizing statist models of development in the South without jeopardizing the ambivalent need for the nation-state as an agent of accumulation in defense against transnational capital. Simply put, NGOs are always part of the linkages of global capital as they invest state-formations and are effective only by virtue of being so.

I should stress that I am not suggesting that human rights NGOs articulate universal ideals that are subsequently contaminated in their implementation. I am suggesting that these ideals are always already conditioned by the force field within which they are invoked. These ideals are posited only in their violation. Consequently, the recognizability of these ideals depends on what counts as oppressive in a given historical conjuncture. We must therefore learn to see that human dignity itself is a product-effect. This is apparent enough in the observation that any assertion of right is limited by its positionality. Take, for example, the feminist right to cultural difference. The need to assert the right to cultural self-determination as integral to human dignity is a by-product of unequal North-South relations. It has been contested by feminist groups in the South seeking to assert women's rights as human rights. These groups seek to establish a feminist right to cultural self-determination in opposition to the patriarchal statist model of cultural difference that obstructs possibilities of gender reform. Yet, even here, it is impossible to locate a pure voice of feminist cultural difference. As Arati Rao observes, much feminist leadership is urban, well educated, middle class, and often government paid. "Since the responsiveness of the state to women's well-being remains debatable, we must remain critical of the relationship between governments and those women's groups permitted to flourish freely." Therefore, "when women's groups or individual women talk about culture, we must remind ourselves that there can never be a purportedly popular notion of culture that is unmediated by the positionality of the speaker; we must look at claims for exemption [from human rights issues] on cultural grounds in relation to the axes of class, ethnicity, race, sexualitly, and age, and so on." This argument about the contamination of the subject of rights should be made at an even more fundamental level that goes beyond a critical analysis of positionality. The politics of positionality or location implies a distinction between an inauthentic or dominant institutional position and a repressed but residual authentic voice that is retrievable by an exhaustively universal vision of human rights. The point I am making is that an irreducible because systemic contamination occurs in the very court of claims in which the voice of the oppressed can be heard, although it is in this court alone that justice can be done, and we cannot want this justice-in-violation. The impossibility of locating a pure voice of the subject of oppression or a genuinely popular voice, and therefore of any vision of human rights claiming an all-encompassing universal validity, is especially salient in the assertion of aboriginal rights by "tribals" in Southeast Asia. As Benedict Anderson observes, "in most cases their humble wish is to be left alone." But they are compelled to defend against the encroachment of nation-states and the forces of global capital on their way of life by sagging a collective identity and demanding rights in the name of that identity.

Their very isolation leaves them unacquainted with the ceremonies of private property, the techniques of coalition politics and even the organizational methods needed for modern self-defense. The irony is that typically, they are not ethnic groups; to survive they may have to learn to think and act as such. . . And the costs of going ethnic, that is, participating in ethnic majority politics and economies within the nation-state, are not to be underestimated. . . . These [ethnic] identities . . . occlude and submerge non-ethnic local identities in the very process of attempting to defend them. Such identities may, under ill-starred circumstances, invite conscious oppression rather than malign neglect, but they also open the way to developing a necessary political and economic bargaining power."
The dilemma of "going ethnic" illustrates that rights accrue only when the subject claiming them is a collective subject endowed with institutional epistemic recognition. Put another way, rights claims are contingent on the performative positing of a subject of rights within and by a given conjuncture although this performative is then necessarily taken to be a constitutive declaration about and by a preexisting subject. Jacques Derrida makes the same point in a different context when he observes that "this obscurity, undecidability between...a performative structure and a constitutive structure...is essential to the very positing or position of a right as such." Human rights NGOs often make the observation that "one of the major issues is how to overcome the barrier of ignorance on the part of the rural poor about their rights, including the right to organize [, because] to make matters worse, the poor do not know they are poor." Without dismissing the necessity and importance of the project of politically educating "the rural poor," it is nevertheless important to note that what we are witnessing is a performative-constitutive ruse by which the rural poor begin to think of themselves as such, in terms of a collective identity capable of articulating their human rights. They are being taught to make cognitive sense of their exploitation by global capital even as the project of consciousness-raising is necessarily part of the same systemic violation. They are constituted as an institutionally recognizable collective, which they were previously not, so that they can have leverage as the subjects/objects of institutional decision making. Yet, this fabulation also reduces them to the accountable data of sustainable development policies that may disrupt their old ways of life even further. This is the crisis. No easy claims of historical relativism or nihilism here, but the sobering acknowledgment that in global capitalism, this is the only way to help them and the only way for them to help themselves.

