

HUMAN RIGHTS IN TRANSITION

VIOLENCE AND UNIVERSALISM AFTER KOSOVO

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Abstract

The legitimisation of the intervention of the west in Kosovo by references to human rights has brought to the surface an inherent problem of universal human rights: the tension between the intention to reduce violence and the claim to universality. This legitimisation of violence on the basis of a universalistic ethical code meant that there was no space from which an effective opposition to the intervention could be argued. The Kosovo war has therefore strengthened the view that violence is in some cases "inevitable," while the disappearance of the opposition has created a new type of "total war." This could mean that human rights are losing their power of de-legitimising violence, and are being transformed into a coinage of power politics. The paper discusses how human rights could be re-thought in such a way that they can de-legitimise violence even when a new strong and "universal" foundation is no longer possible. Referring to the work of Gianni Vattimo, the paper discusses the problem of violence as a manifestation of the metaphysical tradition of western thinking and its quest for secure foundations. It argues that human rights as a reduction of violence must be thought post-metaphysically and proposes an understanding and practice of human rights located between the nihilistic hermeneutics of Gianni Vattimo and the neo-pragmatism of Richard Rorty. This understanding of human rights could de-legitimise the new type of organised violence born during the Kosovo war, and allow an understanding of democratic transition beyond the model of a "catching-up process."

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Introduction

After the cold war ended, human rights became part of the new international security paradigm. Deterrence, balance of power, nuclear disarmament, proxy wars and other cold war tools dropped on the security agenda, while democracy, free market, development, and human rights now make up the core strategies to which hopes for global peace are tied. Human rights, first designed to regulate the behaviour of governments vis-à-vis their citizens, now play an increasing role in regulating the behaviour among governments in what Habermas (1999) has called the “human rights-driven domestication of the natural condition among states.” The politics of human rights provided the legitimisation of the intervention in Kosovo and made it possible, even without the UN mandate, which would have been necessary according to international law. Therefore, Habermas (1999) argues that we may expect the Kosovo war to represent a “leap forward on the path of the transformation of classical international law into the cosmopolitan law of a world civil society.”

Against the background of such hopes for a fully civilised world society, a world civil society, it is easy to overlook that with the human rights-oriented legitimisation of a violent western intervention, human rights have been placed in uncomfortable proximity to a new kind of violence orchestrated by states; it is a type of violence which objects to be called by its name, war, but is hardly less violent. What made the Kosovo war so novel as to justify the objection is what happens on the level of what Galtung has called “cultural violence,” i.e., on the level of legitimisation. While previous “just wars” were considered just by virtue of their capacity to conform to international law (self defence, UN interventions, etc.), the legitimisation of the Kosovo war seems to attempt a final and definitive reconciliation between violent intervention and universal ethics, i.e., it opens a space for wars with built-in legitimisation and provides a *carte blanche* for similar, future interventions (total war) whose reasons are fully evident and bear no questioning.

In view of this development, one must fear a totalisation of war rather than understanding the Kosovo war as a turn-around from total war, as Habermas has argued. The totalisation of war occurs when opposition is no longer possible, because the place from which such an opposition might be formulated or exercised has been occupied by war itself. War becomes, as it were, the better peace; the distinction between civilian and soldier is obliterated. Its legitimisation is built-in, and opposition is effectively silenced, reduced to a squabble about methods and quantities, a phenomenon that we have been able to observe during and after the Kosovo war. If war is legitimised by a moral obligation to reinstate human rights, than it can no longer be opposed by referring to human rights, it can only be opposed by questioning this type of legitimisation. I can think of two ways in which this could be done: either by considering it a case of political opportunism with no theoretical consequences, or — which is what I would like to propose — by asking the question whether there is something in the dominant conception and praxis of human rights itself which makes such a legitimisation possible or even necessary?

When asking this question, we can depart from two premises: one is the original intention of human rights to reduce violence, and the second one stems from the totality of the war and its legitimisation. This totality has not only silenced the opposition; it has also exhausted the legitimacy space by linking legitimisation to universal ethics. If legitimisation appeared unfounded, there is no basis on which

a new one could be formulated. The arithmetic of metaphysics leaves no space beyond the universal.

