

**Theories of human rights in relation to understandings of human
rights education: the relevance to diversity**

by

Ådne Valen-Sendstad

A Thesis submitted to
The University of Birmingham
For the degree of
PhD

School of Education
The University of Birmingham
14th of April 2010

UNIVERSITY OF
BIRMINGHAM

University of Birmingham Research Archive

e-theses repository

This unpublished thesis/dissertation is copyright of the author and/or third parties. The intellectual property rights of the author or third parties in respect of this work are as defined by The Copyright Designs and Patents Act 1988 or as modified by any successor legislation.

Any use made of information contained in this thesis/dissertation must be in accordance with that legislation and must be properly acknowledged. Further distribution or reproduction in any format is prohibited without the permission of the copyright holder.

ABSTRACT

This study explores theories of human rights in order to assess how these are reflected in human rights education (HRE). It uses and develops Dembour's (2006) four way categorisation of human rights schools, that is, the natural law, deliberative, protest and discourse schools. The thesis is text-based and uses a hermeneutic methodology. HRE is examined mainly at a higher level such as teacher education, using academic texts as sources rather than manuals for schools. A particular question for the research is how the issue of diversity is addressed both in the human rights theories and in the writing on HRE, in the context of the need to envision HRE for a pluralist society.

The findings of the study are that the perspective of the protest school is the one most deployed in HRE, but that the other schools have potential for deepening how human rights and HRE might be approached at teacher education level. The study proposes a model for HRE that combines three perspectives: (a) overlapping consensus and normative dialogue, (b) empowerment and (c) double responsibility. These are argued to enable teachers to address complex issues of rights as they relate to diversity and difference.

DEDICATION

To my three wonderful daughters Marit, Janne and Lise

ACKNOWLEDGMENTS

I firstly want to especially thank my supervisor Professor Lynn Davies. It has been an exciting journey with stimulating discussions and constructive criticism. Her sharp and clear reading and comments have continually impressed me, I am most grateful for her support.

I am also grateful for the support I have received from the staff of Oslo University College. My colleges and friends Dr Per Jarle Bekken and Robert Kvalvåg have provided many stimulating dialogues and discussions. Prof. Joron Phil has read and commented on several chapters. Ragnvald Thilesen has also given his support.

Writing in a foreign language is a challenge and in the end Dr Brian McNeil helped me improve my English and thoroughly checked my text. I am grateful for his help.

I am also grateful for the help and support I have received from my colleague and friend David Glass at Vestfold University College, Norway.

Ascot Road has been my home from home on my visits to Birmingham. I want to particularly thank Jenny Banks Bryer for being my host these years. Ascot Road has been a lively house with discussions and good meals, my thanks to Gaye, Cally, Chloe and Joseph. I want to thank Judith and Malcolm Savidge for their hospitality and for introducing me to the wonderful English countryside.

I want to thank Kari and Tommy Furvann for supporting me and my family during this project. They have made a decisive contribution. They have in particular made it possible for me to travel, which I have done a lot both to Oslo and Birmingham, I am most grateful.

Finally I want to thank my own family, my daughters and wife, for support and patience. They have had to deal with a father and husband whose focus has been on books and his laptop for a very long time.

TABLE OF CONTENTS

Chapter 1 Introduction	1
1.1. Personal motivation	3
1.2. Research questions	4
1.3. Background to the project	5
1.3.1. Human Rights	6
1.3.1.1. The four schools	8
1.3.2. Education in human rights	9
1.3.3. Diversity, multiculturalism and pluralism	13
1.4. Sources	19
1.4.1. Criteria for sources on human rights	20
1.4.2. Pedagogical sources	22
1.5. Current status of the field	23
1.6. Personal theoretical position	25
1.7. Method	27
1.8. Outline of the thesis	29
Chapter 2 The natural law school	30
2.1. Minimalist universalism	32
2.1.1. Comments	36
2.1.2. Minimalist universalism and HRE	36
2.2. Strong universalism	39
2.2.1. Comments	45
2.2.2. Strong universalism and HRE	46
2.3. Tentative universalism	50
2.3.1. Comments	60
2.3.2. Tentative universalism and HRE	61
2.4. Natural-law school and diversity	62
2.5. Comments	64
Chapter 3 The deliberative school	70
3.1. Jürgen Habermas	71
3.1.1. Comments	77
3.2. John Rawls	79
3.2.1. Comments	86
3.3. A third way	88
3.3.1. David Ingram	88
3.3.2. Iris Marion Young	95
3.3.3. Abdullahi Ahmed An-Na'im	98
3.3.4. Bikhu Parekh	102

3.3.5.	Comments	107
3.4.	Diversity and the deliberative school	111
3.5.	HRE and the deliberative school	113
Chapter 4 The protest school		126
4.1.	Costas Douzinas	128
4.1.1.	Comments	132
4.2.	Upendra Baxi	134
4.2.1.	Comments	149
4.3.	The protest school and HRE	151
4.4.	Protest school and diversity	162
4.5.	Comments	165
Chapter 5 The discourse school		174
5.1.	Talal Asad	176
5.2.	Makau Mutua	181
5.3.	Wendy Brown	186
5.4.	Marie-Benedicte Dembour	192
5.5.	Jacques Derrida	197
5.6.	Diversity in the discourse school	205
5.7.	Comments	206
5.8.	Discourse school and HRE	211
Chapter 6 Concluding discussions		219
6.1.	The four schools and HRE	220
6.1.1.	Natural law school	221
6.1.2.	Deliberative school	223
6.1.3.	Protest school	226
6.1.4.	Discourse school	228
6.1.5.	HRE and the human rights schools	230
6.1.6.	Some conflicting views and syntheses	233
6.2.	Diversity in the human rights theories and in HRE	237
6.3.	HRE related to human rights theories	245
6.3.1.	Normative dialogue/overlapping consensus	246
6.3.2.	Empowerment	250
6.3.3.	Double responsibility	253
6.4.	Concluding reflections	258

Chapter 1: Introduction

The topic of this thesis is human rights education (HRE). The thesis aims to approach HRE from the general human rights discourse. It is a study of how human rights are understood in normative and political theories, which aims from these perspectives to study understandings of HRE. The thesis will analyse those HRE sources which reflect or discuss HRE on a theoretical level. My assumption is that there are relations between the ways HRE is understood and general human rights theories, and I want to study the relation between the two fields and their frameworks. Further is a third element, a sub-question for both frameworks, that is, how they deal with diversity.