Normativity in Original Contamination: Global Capitalism Is a Text, Not a Totality

It may be fruitful at this point to situate the performance of human rights practical discourse in contemporary global capitalism in relation to the two main competing theories of international society in intellectual history: cosmopolitanism and realism. We have already encountered cosmopolitanism in the concepts of international public sphere and global civil society. Clearly, the contaminated normativity of international human rights claims can no longer be explained in terms of the Kantian idea of cosmopolitan right. As I suggested earlier, in the current interstate system, no international public sphere or global civil society in the full sense has come into existence. None of the three voices of human rights can represent universal humanity. Although they can be complicit with one another, the hegemonic North, the weak neocolonial states in the South, the economically high-performing Asian NIEs, and human rights NGOs in both the North and the South clearly do not share identical interests.

In international relations theory, the alternative to a cosmopolitanist conception of international society is realism. Hedley Bull represents a more moderate example. As one commentator observes, Bull cautioned that "cosmopolitan ideas can determine our attitudes and policies in international relations only to a limited extent" since states were "notoriously self-serving in their policies." Having suggested that a commitment to basic human rights underpin any cosmopolitanist world culture, he pointed again to the continuing lack of agreement among states as to what is meant by human rights, and the dangers of subverting coexistence by pursuing partial conceptions of justice." Hegel offers an even stronger philosophical articulation of realism. He argued that the normativity of international society would never go beyond a mere "ought to be." Hence, "the broadest view of these [international] relations will encompass the ceaseless turmoil not just of external contingency, but also of passions, interests, ends, talents and virtues, violence [Gewalt], wrongdoing [des Unrechts], and vices in their inner particularity. In this turmoil, the ethical whole itself—the independence of the state—is exposed to contingency."

Hence, in its most cynical version, a realist account of international society is a relativism that emphasizes the historical contingency of state action toward other states. In the face of the ineluctable historicity (Geschichtlichkeit) of moral-political norms, Hegel could assert the rational-universal normativity of state action only by resorting to a teleology of world history. He argued that the institutionalization of certain norms coincided with the direction of world-historical progress and that these norms retained their universal validity in later stages of development. Such world-historical norms cannot be revoked even though they can be modified. The nation-state that embodied the world spirit of a
certain epoch would lead all other states, and its actions would have universal normative force. Thus, "it is through this dialectic [of the finitude of national spirits] that the universal spirit, the spirit of the world, produces itself in its freedom from all limits, and it is this spirit which exercises its right—which is the highest right of all—over finite spirits in world history as the world's court of judgement." Furthermore, the nation [Volk] to which such a moment is allotted as a natural principle is given the task of implementing this principle in the course of the self-development of the world spirit's self-consciousness. This nation is the dominant one in world history for this epoch... In contrast with this absolute right which it possesses as bearer of the present stage of the world spirit's development, the spirits of other nations are without rights, and they, like those whose epoch has passed, no longer count in world history.

We clearly cannot follow Hegel's rationalist impregnation of the contingency of historical events with teleological significance. The neocolonial ideology of development deployed by the IMF and the World Bank under the leadership of the Group of Seven nations is world history in its misdirection, or desterritorialization. Indeed, both the United States in its self-staging as the champion and defender of human rights and the authoritarian governments in the South that justify human rights violations in the name of the right to development try to endow their actions with normative force by exploiting weaker variations of the same teleological argument. The question is whether in the face of the irreducible contamination of human rights in global capitalism (a case of ineluctable historicity) we must give up their normativity and reluctantly embrace cynical realism if we reject a teleological solution to historical contingency.