Therefore, what seems to have happened in the course of legitimising western intervention in Kosovo is that the two premises have entered a conflict, which creates a completely novel situation. Before, wars were legitimised by references to national or security interests — more recently to international law — while opposition to war was expressed in references to universal ethics.

In the Kosovo war, giving preference to the second of the two premises — the premise of totality/universality vis-à-vis the first one, non-violence — solved the conflict. This meant that violence was the “accepted” price for the preservation of universality and that opposition to the war was connected to opposition to the universal. Such an opposition necessarily appeared absurd (therefore politically unattractive), since it appeared as opposition to humanity itself instead of opposition to war itself, as the case of Peter Handke has shown.

I will give priority to the first of these premises, which seems to be in greater agreement with the intention of human rights to reduce violence and with the democratic postulate of opposition.¹ Moreover, this choice is in agreement with the perspective that human rights become “unfounded” when used in the legitimisation of violence; more generally speaking, the “exchange value” of human rights as a currency of international politics increases at the expense of its “use value,” its capacity to protect people against the violence of states.

Metaphysics and Violence

Philosophically speaking, the current dilemma of human rights can be seen as a manifestation of the larger problem of the connection between metaphysics and violence. Both, the dominant conception and political praxis of human rights (their transformation into exchange value) are embedded in the tradition of European metaphysical thinking.

In European philosophy, the question of metaphysics received its most radical critique from thinkers who tend to be considered outsiders and whose work is often understood as scandalous, as a contamination of progressive, enlightened thinking. However, Nietzsche, Heidegger and their contemporary interpreters, including Vattimo, Rorty, Derrida, and others are exercising an increasing influence on “leftist” emancipatory thinking as the political utopias inherited from the Enlightenment are exhausting their illuminatory power and causing widespread disillusionment. If we understand the problem of violence as a problem of metaphysics, then the “destruction” of metaphysics which occurs in the tradition of European nihilism might contain some insights into how human rights could be rethought as to not become the totalising force which they must be to legitimise violence and silence opposition to it.

The metaphysical tradition of European thought has tried to secure ultimate foundations for existence and — in order for this to be possible — had to identify truth with certainty, the possible with the good, and peace with security. The legitimisation of war by reference to the universal — the exhaustion of legitimacy space of which we have spoken — can be seen as nothing else but an attempt to give war a moral foundation beyond which one cannot go, and which cannot be questioned. In other words, to do what the metaphysical tradition has always done: secure an ultimate and secure foundation. To think of human rights as an inten-

tion to reduce violence would, therefore, call for a conception of human rights which tries to go beyond the metaphysical, which is the “postmetaphysical.”

Although metaphysics is usually considered as a stage of thinking “overcome” by the West, this overcoming should not be understood as “left behind.” The modern projects of science and technology, which are often cited as the culmination of rationality, constitute also the most advanced stage of metaphysics in so far they organise the world into a calculable and predictable whole, governed by the objective law of causality, in which truth is reduced to certainty and operationally proved in the functioning of technology. Heidegger calls this the thinking of “being as presence,” the neglect of ontological difference.

The modern period, in so far as in metaphysics it reaches its most advanced point in science and technology, values the future over the present, distance over proximity, the eternal over the ephemeral, and the universal over the local. In its quest for secure and ultimate foundations, modernity has had to fight against all which stands in the way of such ultimate foundations; it has set into motion a violent crusade against the “other,” the irrational, the incomprehensible. Gianni Vattimo (1994, 40), a contemporary interpreter of the chief critics of metaphysics, Nietzsche and Heidegger, speaks of metaphysical thinking as violent in so far as it represents a “thinking of the peremptory presence of being — as the ultimate foundation in the face of which there can only be silence, or perhaps admiration If the foundation is given with incontrovertible evidence which bars further questions, it is like an authority which commands silence and imposes itself without giving explanations.” This is another motive why — if human rights are understood primarily as an intention to reduce violence — we must try to think them beyond metaphysics.

To think human rights beyond metaphysics would mean to think them outside those determinations. It would mean to re-appreciate all that the modern heritage of metaphysical thinking tends to eliminate: difference, locality, opacity, insecurity, and uncertainty. It would mean to appreciate that which contaminates metaphysics.