By human rights theories, I mean theories or philosophies that develop a general understanding of human rights or how they are used. It means frameworks behind human rights rather than discussions of concrete norms. The theories may be informed by various academic fields such as anthropology, law, sociology, normative or political philosophy. Most of the theories used in this thesis will be in the fields of normative and political philosophy where there are the most direct constructions of human rights frameworks. They may be supportive, but also critical of aspects of human rights. Some of the theories give foundation and legitimation to rights; in a way they predate human rights as codified and enshrined in conventions. Some take up discourse and other critical theories in their understanding of human rights, and some of these may move back to the historical origin of human rights to see where they come from and how this history has influenced their use. Other theories start from the human rights norms and do not look behind the principles but focus on their application. All of these perspectives are relevant to the understanding of human rights frameworks. I call them all human rights ‘theories’ because they in many

different ways elaborate an understanding of human rights from normative and critical platforms, using different theoretical horizons. All these theories, in different ways, are prescriptive of how human rights should be understood and used. They represent a variety of understandings of human rights and that makes them a particularly interesting area for study. For this reason it also makes it interesting and relevant to study similarities to HRE discourse and which of these perspectives do or do not have an influence on HRE.

By ‘theories’ of human rights education I mean texts which present and reflect on HRE at a theoretical level. These may be related to general human rights or to pedagogical theories. I call them ‘theories’ because what they do is to prescribe in theoretical ways how HRE shall be understood and done. Much HRE literature is linked to one right or selections of norms within human rights, e.g. education for democracy, peace education and intercultural education. HRE in terms of, for instance, democracy education seeks to see the development of democratic understanding as part of HRE. But democracy could be seen as much more than human rights even though rights norms such as freedom of expression or freedom of association are contained within the notion of democracy (Davies, 2000). HRE has a similar relation to citizenship education, in that human rights are universal and broader than a particular citizenship education (Kiwan, 2005). I am not however entering the debate about which is the proper subject in the school curriculum for HRE. My main focus is on education in human rights norms themselves. This is not to underestimate the importance of human rights as democracy or as part of citizenship education or in the other perspectives which are applied, but I see human rights norms as a field and topic in its own right, and I am interested in how these principles are understood in theoretical approaches to HRE.

The context of this thesis is HRE in formal and public schools in diverse, pluralistic and multicultural societies. My thesis is theoretical but in the background is formal education in primary and secondary schools in “western” societies such as Norway. These schools increasingly have students with different cultural, religious, non-religious or normative backgrounds, with diverse identity groups and groups who share common experiences related to social structures such as class or gender. Identities are not singly situated, but have complex combinations. Human rights principles become particularly important in these settings, and my interest is to see if and how diversities have an impact on the framework of human rights and HRE.

1.1. Personal motivation

I embark on this thesis as a lecturer with a special responsibility for religion and secular worldviews and in particular for philosophy and ethics. My students are teacher education students at a university college in Norway.

In Norway we are moving from a Christian-based moral education. We now call this ‘Christian and humanistic’. But our society has become more pluralist and multicultural, and it seems important to redefine a common ground. This is the background to my interest in human rights. I also found that the students had little knowledge of human rights. My own knowledge and understanding was also limited, and this made me keen to get a better understanding of human rights. The present thesis is the result of this process.

As a theoretical thesis, it is driven by a focus on ideas, arguments, and content. Its substance is the understanding of human rights theories and theories about HRE. In this way it is an optimistic approach, believing that human rights can and should be discussed directly.

Who is the audience for the thesis? I address HRE educators at an academic level, that is, those responsible for the education of teachers in HRE. The next step after the completion of this thesis would be to draw on it for papers and teaching materials which would enable the issues to be deliberated among teacher trainers and teachers.

1.2. Research questions

1. What are the key categories of human rights theories?
2. To what extent and how are these categories and their discourses reflected in HRE?
3. What perspectives from human rights theories might HRE explicitly engage with and develop to further contribute to understandings/practices of human rights?
4. To what extent and how is diversity addressed or accommodated in the key human rights theories and HRE?

My aim is thus both exploratory – to see where HRE is located within a wider arena of human rights theories, and critical – to analyse whether the current HRE discourses and prescriptions for praxis are able to tackle pluralism in schools and whether broader critical theorising on the origins and underpinnings of rights would be valuable.

This thesis is analytical and normative. I am studying and analysing theories in order to better understand human rights. I do the same with the HRE material I use: my aim is to analyse how HRE is understood, thought about and practised in different ways, and the

different meanings attached to it. The normative aim is to see whether HRE in a diverse society can be enhanced by such a theoretical exploration. In combining the two fields, I expect to find the influence moving in a one-way direction, from human rights theories to the understandings of HRE; but even more, I am interested in what the human rights theories can offer or open up in terms of perspectives for HRE – their potential.

In the process and analysis I will give my comments and evaluations of the material I analyse. I will present a concluding synthesis and indicate how I understand the two fields. In this way this thesis is not only analytical or illustrative, but also normative. I take an active part in the discussion and take an explicit stand on how I understand human rights and HRE. Besides this, I introduce in these analyses and discussions the issue of diversity, which means pluralism and multiculturalism (explored more below). This is a key contemporary question in how human rights and HRE are understood.

My hope is to contribute to a debate on HRE. I am not therefore looking directly at classroom approaches to teaching HR nor aiming to make recommendations for practice, but attempting to generate discussion among educators and deepen the debate. It is important that teachers and teacher trainers have the opportunity to reflect on this complex area.

1.3. Background to the project

I now expand briefly on the three frameworks for this study: human rights, HRE, and diversity.

1.3.1. Human rights

Human rights are a success story, if measured in terms of the amount of declarations, covenants and conventions. From the Universal Human Rights Declaration in 1948 up to now there has been a significant increase in the number of human rights documents. One achievement is the official laws and agreements realised in negotiations in the United Nations, UNESCO, the Council of Europe or elsewhere; another factor is the popularity human rights have attained in popular use. They have become a key word in political debates and struggles. Human rights have become one of the most influential set of norms in our time.