The situation is not as bleak as it seems. For if idealist universalism is unrealistic, cynical realism is equally unrealistic, given the very real normative power that human rights exert on various types of actors notwithstanding the fact that their normative basis cannot clearly be separated from global-systemic imperatives and particularistic tendencies. To be a concrete agent in history is, after all, to be influenced by historically existing ideals and norms, no matter how contaminated they are. The task is rather to rethink the normativity of human rights claims within the original contamination and violence of global capitalism, within ineluctable historicity. It is to accept that our principles of rational action are irreducibly conditioned by what they seek to alleviate and transform even as we cannot not invoke these principles because they condition us in turn. But this will require a radical break with the theory of normativity behind human rights practical discourse, which, in claiming exhaustive universal rationality, has always taken as axiomatic the co-extensiveness of ethico-political change with the prescription of a total rational form by the human agent to historic-material forces.

Indeed, all existing theories of normativity regard normative force as something that issues from and expresses self-present reason and define rational normative activity as the elimination, regulation, or transcendence of historical contingency. The struggle of normative reason to transcend historicity can take different forms. In neo-Kantian human rights discourse, it involves the prescription of an ideal total form, for example, a holistic system of rights maximizing respect for human dignity, that is distinct from and even transcendental to historical reality, but that functions as a regulative or asymptotic horizon of the Kantian type, a guiding thread for the transformation of reality. Or, following Hegel, normative reason can be reconciled with historical contingency: it can transcend the contingent by actualizing itself in history through autonomous action that affirms the ethical institutions of the nation said to embody the spirit of world history. Reason's struggle to transcend historical contingency can even take the form of Fredric Jameson's neo-Marxist argument that human rights, like the ideals of other progressive social movements, are necessarily compromised so long as they are articulated in global capitalism. The full realization of human rights would then be premised on the transcendence of the capitalist world system. The first step toward transcendence would then involve an aesthetic of cognitive mapping that enables us to imaginatively outline global capital into the form of an oppressive social totality in urgent need of transformation.

But we can no longer rely on these rationalist accounts of normativity if we want to make cognitive sense of the normative force that human rights can exert in their very contamination by global capital. This is because the normativity of human rights is inextensive with their historical contingency. I have already suggested that the ineluctable contamination of the subject of human rights indicates that we can no longer theorize the normativity of rights claims in terms of the rational universality of a pure, atemporal, and context-independent human dignity that is ultimately separated from economics or politics. But more important,
however hard it may be for leftist critics to accept, this irreducible contamination also indicates that we may never be able to transcend global capital. For the very constitution of a subject entitled to rights involves the violent capture of the disenfranchised by an institutional discourse that inerverably weaves them into the textile of global capitalism. Human rights are generated as concrete rights at the level of bodily needs and materialized through institutional practices as part of a complex of processes by which global capitalism continually sustains and reproduces itself through the production of human subjects with rights. Our interconnectedness within global capitalism thus generates a real and unequal universality that caricatures the ideal universality presupposed by conventional human rights discourse. Rights are not, in the original instance, entitlements of intersubjectively constituted rational social agents but violent gifts, the necessary nexuses within immanent global force relations that produce the identities of their claimants. Yet they are the only way for the disenfranchised to mobilize.

From the foregoing we can see that the normative force of human rights issues from the material linkages that make up the global capitalist system without either being reduced to these forces (historico-relativism) or being able to transcend them (varieties of neo-Hegelianism and neo-Marxism). In his reflections on the aporias of justice and the gift, Jacques Derrida has articulated an account of normativity that is explicitly distinguished from the Kantian and Hegelian accounts of normativity underpinning cosmopolitan and realist accounts of international relations. I want to suggest that his idea of justice can help us arrive at a more adequate understanding of the contaminated normativity of human rights. As we have seen, Kant's idea of a cosmopolitan federation is an ideal horizon that is only tenuously connected to present actuality. Hegel's critique of Kant, however, is animated by the argument that the state's political morality constitutes an "ought" that already "is," a sphere in which normativity and actuality are reconciled and historical contingency is transcended. Insofar as any account of normativity involves an understanding of how a norm is related to the present, these two institutional models of normativity are characterized and understood by different temporal relations. In Kant's case, the cosmopolitan federation is an ideal horizon, an infinitely deferred and asymptotic future end that functions regulatively as a guiding thread, whereas for Hegel, the ideal state is a sphere of normative facticity where justice is immanent to the present. In Derrida's view, however, justice is not so much a mode of time as the movement of temporalization or the giving of time itself.