Universalism and Contamination

To illustrate what I mean by contamination in the philosophical sense, I would like to refer to an admittedly rather profane case of contamination which occurred a shortly after the NATO victory in Kosovo, a victory of “civilisation” over barbarism, as western statesmen were quick to point out. It was the Coca-Cola contamination in Belgium.

In a June 1999 article in the *Süddeutsche Zeitung*, Bernard (1999) pointed out that Coca-Cola is actually a product without a place. Wherever we go, Coca-Cola is already there, and it looks and tastes the same everywhere. “The secret of Coca-Cola lies in the fact that every trace of regional identity, every hint pointing at its origin have been eliminated.” We tend to perceive Coca-Cola as a drink whose appearance and taste have nothing to do with its origin, Coca-Cola is everywhere and seemingly comes from nowhere. We can only think Coca-Cola independent of its origin. Coca-Cola only makes sense as the omnipresent black drink in the red can which makes any questions regarding its origin redundant.

In this it is very different from wine, spirits, or even beer, for which local identity is essential. How could you talk about Chianti without calling it Chianti, i.e., without identifying it by its origin? Equally, single malt whiskeys make no sense

without the place of distillation, and the names of many beers are identical with the places where they are brewed.

However, this non-locality of Coca-Cola suffered when several cases of contamination were discovered in Belgium. Suddenly, the name Coca-Cola was mentioned next to the names of real locations of bottling plants: Antwerp, Dunkerque, and Gent. The discovery that even Coca-Cola was produced at concrete places meant that the aura of non-locality that surrounded it was damaged.

To trace the contamination, it was necessary to clarify exactly the obscurity on which the universal non-identity — and with it the success of the drink — relies. For a brief interval, the non-places, the diffuse globality, the fleeting imagery of happy universal Coke consumers, were interrupted by the heavy and concrete localities, Antwerp, Dunkerque, Gent. This interruption heterogenised a product that is an icon of homogeneity. Suddenly the differentiation between Coca-Cola made in the U.S.A. and in Belgium, strictly avoided before, was not only possible but also necessary for the protection of what is called public health.

Returning to the philosophical level, we could understand contamination as a weakening of metaphysics. To reduce the danger, a placeless product suddenly had to speak with what Vattimo we could call a “local dialect.” Even if this episode will soon be forgotten by most people, the essential truth on which the image of the drink relied is no longer an essential, self-imposing, reliable truth. Nietzsche calls the weakening of metaphysics the “death of god” — in the reality of the modern era, god is not necessary, and for god this means he is “dead.”

When we try to think human rights post-metaphysically, we are admitting that the shadow of the “dead god,” the weakening of metaphysics, is now beginning to have its effect on the debate around human rights. The self-evident truth of universal ethics is being contaminated by the claims of local ethics and local rationalities, while the success of the universalisation of the conception of human rights is accompanied by danger (violence).

Postmetaphysical Human Rights?

Gianni Vattimo, in his nihilistic interpretation of Heidegger and Nietzsche, actually uses the word “contamination” to refer to a relationship of postmetaphysical thinking with a nihilistic orientation to metaphysics. To Vattimo, metaphysics is the essence of Western thinking and its idea of being strong, and eternal, but finally comprehensible, describable, and of a certain structure. In late modernity metaphysics reaches its culmination in the global project of science and technology. This culmination of metaphysics and its calculating thinking in science and technology takes place when the speed and danger of this project forces us to think a way out of this type of thinking. But in so far as it must be postmetaphysical, it cannot “fix” the metaphysical essence of Western thinking and improve it, instead, it can only overcome it by way of “twisting” (*verwinden*) it. The very culmination of metaphysics — its global success in science and technology — contains an uncomfortable call to think beyond metaphysics, to think without the stable, reliable, verifiable, and certain foundations of metaphysics.

Among the different attempts of 20th century Western philosophy to come to grips with this “uncomfortable call,” Vattimo’s approach is located beyond any reconstructive or deconstructive effort. Vattimo emphasises that Nietzsche’s *Zarathustra* not only abolishes the “real” world, he also finds that the “unreal world,”

the fable, loses its meaning once the real world is no longer “real” in the hard, forceful sense of the word. What Vattimo ironically calls contamination is seen as liberating, but no longer in the revolutionary, once-and-for-all utopian sense. Rather, the liberatory dimension of contamination can only be found locally, it does not lend itself to a new, better, faster and more human global project. For this to be possible, it would need to use the objective and universal language of metaphysics, that is, modernity.

