



The complexity of human rights in global times: The case of the right to education in South Africa

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ABSTRACT

The right to education has an established legacy in international agreements and debates, but has nonetheless proved difficult to achieve across the countries of the world. This paper explores why this might be so. It begins by locating the current architecture of rights in Enlightenment philosophy and the political and legal formations of modernity, exploring the paradoxical legacy this brings. It then looks more specifically at the right to education, and why it cannot be assumed that statements of rights deliver what they promise. Finally, it looks at education in South Africa to explore both the limits and the possibilities of using a framework of rights to achieve greater social justice in global times.

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1. Introduction

Since the adoption of the United Nations Universal Declaration on Human Rights (1948), it has become commonplace to talk of education as a basic human right, and to regard it as self-evident that the countries of the world are progressively moving towards this. Since the 1990s, the discourse of 'rights' has been supplemented by discourses of 'goals and targets', particularly in multilateral organisations (examples are the Millennium Development Goals and Education for All), and by the conceptually more elaborate discourse of 'capabilities' made famous by the work of Sen (1999) and Nussbaum (2000). Yet, whether framed as rights, as goals and targets, or as capabilities, the fact remains that basic education lies beyond the reach of millions of people across the world. And although globalisation foregrounds knowledge as a source of value in network societies across the world, it does not necessarily bring basic education to those on the margins. The right to education remains elusive. Why is this so?

This article explores a residual paradox within statements of rights, including the right to education, and that is, that rights do not necessarily deliver what they appear to promise. In spite of their apparent clarity, statements of rights are not simple tools for achieving desired educational outcomes. This article explores why this is so, and as well as the limits and possibilities of working with a discourse of rights in education. The article begins by locating the

current concept of rights historically in Enlightenment philosophy and the political and legal formations of modernity. Exploring some of the conundrums and paradoxes of rights, I suggest that there is value in retaining rights if they are used as a framework for struggle in global times. Turning to consider the right to education, I explore some of the ways in which rights may be worked with to achieve more equitable outcomes in education with particular reference to South Africa.

2. Framing human rights

The current architecture of human rights, exemplified in various universal declarations, was established along with other formations of modernity, inspired by Enlightenment philosophy and the development of nation states (see, e.g., Donnelly, 2003; Douzinas, 2000; Falk, 2000). As with other dimensions of modernity, rights are not always what they seem. While elegant in abstract, rights are often less clear in the complex conditions of material life. These points will be illustrated by brief examples from the fields of Western philosophy and international relations. It is impossible to do justice to the richness of debates on rights in the brief comments that follow. Instead, the examples are intended to illustrate my argument that while the ontological basis of rights is open to question, there is nonetheless a place for universalist concepts such as rights in working towards greater social justice.

2.1. Rights in philosophy

On what grounds may human beings claim rights? Is there a common human nature that confers rights on humans as humans?

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Questions such as these have been much debated in Western philosophy, including Enlightenment philosophy.

For example, John Locke, writing in the 17th century, argued the case for human rights in natural law existing prior to the formation of political and social communities. These rights stem from natural law, which stems from God. Through the establishment of a 'social contract', abstract autonomous individuals exchange freedom for security to form political societies. Natural rights then take social and political forms as the rights of citizens.

Immanuel Kant, another key Enlightenment philosopher, provides an alternative approach by locating the basis of rights not in nature, but in the rational capacities of autonomous human beings. Kant provided a template of the sovereign individual, capable of courageous reasoning and possessing a moral consciousness. The realm of morality, he argued, stood outside of the realm of nature (and hence of 'natural law'), and its unchanging elements stemmed not from an external authority (such as God) but from human rationality. In his 'categorical imperative', Kant provided a universalist – and again, abstract – approach to moral reasoning. Kant's categorical moral imperative was: 'act only on that maxim through which you can at the same time will that it should become a universal law' (1785/1969:44). In other words, the test for a categorical moral imperative was that we should wish to apply it universally to all human beings, without exception. Thus, the human capacity for reason provides the basis for a universalist approach to morality. The exercise of reason in the context of moral duty is the universal feature of being human, and it is this that forms the basis for equality and rights. In this approach, human rights are rights we give ourselves and others as sovereign, autonomous, reasoning beings, able to follow duty rather than inclination.