Against Hegel, Derrida argues that it is unjust to regard justice as being exhausted by or reduced to its present historical forms or determinations. This is because justice must remain fundamentally open to unpredictable future circumstances: "The deconstruction of all presumption of a determinate certitude of a present justice itself operates on an infinite 'idea of justice,' . . . [which] seems to me to be irreducible in its affirmative character, in its demand of gift . . . without economic circularity, without calculation and without rules, without reason and without rationality." But, unlike Kant's idea of the cosmopolitan federation, this infinite idea of justice is not a projected ideal form that has a limited effective relation to present actuality. Justice is not a transcendental exteriority that can function only as an ideal horizon. It demands an immediacy of intervention into and transformation of the present: "I would hesitate to assimilate too quickly this 'idea of justice' to a regulative idea (in the Kantian sense) . . . or to other horizons of the same type . . . ( . . . eschato-teleology of the neo-Hegelian, Marxist or post-Marxist type) . . . As its Greek name suggests, a horizon is both the opening and the limit that defines an infinite progress or period of waiting. But justice, however unrepresentable it may be, doesn't wait. It is that which must not wait" (FL, 965, 967). To be just, justice must not be either simply immanent in or transcendental to the historical present. Hence, justice must paradoxically be immanent and transcendent at the same time. To be just, justice must give itself to the historical present. But in the same instance, it must withdraw itself or be effaced from the present. Thus, justice must (and can only) give itself in its own violation, contaminate itself by appearing in the present.

What is important here is Derrida's suggestion that the source of normativity—its condition of possibility—can only be the absolute surprise or chance of the event that opens and keeps time and history going. Justice ought not to be exhausted by rational action in the present. But at the same time, it must have an effect on the present through rational action. This persistent, sheer possibility of the transformation of historical actuality can therefore issue only from a contingency original to and constitutive of the historical present: the historicity of history. Normative reason is born in an unconditional response to this original contin-
gancy, but since historicity is constitutive of finite reason, reason cannot cognitively master, eradicate, or transcend it. The radical historicity or finitude of reason thus refers to reason's constitutive insertion within an unstable and shifting field of historical forces that it cannot control or transcend. But at the same time, this moving base also holds the merid- cable promise of ethical transformation because it exceeds and cannot be captured by the hegemonic forces of any given historical present. In this sense, normativity is both unconditional and coextensive with historicity, which is precisely why normativity cannot be reduced to existing norms or their historical conditions:

Justice remains, is yet, to come, a venir; it has an, it is a venir; the very dimension of events irreducibly to come. . . . Perhaps it is for this reason that justice, insular as it is not only a juridical or political concept, opens up for l'avenir the transformation, the recasting or refounding of law and politics. "Perhaps," one must always say perhaps for justice. There is . . . no justice except to the degree that some event is possible which, as event, exceeds calculation, rules, programs, anticipations and so forth. Justice as the experience of absolute alterity is unrepresentable, but it is the chance of the event and the condition of history. No doubt an unrecognizable history . . . for those who believe they know what they're talking about when they use this word, whether it's matter of social, ideological, political, juridical or some other history. (PL, 969, 971)

This is precisely the structure of justice-in-violation that characterizes the unconditional but contaminated normativity of human rights in their historical contingency. For as we have seen, human rights are double-edged but absolutely necessary weapons that are given to the disenfranchised by the global force relations in which they find themselves mired in a given historical conjuncture. On the one hand, we should be able to account for the historical conditions that determine and impose limits on any invocation of human rights so that we can calculate the effectiveness of human rights claims in a given situation. On the other hand, because they are in-history, these contextual conditions are subject to radical mutability. A mutation in historical conditions will cause a corresponding change in the effectiveness of human rights. At the same time, the contaminated normativity of human rights can be a factor in bringing about and inflecting a mutation in historical conditions.

This view of normativity in historical contingency is not a historicist relativism that reduces normativity to a rule of hegemonic power. First, conjunctures have an immense stability. Second, no collective institutional actor can predict when and how a given conjuncture will mutate. Thus, although some actors may be invested with hegemony by the current state of affairs, no single actor can be said to have exhaustive mastery over it.