Instead, contamination uses its own language or “local dialect.” Within this local dialect, what appears as contamination from the outside, is a language, a culture, and an ethics. Just like the Spanish conquerors reported to the pope that the indigenous people of the new world were unable to speak, that they only made strange noises, local dialects (local rationalities, ethics, etc.) appear as nuisance (as underdevelopment, lack of civilisation, etc.) to the globalising metaphysical mind, that is, to the modern mind.

To understand how human rights may be thought from such a perspective, it is necessary to go a step further into the thinking of Vattimo and analyse the relationship he sees between Nietzsche’s and Heidegger’s nihilism and the liberation of local dialects.

Vattimo understands the decline of metaphysics as prepared in the thinking of Nietzsche and Heidegger. Nietzsche’s death of god is a metaphor for the demise of a thinking that functions on the basis of strong, ultimate foundations; it is also a metaphor for secularisation, which is the hallmark of the history of modernity. With god, the highest value falls off its throne, and henceforth, all other values can no longer be defined by their proximity to the highest value: they become relative to each other. This is what Nietzsche has called the “revaluation of all values” and what, in Vattimo’s interpretation, corresponds to the transformation of being into value in Heidegger’s thinking. Vattimo sees both philosophers as turning away from the metaphysical notions of certainty and strength and as preparing the ground for an experience which values the ephemeral and the transitory as all there is. The attempt to position the subject in the dissolution of notions of the ultimate and lasting has been the hallmark of twentieth century European philosophy.

In Vattimo’s thinking, this transformation of being into value, and of use value into exchange value, is historically manifest in the generalisation of communication in modern societies. Indeed, it would seem difficult not to see that expansion, intensification, and acceleration of communication are key developments even on a global level. Modern societies are technicised societies and societies of generalised communication, an ever-accelerating and vertiginous movement in which any strong and metaphysical sense of “the reality” cannot survive. In the society of communication, the fictionalised experience of reality, announced by Nietzsche, is happening.

Returning to our subject of human rights, this is the background against which one can see the contemporary debate on human rights, because here the “liberation of local dialects” occurs. It is also against this background that the conflict between the demands of the universal and the local can be seen, and against which the demand for a new “strong being,” a new “ultimate foundation,” a new “solid basis” for political praxis appears as violent vis-à-vis the small and the local.

In keeping with his interpretation of Heidegger and Nietzsche, Vattimo argues that overcoming metaphysics cannot take place outside of it; in modern, technicised societies of communication this means it cannot take place from a neutral, ideal standpoint outside of technology from where one can “attack” metaphysical struc-

tures. Instead, overcoming metaphysical thinking, in the sense of its contamination, must take place within technology, it must first accept acceleration, technicisation, transpropiation, the fictionalisation of experience in mass communication, and accept that the project of finding and protecting a safe zone outside of technology is futile, dangerous, and may be violent. Violence would then be defined as increasing the volume of one's own speech (instead of listening) to the point where it can no longer be increased and must fall back into the wordlessness which accompanies violence.

Many a large-scale attempt to reinstate strong and lasting structures has ended in this violence: the defence of the use value against exchange value in Marxism, the idea of a strong and clean tradition in fascism, the projects of ethnic cleansing, and religious fundamentalism.

If the idea of universal human rights is now used as a legitimisation to do harm to those who do harm and is elevated to the status of an eternal and binding truth for everybody in the so-called world civil society, we can see in this an attempt to apply a legal system invented before the society of generalised communication; it is a normative code which rests upon metaphysical definitions of the good, in a world whose acceleration makes lasting definitions and institutionalisation very difficult, a matter of applying considerable force, an attempt to force a predictable order onto a world, whose sheer acceleration means that order does not last; it is a world in which perhaps the ability to live in acceleration and uncertainty may be more useful than the search for an order that may finally last.

In terms of human rights, I would reformulate this thought like this: to achieve protection against violence, which is central to the idea of universal human rights, it must first be accepted that the ethical and practical foundations for this project are no longer to be relied on and cannot be reconstructed.