Kant's legacy has been immensely important in moral and political philosophy. However, it is not without its critics. In particular, the abstract notion of the human subject, standing apart from context and social relationships and acting on reason, has been a target for criticism. Douzinas (2000) provides a good overview of this critique in the context of rights. He illustrates, for example, how philosophers such as Hegel, Heidegger and Levinas (whom he terms 'philosophers of alterity') have argued against Kantian abstractions of the sovereign individual. Hegel, engaging with Kant's ideas, asserted the importance of historical context over abstraction, and argued that the identity of the individual is constituted in relation to others in the struggle for reciprocal recognition. Heidegger's phenomenological explorations of Being and Levinas's 'face of the other' both assert the absolute necessity of an 'other' in the constitution of the 'I'—again calling into question the notion of the abstract, sovereign individual as the primary unit of analysis. Extending these arguments, for philosophies of alterity, rights cannot inhere in the rationality of the sovereign individual. Rather, they arise in inter-human engagement and it is there that their basis must be sought.

Enlightenment thinking, including foundationalist notions of a universal human nature and the sovereign subject, has been severely challenged by a range of critics. Most obviously, even as they claim universality of application, human rights are clearly linked to Western notions of the subject. These have developed historically and are grounded in particular ideological and political struggles. Claims to 'foundational truth', in particular, are vulnerable to claims that the universalising of rights may be read as a Western imposition on other cultures. Indeed, a strong postmodern critique would view human rights as no more than a particular discursive construction, without 'foundation' or 'truth'.

Edward Said's perspective is particularly interesting, given the significance of his work to postcolonial and indeed postmodern theorising. In *Humanism and Democratic Criticism*, Said (2004) is scathing of extreme anti-humanist versions of postmodernism

which reduce the subject to a discursive construct as if material history does not exist and intellectual traditions may be simply dispensed with. He points out that concepts such as justice and equality (and, one might add, human rights) have inspired political and social activism historically across the world, with powerful effect. If rights are understood in terms of human agency in historical struggle, their validity does not hinge on a choice between ontological foundations or discursive construction.

Poststructuralist theorising, which analyses relationships between power and knowledge, also opens constructive approaches in terms of engaging with foundationalist concepts (see Christie, 2005). Butler's (1995) work on 'universalism' is particularly useful in this regard. Butler argues that foundationalist categories cannot be simply abandoned, since all theories incessantly posit foundations. In her words, 'foundations function as the unquestioned and unquestionable within any theory' (1995:39). Rather than doing away with categories like 'universalism', the task is to work differently with them, so that they are rendered as 'permanently open, permanently contested, permanently contingent, in order not to foreclose in advance future claims for inclusion' (1995:41). This logic may be powerfully applied to the concept of rights, which may then be viewed as radically incomplete and inviting engagement.

From the perspective of postcolonial theory, Chakrabarty's (2000) discussion of political modernity illustrates a similar position to the poststructural analysis outlined above. Chakrabarty argues convincingly that concepts such as citizenship, civil society, social justice and human rights are western political concepts that 'entail an unavoidable – and in a sense indispensable – universal and secular vision of the human' (2000:4). These concepts are indispensable in political discussions, yet their western, modernist forms are also inadequate. As Chakrabarty shows, they are not stable and singular in meaning, and their political history shows them to be contested and hybrid in practice. Yet it is this very quality of radical incompleteness which allows universalist categories to be worked with towards alternative configurations.

In the global context, Balibar (2006) suggests the importance of engaging with 'the universal'. His argument is that 'the universal' already exists in a globalised world, and does not need to be defended on grounds of essentialism or foundationalism. Indeed, given conditions of globalisation, it is necessary to be able to speak 'from the standpoint of the universal' (2006:25). This is not to say that 'the universal' is conceived of in the same way under globalised conditions. Instead, as he notes, 'different geo-histories engender profoundly heterogeneous points of view on the same questions of principle' (2006:25). Nonetheless, he makes the point that in the current political and ideological conjuncture, rivalries between competing versions of 'the universal' have become more significant than rivalries of 'the universal-particular type'. Globalisation, in other words, provides both the context and the necessity of universal discourses, regardless of their ontological grounds. That said, it is important to be alert to the westernising hegemonies that rights discourses may encourage, such that, in Ashis Nandy's words, we do not turn away from 'the plurality of critical traditions of human rationality' (1983:x).

In engaging in the discourse of rights, it is important to remain alert to ambiguities and silences. For example, the narrative of social contract theory seldom acknowledges the violent founding of many states, or their past and continuing exclusions. M. Anne Brown (2002:7) makes this point well:

... [T]he instruments that at least the dominant traditions of rights bequeath, and in particular the categories of 'community' and of 'person' in which understanding of human rights is routinely embedded, have also carried their own forms of damage, their own significant myopias and exclusions. The

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