Human rights are several times confirmed as universal in UN conferences like the Vienna Declaration and Programme of Action in 1993. A key paragraph in that document states that human rights are “universal, indivisible and interdependent and interrelated”(1993, United Nations General Assembly; Art 5). The human rights documents are however short on theoretical reflections. Several questions arise in relation to the background of human rights or their philosophical underpinnings. These types of questions, and the interest in how human rights are put into practice, have stimulated many academics from different fields to study human rights issues. This has generated a variety of human rights theories and perspectives, from supportive to critical, from an ahistorical universalism to a historical and political perception. Churchill can serve as an example of one kind of understanding:

“Universality demands rationality and coherence in one’s outlook. Differences that some might want to regard as important, for example, differences in skin colour, national origin, and language, are wholly irrelevant to basic needs or capacities to benefit, and hence to rights” (Churchill, 2006; 11).

At the other end of the spectrum, Spivak expresses scepticism about who is applying the norms of human rights on behalf of whom. She sees human rights as historical and political, used in societies where some belong to dominant and other to submissive groups. The dominant groups often have the powers of definition and political power, and can also use human rights to their benefit. In this perspective, human rights have to address these power relations.

“All that seems possible to surmise is that the redressing work of human rights must be supplemented by an education that can continue to make unstable the presupposition that the reasonable righting of wrongs is inevitably the manifest destiny of groups –unevenly class-divided, embracing North and South – that remain poised to right them; and that, among the receiving groups, wrongs will inevitably proliferate with unsurprising regularity” (Spivak, 2003; 178).

Churchill and Spivak show a real difference in the understanding of human rights. For Churchill, the principles are pure and exist prior to differences. For Spivak, they can be part of power languages and political dominance, although she sees them also as tools for destabilising power relations. She has optimism about human rights, but this is combined with a critical view, because they can easily serve the interests of the powerful. This is the sort of debate I want to develop in this thesis.

There are many strong human rights theories, but I did not want to be locked up in one theoretical approach. I started by looking at diverse uses of human rights theories. It also became necessary to organise the material of the theories. This is partly because the amount of literature is very comprehensive, but also because there are some similarities that make it sensible to organise the theories. Dembour’s (2006) model of four main types of human rights understandings in human rights discourse offers relevant classifications. She engaged in discourse analysis and worked with literature from several relevant fields. She has included a study of how the European Court of Human Rights in Strasbourg practises the

interpretation of human rights interpretations in its verdicts. This is a core element of her analysis, which means that her four schools are based on theoretical but also on practical legal applications of human rights. She shows that human rights are given meaning under influence from different theoretical frameworks.

Dembour uses a kind of postmodern discourse analysis that normally avoids categorisations, yet she chooses to organise the approaches, calling them ‘schools’. She is aware that the persons she classifies under the different schools do not operate with that labelling. There is no general agreement on schools in the field of human rights. Some of the authors she presents would probably see themselves in no school, a different school or across schools. ‘School’ is a strong word, and traditionally one would expect the members of a school to acknowledge a kind of belonging, but they do not do so in this case: ‘school’ is Dembour’s word and categorisation. Part of the present thesis will involve investigating whether such categorisations are useful.

1.3.1.1. The four schools

The first is the natural law school, with roots in the old natural law traditions in western philosophy, but also with new and modern approaches. This school places the foundation of human rights high on the agenda, seeking to give them solid foundations as a strong platform for change.

The second is the deliberative school, which refers to this strong and influential movement in political theory, which is a strong voice also in human rights discourse. Here too, foundation and legitimation are important. Human rights are linked to dialogue and consensus or overlapping consensus.

The third is the protest school, with links to social movements and the struggle for rights. Human rights here are tools for the victims of violations and are related to a keyword such as ‘empowerment’.

The last is the discourse school. In this context, the word ‘discourse’ refers to postmodern theory, not to discourse ethics (which belongs under the deliberative school). The politics of human rights and theories of human rights are deconstructed to find the origin and impacts, and in this process to open the door to new perspectives or new voices on human rights.

I am heavily indebted to Dembour and her four schools. But although I use her model, my intention is not to prove her model right or wrong. I limit myself to some final comments on it. The focus in my research is dictated by this diversity in human rights theories. What might this diversity mean for education in human rights, and which of the schools may be dominant in HRE?

1.3.2. Education in human rights

After legal implementations, HRE is perhaps the second most important means to a realisation of human rights. There are several international documents that confirm the importance of HRE (see Coomans, 1999). These documents oblige states to promote human rights at all levels of the educational system.

UN and UNESCO and others have developed guidelines for human rights education; commonly there are three keywords, that is, skills, knowledge and attitudes. These are the main goals for human rights education, leading to the fourth keyword, action.

“Human rights education encompasses:

- a- Knowledge and skills – learning about human rights and mechanisms for their protection, as well as acquiring skills to apply them in daily life.
- b- Values, attitudes and behaviour – developing values and reinforcing attitudes and behaviour which uphold human rights
- c- Action- taking action to defend and promote human rights” (2005, United Nation General Assembly; Art. I A 4)

These guidelines for education are instrumental, but the programmes on education show even more ambitious visions, for example in the following formulation:

“Believing, therefore, that, throughout their school career, all young people should learn about human rights as part of their preparation for a life in pluralistic democracy. Convinced that schools are communities which can, and should, be an example of respect for the dignity of the individual and for difference, for tolerance, and for equality of opportunity” (1985, Council of Europe Committee of Ministers ; 1).

Education is here more than learning or an introduction into principles. It is expected that schools should be places where the principles are practised. This is sometimes called a human rights ‘atmosphere’ or ‘climate’: “An appropriate climate is, therefore, an essential complement to effective learning about human rights” (1985, Council of Europe Committee of Ministers ; art 4.1), which means “where views can be expressed openly and discussed, where there is freedom of expression for pupils and teachers” (1985, Council of Europe Committee of Ministers ; art 4.1). This climate refers to student voice and exercise of tolerance as a general ethos in the school.