Today, human rights are contaminated by local rationalities; the conclusion that one could draw from this is the insight that correction and cleansing measures are bound to be violent and that human rights should be considered not as a non-local, i.e., universal project which acts as the "ultimate value" against which all other, local projects are measured; one should not counter the transformation of human rights from use value into exchange value with attempts of reappropriation.

Human Rights as Literature

In light of this argument, the "universal" with which the local seems to be in conflict is no longer "universal" in the previous sense of the word, and the conflict between universalism and localism can be negotiated as a conflict between different narratives. Such a negotiation takes place, for example, in Richard Rorty's conception of human rights, in which he advocates a human rights culture vis-à-vis human rights foundationalism. Rorty (1993) argues that human rights foundationalism is outmoded and that the question whether or not there exists a universal human nature — i.e., a catalogue of qualities which one must possess to be entitled to claim a human right — is simply not effective as the definition of a distinct category of beings called "humans" contains the danger of people not qualifying as humans (the Serbs, the Muslims, etc.). Instead of speaking of the implementation of universal human rights, he speaks of a human rights culture.

If we understand human rights as a narrative that forms part of a living culture,

the politics of human rights will also become different. Human rights as culture may guide political action, but it is difficult to think of them as a solid basis for political action, let alone of violent intervention. If considered a cultural value rather than a political programme, human rights cannot be imposed, implemented, forced on other cultures, because a precondition would be the demonstrable existence of something essentially human, some kind of independent, transcultural truth which could ground such an imposition. Neither could human rights be used as legitimisation for state violence — as in the case above. If we agree with Nietzsche, Vattimo, and Rorty and conclude that such a transcultural truth — if it exists — is not strong enough to act as the basis for imposition, implementation, enforcement, etc. then the human rights culture cannot be “defended” by reference to such a truth. It can be “defended” only by acts of persuasion rather than conviction. This could be said about human rights culture and its interactions with others. Within the human rights culture, human rights could be seen as a narrative which is in a constant process of re-negotiation and re-writing, that is, reinterpretation. In its interaction with other cultures, a human rights culture could narrate human rights as effective in de-legitimising violence, and as something worth living by.

Perhaps such a view of human rights as culture would reduce the importance of states in human rights matters, although this would almost certainly be for the better. Cultural boundaries, unlike state boundaries, are fleeting, transitory, not easily specified, and they usually do not coincide with state boundaries. Once human rights are considered more a cultural value than a superior truth — which can justify all kinds of political action — their “range” will be limited culturally, that is, linguistically. The international politics of human rights will take on the shape of a translation problem..

Anybody who has ever studied or practised translation knows about the problem of intranslationality. Linguistic boundaries stand in the way of full transparency and homogeneity, and the task of translation is to turn these boundaries into their opposite. Yet there is always something that gets lost in translation. What cannot be translated is concepts formed out of concrete cultural and historical experiences. For example, there is no word for “snow” in the Inuit language. The question here is how these translation problems are dealt with.

This is the point where Vattimo’s postmetaphysical perspectives and Rorty’s idea of a human rights culture can meet. Vattimo’s emphasis on the heritage of Heidegger and Nietzsche and his nihilistic hermeneutics may limit the danger that Rorty’s idea of a human rights culture turns into a project of cultural imperialism — which follows or substitutes that of political imperialism. Unlike Rorty, who emphasises the “we” of a liberal community, Vattimo emphasises the “we” of hermeneutics in his notion of “local” dialects which contaminate universal talk.

Vattimo does so by drawing upon the Heideggerian concept of *Überlieferung*. In Vattimo’s interpretation, *Überlieferung* (trans-mission) is the total of the messages we receive both from the past and other places. As it becomes more and more problematic to believe in the correspondence of truth and certainty, the discourse about human rights is shifting away from a secularised version of our divine nature to which we must conform to attain salvation — i.e., to be truly human — to a realm where human rights are understood as cultural heritage which offers a potential for the reduction of violence. For Western cultures, then, human rights are part of the *Überlieferung* in the sense of tradition, because the notion grew out of the tradition of Western thinking, while for non-western cultures they form

part of *Überlieferung*, as a message received from elsewhere.