But by the same token, human rights are also not inevitably strategic instruments or ideological fictions available for progressive or reactionary use. The normative force and effectiveness they have are given by the mobile force relations that make up the global capitalist system. Human rights are not our instruments as rational actors, for we are their product-effects rather than their originators. Neither progressive nor capitalist forces can choose either to embrace or to repudiate human rights, for they are given to us as finite historical actors by existing historical forces, and they constitute us. What we can do is calculate their effectiveness in situations we can envision and act accordingly. Derrida puts it this way:

It is a matter . . . of responding faithfully but also as rigorously as possible both to the injunction or the order of the gift . . . as well as to the injunction or the order of meaning (presence, science, knowledge): "Know still what giving wants to say, know how to give . . . know how the gift annuls itself, commit yourself [engage-toi] even if commitment is the destruction of the gift by the gift, give economy its chance. For finally, the overrunning of the circle [of economy] by the gift, if there is any, does not lead to a simple, ineffable exteriority that would be transcendent and without relation. . . . [It is this extremity which puts the economy in motion."

Thus, as we have seen, although the three voices of human rights discourse can be complicit, the line of force that joins them together and in the service of the global capitalist economy can also mutate to separate their interests and pit them against one another and against capitalism. In the shifting global force field nothing is etched in stone, and progressive forces must learn to tap this motility.

It follows from this that human rights are not just part of an ideological structure that needs to be re-embedded within the systemic totality of global capital by immanent critique. Neo-Marxist understandings of
human rights are continuous with rationalist theories of normativity that prescribe an ideal totality or world image onto material reality. Global capitalism has undoubtedly brought about material interconnectedness on a world scale. But contra Jameson, the contaminated normativity of human rights practical discourse suggests that global capitalism is not a totality but a textual network, a sheaf of differential processes. The conditioning power of human rights on our rational actions and their ambivalent effects indicate that the global relationality that enables each agent to act and to affect others is marked by a randomness that cannot be entirely harnessed by either hegemonic or emancipatory interests: the randomness of the shifting linkages that sustain global capital. And this chance of economy means that although global capitalism is a formation with great extension and deep penetration, “it” cannot be enclosed as a cognizable totality. Since it is also a product-effect of force relations that overflow it, there are points of weakness generated within “it” that “it” cannot account for. This radical alterity immanent to global capitalism makes totality impossible because it opens the structure up into a general textuality at the very moment when totalization occurs. The positive effects of human rights arise from these unpredictable points. But by the same token, these neuralgic points are not spatially exterior to the formation. They are part of it, conditioned by its historical determinations, and do not present a visible historical or imaginary limit to it. They do not make up an external present site from which we can (imagine and) transcend capitalism as a totality. This is why human rights are originally contaminated, pulled back into the particularistic forces they seek to transcend or check in their very movement of transcendence.

Let me be more concrete: the globalization of market mechanisms and production requires the creation of a technologically educated laboring and administrative class in the South. But the requisite globalization of education and technological know-how also leads to the formation of a stratum of activists. In response to the proliferation of new needs, these human rights NGOs make claims that are provisionally against the interests of global capitalism. Yet, as I have suggested, these provisional points of resistance are also reinscribed into the text of global capitalism: witness the co-option of “sustainable development,” “environmentalism,” and “international civil society” by the IMF and World Bank. Thus, what gives a particular vision of human rights more normative va-

lidity and historical effectivity depends on the constellation of forces at a given conjuncture rather than an ideal or imagined horizon of all-inclusive universalism which that vision has managed to grasp.

I have argued that the unconditional normativity in original contamination of human rights arises from their inscription within the text of global capitalism and not from a self-present exteriority grasped by enlightened reason or neo-Marxist cognitive mapping. Such an approach deprives human rights claims of absolute rational justification, since by viewing normativity as arising out of the radical alterity of the global force field, it sundered the co-belonging of normativity with reason and presence. But then what are the theoretical alternatives? A dogmatic idealism of human rights is disproved by “the real world of human rights.” At the same time, an outright realist dismissal of human rights denies their very real enabling force in the current conjuncture. Given that the transcendence of global capitalism is not in imaginary sight, we have no choice but to take the risk of conjuring with and against the inhuman force field of global capitalism as it induces changing forms of human dignity.