The guiding international documents are ambitious on behalf of human rights education. The UN Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education states that education is “building a universal culture of human rights through the

imparting of knowledge and skills and moulding of attitudes” (1996, United Nations General Assembly : Art. I.2). Eleanor Roosevelt expressed something similar. She saw the Universal Declaration as a moral document with a global aspiration: human rights “carry no weight unless the people know them, unless the people understand them, unless the people demand that they be lived” (Glendon, 2001; xix).

Human rights education is meant to mould everybody in the human rights culture so that the students internalise and demand changes of societies, to become more in line with human rights norms.

These are ambitious goals. But some questions immediately arise. Is the human rights culture one culture, or are there several human rights cultures? Culture is a comprehensive concept. What does it mean to mould everybody into the same culture? Where does this culture start and where does it end, and what kind of relation does it have to other cultures? These are urgent issues, but there appears to be surprisingly little debate among educationalists about this mandate and this understanding of a human rights ‘culture’.

In terms of my concern with diversity, among educationalists, human rights education is understood as entailing the proper norms for a world with differences. For example, Lister writes:

“Human rights offer a value framework suitable for modern society which is, typically, multicultural and multi-faith, and part of an interdependent world. Human rights are, thus, an essential element in education for modern citizenship” (Lister, 1991; 253).

Cunningham has a similar view: “Schools are communities which can, and should be, an example of respect for the dignity of the individual and for difference, for tolerance and for equality of opportunity” (Cunningham, 1991; 90). Eide says students from different backgrounds should “learn to interact constructively with each other” (Eide, 1998; 61), a

similar view being expressed by Starkey (Starkey, 2006). Human rights are seen as the guarantee which provides norms enabling life in a diverse society.

Education is not only a matter of respect for differences. It also means socialisation, teaching students what the authorities find important. Brock-Utne claims “there is a normative element in all education” (Brock-Utne, 1994; 58). Schools are cultivating institutions, and in a sense all education is normative. HRE is not only a framework for how school communities should be organised. It also entails principles which are to be taught in schools, and this education is supposed to have an impact on the students. It is here that that human rights theories cross (or may cross) HRE, because the norms and the official guiding principles are so general that the educationalist who seeks to understand HRE must have recourse to both pedagogical and human rights theoretical frameworks. And it is interesting to see HRE in this light. We have seen above that human rights are related to a human rights culture which provides for ‘other’ cultures, but it is less clear how this human rights culture is to be understood when it establishes itself as a culture.

Some theories about HRE include a commitment to implement HRE in most school subjects (Shafer, 1987). Others, such as Heater, see law and moral education as the priority in human rights education:

“For, indeed, rights are as much a matter of ethics as of jurisprudence. The very concept of human rights is grounded in acceptance of the moral nature of the human being and of the citizen’s relationship with the state, while laws which codify the principles of rights expressly uphold this fundamental axiom. To translate into curriculum terms: law and moral education have vital roles to play in human rights education” (Heater, 1991; 241).

To get an understanding of human rights, we must focus on them as laws and norms. I follow Heater in the intention to deal directly with human rights in HRE, and the theoretical framework for this interests me.

1.3.3. Diversity, multiculturalism and pluralism

In this thesis I use ‘diversity’ as a concept which covers several aspects. It includes multiculturalism and pluralism as well as other differences.

Multiculturalism has become a disputed concept and has been discredited by some, such as Beck (2006) and Okin (1999). In the privileging of ‘culture’ as a central concept for analysis and for social policy, multiculturalism has become related to the issues of group rights and segregation of groups in societies, and to a liberal multiculturalism (Kymlicka, 1998). It has been connected to the rise of nationalism and racism, for example in former communist states. It is also accused of a tendency to compartmentalise and even stereotype group differences, where there are in fact considerable differences and diversity *within* ‘cultures’, and where people share considerable commonalities across cultures. These issues are complicated and much debated. But for my purpose and my use of the word multiculturalism, it is not necessary to go into all the details of that debate. There is a difference between simply defining a society as multicultural on the one hand, and the notion of multiculturalism, which implies taking a position on what such a society should look like. There are clearly negative sides to certain definitions of multiculturalism, but as will be clear throughout my thesis, I do not defend isolationism or separationism. While I accept that people like to preserve their culture, religion and language, this does not mean that I condone human rights violations which may occur in those cultures. Yet even if not unconditional,

there should be respect for people's beliefs and wishes around culture or religion. This is what it means to live in a multicultural society which will probably be multicultural for a long time, albeit in constantly shifting dynamics and intermixing of 'cultures'.

Pluralism is another concept which covers a broader area than multiculturalism. The concept of pluralism can refer to different sets of values and beliefs, both religious and secular, that can exist within a society; it can also refer to political pluralism, encompassing several political parties and opinions. The key distinction often made between multiculturalism and pluralism is that the latter is concerned specifically with *groups* and with group membership, identities and claims. As Olneck (1990) argued, pluralism is not limited to expression of difference in heritage, values and styles, and must enhance the collective lives of groups in a society. While, as opposed to assimilation, pluralism implies the existence of groups living parallel lives in a society, this does not mean an antithesis to integration: Hartmann and Gerteis (Hartmann and Gerteis, 2005) distinguish 'fragmented pluralism' and 'interactive pluralism', with the former achieving social cohesion more through accession to shared procedural norms and laws and the latter through mutual understanding and exchange.

The key issue in 'diversity' is whether to focus on difference or inequality, on recognition or redistribution. Claiming 'respect' for the culture of minority ethnic groups may mask the structural inequalities they face. Also, as well as cultural differences linked to ethnicity and religion, there are also diverse people and groups which are based on common experiences. They can be groups based on for instance class, colour or gender. They can be marginalised and share experience of different forms of oppressions. These groups may struggle for recognition, such as gay movements, and they may want to achieve changes in both recognition and resource distribution, as with disabled people. Some of these groups

will be lasting and others will diminish once the task is completed, when its mission is finished.

I deploy 'diversity' to cover all these differences and inequalities, and the concept will be filled with supplementary meaning throughout the thesis. This said, there will be more focus on cultural diversity than the other types, because that was my initial interest which has been widened during the process of the thesis. At times I use multiculturalism or pluralism when these are the frames of reference of different writers, but diversity is my over-arching term.