If Western culture wanted to understand human rights as a narrative intended to reduce violence, it would have to accept the limits of translation — i.e., it would have to accept the contingency contained in the concept of *Überlieferung*, and the reciprocity in communication. It would also have to accept that there might be untranslatable notions on which universal human rights are based and the possibility that there may be local dialects, which cannot be fully translated into the languages used by Western cultures. If so, Western cultures may be able to understand their languages, symbolic repertoires, and value systems as yet another local dialect, and that difference is not the same as defect.

Human Rights and Transition

Yet the tradition of modernity is to view difference as a defect to be corrected. Europe has a rich history of projects of improvement backed by “universal” Christian ethics. Whether we take the case of Spanish conquerors who felt a need to “correct” the indigenous population of America by converting them to Christianity, the project of the “civilisation of the sages,” or contemporary projects of development and democratic transition, these projects share seeing the other as a threat, as deficient, as a need for correction and improvement, and they have a sound moral foundation. The concept of history underlying these projects of improvement has always been a linear one and present as a notion of “progress” within societies where they were invented.

The movement that takes place on such a linear conception of history, the movement after civilisation or development could be called “transition.” Societies in transition are already largely civilised and developed, but they still have not completed the transition to fully democratic and human rights respecting societies. Thus, democratic transition is another process of “catching-up.”

The understanding of human rights as we have developed it here — i.e., as a cultural asset and as one among many local dialects — however, is incompatible with the notion of a linear history and consequently also with democratic transition as a process of “catching-up,” or as an effort to be undertaken by certain, deficient societies to meet universal standards.

It is certainly incompatible with a division of people into those who are civilised, developed and democratic ones and those who are not but ought to be. Instead, transition is the only condition there is — taking Nietzsche and Heidegger to heart and abandoning the hope for lasting and ultimate foundations. Consequently, it is within transition itself, in the fast movement of modernity, in the complex and ever-changing world of technology and media, and not beyond transition, not in a “safe zone” or “firm structure,” and not in “security” that human rights need to be cultivated if we have an interest in reducing violence. This is also the historical condition in which occurs — if we go along with Vattimo — a liberation of local dialects, diversity, and different rationalities. Under these circumstances, a politics for human rights would be an effort to live with the insecure rather than a creation of a secure basis from which to implement the desirable.

The perspective of human rights we have tried to develop here gives hope for human rights which may be so self-evident and so universal that they may serve as the basis for a new global politics, which we hope to be finally just and human. Indeed, if we view human rights as a local dialect, cultural rather than political,

accept the limitations of translation, and accept reciprocity, then human rights may serve the purpose of a moral foundation for the world civil society.

The idea of a world civil society is itself an attempt to find a new, a post-state foundation for politics at a time when foundations as such have become problematic and when it is probably more useful to learn how to live without such foundations. From the perspective of a nihilistic hermeneutics, such a new foundation is not even desirable, because it can only be enforced by eliminating differences.

But in addition, it is rather questionable whether a legal code, formulated on the basis of a citizen-state relationship, can serve the purpose of a normative foundation for a new, international politics in which the nation-state, and hence the quality of citizens, plays an ever smaller role.

I think that the most extreme point in this development is reached when human rights are used as a source of legitimising what is called humanitarian intervention. Here Europe makes yet another turn on its spiral of just war, interrupted by peace, which all pretend to be perpetual. This is a history which may have begun with the crusades and in which there have always been just causes, justifying just wars; it is a history in which ethics has divided violence into good and bad violence, or, as we would now say in a secular language, into legitimate and illegitimate, avoidable and inevitable violence.

Perhaps human rights understood in terms of nihilistic hermeneutics do not share the hope for a global and lasting peace, which we have inherited from the Enlightenment. They might instead offer hope for the reduction of violence, and opposition to violence, by delegitimising universal human rights as a moral foundation for violent humanitarian intervention. In doing so — by opening a (cultural) space for the reduction of violence and for opposition which is neither self-defeating nor reactionary — they might point the way to a democratic transition which is not a catching-up process, but a democratic transition whose purpose is the reduction of violence itself which must happen wherever violence occurs.

Note:

1. This “democratic postulate” is also an essential component of Kant’s “Perpetual Peace,” in which the legitimisation of war is tied to its endorsement by the people, a factor which was widely ignored by the international community and by public debate, in spite of the frequent use of Kantian argumentation.

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