A key question for my research is how or whether different groups in a society operate on the basis of diverse ethical systems, and what this would mean for identity. Boylan (2000) presents some main ethical theories in western philosophy, such as utilitarianism, deontology, virtue and what he calls feminist ethics. According to Boylan, which of these theories a person finds most convincing depends in part on one's "worldview", how one sees or understands the world. Human rights can be seen as exclusive and restricted to western normative traditions. Gundara comments on the implications this would have for HRE: "Nor must human rights education be perceived and constructed, as it so often is, in purely 'western' terms and therefore liable to be rejected by 'others' who assert Asian, Islamic or African values" (Gundara, 2000a; 159). This entails a difficult question: Is there a relation between who we are and how we reason on normative issues? Is there a relation between identity and ethics?

One who proposes such a connection is Taylor. He views ethics as communities' constructions and guidelines for the common good. Beginning as moral intuitions, they are elaborated into ethical norms and values by means of language. These are internalised and become part of a person's identity. This enables a person to make moral decisions.

“My identity is defined by the commitments and identifications which provide the frame or horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is the horizon within which I am capable of taking a stand” (Taylor, 1996; 27).

A person’s ethical evaluations – Taylor calls them ‘strong’ and ‘weak’ evaluations – are interrelated with a person’s understanding of what is good. These evaluations create meaning for the person, or make sense of life. Taylor regards the relation between ethics and identity as vital and existential.

Taylor and those who think like him are criticised for essentialism and simplifications of human identity. The critics say that identity is more fluid and even multiple (Hall, 1996, Bauman, 2004). Sen also sees identity in a very different way from Taylor. For Sen, identity is open to rational decisions. One can decide which identity one wants to have, because we have many identities: “(1) deciding on what our relevant identities are, and (2) weighing the relative importance of these different identities. Both tasks demand reasoning and choice” (Sen, 2007; 24). From the different identities we have we can choose which one is the most important at a particular time, and we can also change that identity. One of the things he warns against is a simple essentialism, which happens when we think that everybody is the same because they have something in common (e.g., all Indians must be Hindus). Sen is an Indian but he is secular, and he regards the affiliation with other intellectuals in a rational community as even more important than being an Indian. There is a problem if we are too quick to draw conclusions about who persons are. It is difficult to pinpoint where they are situated, and they do not always match the groupings conventionally designated in the ‘multicultural’ descriptor.

But Sen also sees that background has an influence on our reasoning: “even though certain basic cultural attitudes and beliefs may influence the nature of our reasoning, they cannot invariably determine it fully” (Sen, 2007; 34). Our cultural background will be one dimension in our reasoning, but not the only or dominant factor. Several types of identity, not only cultural or religious identity, will be important.

These authors point to a link between who we are and how we reason on ethical issues. For Taylor this is a close relation, for Sen it is a very tenuous relation. Stavenhagen criticises some of the latest developments in identity politics for downgrading and marginalising questions of cultural identities. These can indeed be changed, but that is not always a simple matter.

“For some contemporary analysts, choosing an identity appears to be as easy as deciding on a package of cereals on a supermarket shelf. Given all the inherent tensions in the current era of identity politics, they argue, it would be convenient to downgrade the importance of cultural identities and emphasise everybody’s common humanity ... to become enlightened cosmopolitans. This is more easily said than done, because, in real life, things are more complicated” (Stavenhagen, 2008; 177).

I think that Stavenhagen has a point here.

I have defined diversity as a ‘context’ because I assume there are links between cultural, religious and secular as well as other identities on the one hand, and normative reasoning, understanding and evaluations on the other. Whether these links are close or tenuous may depend on individual differences, and sometimes on the groups they are influenced by. Likewise, I assume some influence in terms of hermeneutical processes, which means that human rights will communicate with different worldviews and take up different questions in the course of interpreting them. When human rights are dealt with in education, these differences will be activated.

Another reason why I focus on this context of diversity is connected to an opposite perspective. If students are at least partly “formed” from their background, then education is also a way to form students. How students learn to reason and decide on moral issues will also be part of their formation. One reference for his kind of thinking is Foucault and his ironical comment: “There is Enlightenment when the universal, the free, and the public uses of reason are superimposed on one another” (Foucault, 1997b; 307). How free is freedom, if everybody learns to reason and understand freedom using the same rationale?

Human rights are often seen as principles which do not and should not have to relate to differences (as we have seen in the quotation from Churchill). From a Foucaultian perspective, however, human rights are not untouched by history and by the influence exercised by place and participants when these rights are formulated. They are themselves a set of reasoning, a type of discipline. They represent the state-accepted norms and hence also the kind of reasoning which is acceptable in the construction of these norms in education: “if we take educational institutions, we realize that one is managing others and teaching them to manage themselves” (Foucault, 1997a, 277). HRE is then a way to construct students’ identities and teach them how to reason in “correct” terms on normative issues. They are an expression of power and of power relationships.

Foucault is critical of education, and his argumentation is guided by a different idea about how people should create themselves as creative artists with no fixed, ready-made patterns. Their lives should be like the art of free individual artists. I am not convinced about such a project, because if everybody searches in this independent freedom there must be general rules and norms that uphold it, and human rights are such norms, which have to be learned and respected. But Foucault’s point about education as a means to form and

discipline students and lead them into acceptable reasonings and ways of being human makes a relevant point. And this kind of critique is also relevant to HRE, especially with regard to diversity. Do we respect human diversity in educational socialisation and in HRE, or are we all to be led into the same reasoning and discipline? I share Foucault's worries, which can also be relevant to HRE if it is done with a hegemonic and dogmatic methodology. The construction and the understanding of human rights and HRE need to be critically discussed.

1.4. Sources

The literature in the field of human rights theories has increased and is expanding at high speed. When I say in this thesis that human rights theories are the subject of my study, I am aware that this project involves far too much material to be properly covered. I focus only on selected theories. My selection of theories is in part guided by the choice of taking Dembour's model of the four schools as a way to organise and structure my discussion. By using her schools, I achieve the breadth of theories I am looking for. Yet I must also limit my discussion with regard to the breadth of her material; as I have said, she has used many examples of human rights verdicts in the courts. I focus mainly on theories that contribute to and address *meanings* of human rights, theories which deal with the normativity of human rights in a broad sense. It means that ethical and political theories about human rights are the most important, but other perspectives like anthropology are also of interest when they provide perspectives on the understanding of human rights. In the literature on human rights the legal contributions predominate by far, but I choose not to go into that material.

There is less literature in the field of theories about HRE. There is much literature on HRE with reference to many concrete topics and in the form of manuals and guidelines. But my investigation deals with the approaches that present and reflect on HRE in more general terms and in principle, that contribute by means of views and discussions of what HRE might mean. As I have said, I take Dembour's four schools as a way to organise my material. She has not many references to education; this is a potential weakness in terms of discourse analysis.

1.4.1. Criteria for sources on human rights

For human rights sources, I will, as said, mainly follow Dembour and deal with many of the same theories under her schools. Yet I also feel free to include and apply material that I find fits the ideas and supplements understanding of the schools, even when this material has no place in her presentation. I will also include a few voices with no human rights agenda, but with enlightening and relevant perspectives.

The criteria for the selection of theories presented in this thesis are that they are leading or influential voices who express the main ideas in the different schools. They bring breadth and depth to the discussion with interesting perspectives on human rights or aspects of human rights. In some schools there are many options, in others there are fewer: in the first two schools, the natural law and the deliberative, which are also leading schools in the theoretical discussion of human rights, we can choose among many representatives.

In the natural law school I choose three different types of universalisms: a strong universalism, Gewirth (1996), a minimalist universalism, Donnelly (1989), and what some call a tentative universalism, Nussbaum (1995). Gewirth and Donnelly focus directly on

human rights. Nussbaum focuses mainly on human capabilities and relates them to human rights (Nussbaum, 1999). I include Nussbaum because her theory has a significant influence also in human rights discourse and because she herself makes interesting points.

In the deliberative school there are two main figures that set the scene, Habermas (1996) and Rawls (1996), who is surprisingly not on Dembour's list. Their theories about consensus and overlapping consensus are important and make them obvious choices. I also include some others, partly to elaborate arguments in the discussion of the earlier authors, but also to critique them. An-Na'im (1995a) belongs to the first category: he supplements Rawls. Parekh (2000) both supplements and criticises. Ingram (2004) constructs his theory about human rights on the basis of both Habermas and Rawls, and is interesting for his own sake. I have also included Iris Marion Young (2000) in this school even though she does not have a focus on human rights. The reason why she is included is that she has very relevant comments on the process of deliberation, which seem also relevant to a human rights context.

The theories of the protest school have not won the same recognition as those mentioned above, and this school is less influential in human rights discourse. Of those whom Dembour mentions, I choose two with interesting perspectives, Baxi (2006b) and Douzinas (2000). It is also natural in this school to social movements which give human rights a place in political struggles.

The last school in the human rights discourse is probably the most marginal, and the perspectives here are often ignored in the other debates on human rights. Once again, I follow Dembour and present Asad (2000) and Mutau (1996), who writes with reference to Africa, Wendy Brown (2004), who takes up a Marxist, feminist and postmodern perspective,

and Dembour herself, who is the only one who places herself in a school. She also refers to Derrida (1990, 2002b) as a main reference for this school and I have integrated some of his philosophy into the thesis, even though he did not deal with human rights as a main topic. Nevertheless, he brings interesting perspectives into the discussion and Dembour regards him as a key author in this school.

1.4.2. Pedagogical sources

Few pedagogical texts go deeply into the discussion of human rights theories. Where they refer to human rights theories, they refer mainly to one type of understanding, such as empowerment of rights, and to few authors. They are often practical and are interested in effectiveness, although there are some that reflect on different types of HRE. In one conventional approach, the reflections move around the three prepositions, an education “about” and “for” but also “in” human rights (Lohrenscheit, 2002). “About” means information, teaching knowledge of rights; “for” is an education with advocacy of human rights; “in” refers to the school as a place where human rights are practised, thus giving the student experience of the meaning of the norms. These prepositions shed some light on differences in HRE, but do not refer to theoretical understandings of human rights. There must be alternative ways to categorise HRE, and I hope to make a contribution to this here.

When I read pedagogical texts closely, I find differences that can be related to the four schools, but the theoretical reflections tend to be implicit. Usually, theories are not explicitly discussed. It seems to me that most educationalists start from the human rights documents and guidelines for HRE and that they do not look behind these nor engage in a discussion of a deeper understanding or critique of human rights. This means that I will focus on the literature which does reflect on human rights or how such reflection might impact on

teaching, and relate this to the different schools. I will look at the influential authors in HRE, e.g, Tibbitts, Heater, Lister, Osler, Starkey, Ely-Yamin, Mihr and several others. While many writers on different aspects of education such as citizenship, democracy, peace, race, gender and so on may mention rights or theories of rights, I confine my sources mostly to those directly foregrounding human rights education as their central concern.

1.5. Current status of the field

Before looking at methodology for using these sources, I briefly outline the current status of the fields of exploration. To give a complete presentation of the human rights field, firstly, is almost impossible, but I will comment on two issues. Human rights theories are an active and developing field where scholars such as Pogge (2007, 2002) or Caney (2005) are taking human rights on to a cosmopolitical level. While the conventions are crafted at the international level, human rights are and have traditionally been seen as the responsibility of the sovereign nation-state. Each state is to look after its own citizens. The cosmopolitical arguments are based on human rights as general claims related to being a human, not a citizen. There should be a responsibility not only for the individual states, but internationally, to establish the respect and enactment of human rights. This broadens the responsibility once more, from designating rights to implementing them.

The question of the universality of human rights has traditionally been contested by anthropologists. It found its clearest expression in a statement by the American Anthropological Association during the process of developing the Universal Declaration of Human Rights (American Anthropological Association, 1947, 2000). According to this statement, cultures can be evaluated only on the basis of norms that the culture itself accepts

and lives by; the alternative is a kind of imperialism. There are still some who hold this opinion, but I believe that the debate has moved on. It seems more nuanced, accepting some universal norms, but still committed to respect diversity. Now it is seen as immoral to accept cruel or inhuman treatment despite the fact that local communities practise them; on the other hand, a blind universalism is also criticised.

Secondly, in terms of the status of HRE, there has been a considerable change from the 70s to the 80s, from a law-based HRE proposed by Buergenthal and Torney (Buergenthal and Torney, 1976) to a political and normative-based understanding at the beginning of the 80s with scholars such as Lister (1984) and Heater (1984). Of late there has not been such a radical change, and developments have continued along the lines from the 80s. That does not mean that there is no life in HRE! There is in fact a high level of commitment, but mostly in the direction of praxis, in manuals and also in the application of HRE to new educational groups such as the police, public health workers and so on. There are discussions of such issues as formal, non-formal and informal education, where formal education is sometimes criticised for putting restrictions on HRE, which ought to be more free so that it can use its potential in grassroots movements and non-formal education (Dias, 1993, Dias, 1994).

Some HRE addresses curricula and education politics (Tarrow, 1992). Here subjects like history and geography have received a great deal of attention from a human rights and peace perspective (Tomasevski, 2001). As I have mentioned, there is also a tendency to link human rights education to a particular dimension of human rights, like peace education (Hicks, 1997). Stavenhagen (2008), Hahn (2005) and Rudelius-Palmer (2006) are examples of intercultural education. Stavenhagen analyses how indigenous people are provided for in education, where they are given instruction in their mother tongue and are offered an education based on their own cultures. “Indigenous education, adapted to indigenous

peoples' cultures and values, is the best way of ensuring the right to education” (Stavenhagen, 2008;178). His focus is on the human right to education and the right to culture, and he is interested in how these rights are followed up around the globe. HRE is here not an education or teaching of the principles themselves; rather, human rights are guidelines for the politics of education. This is a relevant issue, but I choose to focus on the teaching of the principles themselves.

Felisa Tibbitts (2002) has recognised and structured different types of HRE. She organises HRE into three models, first a values and awareness model, second an accountability model and third a transformational model. The first and the last of these models concern formal primary and secondary education, the second model is more concerned with groups such as lawyers and police. She herself supports HRE in the third model, i.e. transformation, and her discussion of HRE focuses on the level of change, of transformation. This is an interesting contribution to the organisation and discussion of what HRE may mean. I approach HRE in a different way from Tibbitts, however: I begin from human rights theories and try to relate these to HRE.

1.6. Personal theoretical position

Earlier I briefly outlined my personal motivation for the research, but at this point my own theoretical position should be given a short comment.

This thesis deals with very many different types of theories, such as post-colonial theory (Asad and Mutua), postmodern theory in several versions (Brown, Douzinas, Levinas, Foucault, Laclau and Mouffe), deconstruction (Derrida), feminism (Young, Brown),

communitarianism (Parekh, Taylor), critical theory (Habermas, Ingram), liberalism (Habermas, Rawls), rationalism/Kantianism (Gewirth, Habermas, Rawls), teleology/Aristotelianism (Nussbaum), utilitarianism (Sen), intuitionism (Taylor), hermeneutics (Ricoeur), Marxism (Brown), and social realism (Baxi). If I were to define my position and take one of these as my approach, I find that I do not feel comfortable with any of them to the degree that I can say that this is my theoretical platform. In contrast, I find interesting and good points in all of them, even though to different degrees, so to reject any of them is also not an alternative. It is often possible to see things from other angles which give new, relevant perspectives. All the theories, if they are taken alone, are totalitarian. Even the discourse theories, which claim to open up, act to close in another way, and are just as totalitarian as the others.

This thesis has been a journey for me and I will come back on this towards the end of the thesis. Here I will give a comment on where I entered the project from. My position was inspired from Levinas, who starts from the relation to the Other, the individual who is different from myself. For Levinas, the moral question and imperative comes from the face of the other (Levinas, 2007): the other's suffering demands a response from me. Further I also think that there are moral intuitions in relations between humans (Taylor, 1996). This entails respecting and realizing responsibility for the other, in her individuality and difference.

The other as different means that my own way of thinking and understanding may not be right for the other. I cannot take my own platform for granted in relation to the other; what I think is best is maybe not what the other wants or needs. I have to be open towards the other and their position. In Europe for example, wearing the Hijab causes much conflict. When non-Muslims claim that they stand on the side of these "oppressed" women, that is

may be true for some females, but may be wrong for others. To take one's own position as valid for others can be too hasty. In other situations it is right to intervene, for instance in cases of human trafficking or exploitative child labour, and in cases where rights are clearly violated and the victims have no possibility of protecting themselves or claiming their rights. In such cases, one must take responsibility for the other and take action even when there is little or no chance of checking with the victims what they want. But it is also here important to be attentive to the victims' interpretations and give them the support they would like. The responsibility to take action can at times be more important than to stop to get the views of the victims before action, but generally victims should be heard in matters that concern them.

Human rights addresses basic normative needs and issues; the way they are understood and practiced with regard to the other is important. The relation between human rights as universal norms and the rights of individual or groups can be in tension, or conversely universal human rights can act as protection for individuals or groups. This relation seemed to me crucial for the projects of human rights and HRE. I wanted to study this interplay.

1.7. Method

The study in this thesis is text-based. I do not use empirical sources, only texts. The method is hermeneutic. This is an old method of interpreting texts. In European history it is related to names like Schleiermacher, Dilthey and Gadamer and to Ricoeur, who is one of the most influential contributors to hermeneutics in the last decades. He (Ricoeur, 1976, Ricoeur, 1984) uses the concepts of the explaining and the understanding of texts. The first, the explaining, is influenced by structuralism and language theories where the texts are analyzed

as texts, which means that the constructions, but also issues like the genres of texts, make an impact on how they are to be explained. The second element, understanding, is the reader's grasp of the meaning of the texts. This is a meeting of two horizons from the texts and from the reader; there is a dialectical process between these two horizons, "worlds" or "worldviews". The reader comes to the text with questions, and new questions are raised by the texts. For Ricoeur, there is a communication with the texts, not with the authors behind the texts.

In the hermeneutic tradition texts also derive meaning from the historical and cultural contexts. They can also be interpreted from a defined position and be analyzed from a perspective, e.g. a feminist view, and the text acquires new meaning from the different contexts.

In this thesis I contrast two fields of knowledge which are different but also related. I contrast HRE with human rights theories, the latter being used to enlighten the former. Although there is an element of comparison, my main goal is not to identify detailed similarities or differences, but to relate main lines or points and see what the general theories can contribute to HRE. This method will show what kind of understanding of human rights is dominant in HRE, and I hope it will open up some new possible perspectives or ideas for HRE.

A hermeneutical interpretation is a positive reading, but it can also take a critical perspective. First the reader interprets and follows the texts in a dialectical reading from parts of the text to the whole and from the whole to the parts. Such a methodology looks for coherence between the elements in the text, in order to find the meaning of the text. This means that I will read the texts with the aim of understanding the content and argumentation of the texts and of being as true to the texts as is possible. This is basic, antecedent to

questioning or to taking up the critical reading where arguments or views are critiqued. After a loyal reading one can go on to critique and discuss the arguments and meanings of the texts, while still respecting the views of the texts so that one does not criticize views other than those which are in the text.

This then is a theoretical work which seeks to contribute to the discussion of human rights theories and education. It is analytical and interpretive, but also a critical study, critical of the general theories and of HRE frameworks. The study is normative: it aims to take part in a debate about the meaning of HRE. Ultimately, the different horizons will all influence the arguments, even though the theories will differ and be in conflict with each other. I will in the end synthesize, but I do not aim at a coherent theory without internal conflicts; in this sense, it is not a traditional normative work.

1.8. Outline of the thesis

The outline of this thesis is simple. I deal with the four schools one by one, with a chapter on each. I present and discuss the human rights theories and then examine what HRE looks like in the same school, and whether there are traces of that school in any theories about HRE. I also examine the implications for diversity. In the last chapter I draw the investigations together and offer a concluding discussion. I start with the school with oldest roots, the natural law school. I move on to a very influential school in human rights modern discourse, the deliberative school. I then move to the protest school and finally to the discourse school, before the concluding chapter.

Chapter 2: The Natural law school

This chapter focuses on those human rights theories which Dembour called the natural law school. They have had, and continue to have, a significant influence on the human rights discourse.

I will discuss three theories. They are different in many ways, but they are all designed to ground or legitimate universal standards and human rights. These theories are universalist and probably for that reason they are popular in human rights discourse.

The theories are taken from normative political and moral theories. I will analyse them, provide a comment on each, and then see if they are applied in HRE. When I started on this study I had expected close bonds between HRE and human rights natural law theories. That is the case, but in a different way than I expected. Several educationalists refer to natural law ideas and lean on them for support, but they focus more strongly on the consequences of human rights in practical terms, rather than reflecting on the basis of these rights.

As explained in the introduction, this study occupies four levels. First, I look at theories about human rights, then at how HRE stands in relation to this school and what it might mean for HRE; fourthly, these two questions are examined afresh to see what role diversity plays in them.

The three philosophical theories that I will present understand the concept “universal” in various ways. This concept is central to human rights. It has been challenged and criticised several times. One of the more famous controversies was before the human rights conference in Vienna 1993. Some voices from East Asia claimed a limited understanding of universalism: “Recognise that while human rights are universal in nature,

they must be considered in the context of ... national and regional particularities and various historical, cultural and religious backgrounds” art.8 (1993). This view has been criticised for being relativist, cf. Follesdal (2005). The delegates in Vienna did not accept this criticism, and made a declaration which confirmed the universality of human rights: Article 5 Vienna Declaration And Program of Action (1993, United Nations General Assembly).

The human rights documents themselves do not give explanations of what they mean by universal. Accordingly, interpretations and theoretical works are needed, to explain and give meaning to the concept. Eva Brems (2001) found sixteen different meanings of the concept universal in relation to human rights. A few examples: universal means “historical origin”, which means that all “cultures contributed to the concept of human rights” (Brems, 2001 : 7); another is “anthropological or philosophical acceptance”, which means that “human rights are defined as rights accepted by or acceptable to all human beings around the world” (Brems, 2001 : 9); still another is “functional acceptance”, which means “the fact that human rights organisations exist and attract support across the world” (Brems, 2001: 10).

In the natural law school, the universality of human rights is based on ontological or rational objectivity. The theories I address take three different approaches to human rights. The first theory I present is from Donnelly, probably the single most influential theory in human rights discourse. I call it “minimalist universalism”. The second is from Gewirth, who is a Kantian philosopher. The Kantians represent a hegemony in philosophy of human rights, with voices like Pogge (1995, 2007), Caney (2005), and several others. I call Gewirth’s position a “strong universalism”. The last theoretical presentation is Aristotelian, the so-called capability approach. This is developed above all by two scholars, Sen and Nussbaum. They have a special interest in and influence on development theories. Both combine an outlook on capability with human rights. Nussbaum is the more articulated

Aristotelian of the two, and speaks more concretely and substantially about capabilities. I focus mainly on her contributions. I call this “tentative universalism”, an expression I take from Caney (2005: 37).

The educationalists I focus on have parallels and similarities to the theories which are presented here, or are based on these theories.

2.1. Minimalist universalism

Jack Donnelly presents in his first edition of his famous book *Universal Human Rights in Theory and Action* (Donnelly, 1989) an influential and common understanding of human rights. He is an American, working in the field of political science. His view in that book changes by the time he publishes the second edition (Donnelly, 2003), where he expresses views more in common with the deliberative school. I present his first understanding here, because it expresses a popular view which has had the greatest influence on human rights discourse.

He is labelled as a natural law theoretician, but he does not give a comprehensive moral foundation to human rights. He thinks that it is an impossible, or even meaningless task.

“I therefore suggest that the attempt to provide a direct philosophical justification of any particular list of human rights is not likely to be of great interest – except perhaps to those who already accept it – or value” (Donnelly, 1989: 22).

Yet there is enough reflection to make visible basic premises and a minimalist moral grounding of human rights.

He separates human rights *qua* moral rights from the legal laws (Donnelly, 1989: 16), claiming that a purely legal understanding of human rights is too narrow. Human rights as

moral norms are higher than positive laws. When all else is done or has been tried, one claims human rights. Human rights are fundamentally moral, according to Donnelly. He also argues however that they should be implemented in national laws. Human rights entail strong claims to achieve change and improvements, and they achieve change more efficiently when they are codified as laws. Human rights are practical at one level, but they are also the highest moral principles which we can invoke.

What is it that gives these human rights their moral force? Donnelly has what I call a minimalist foundation of human rights. Human rights are simply derived from the human being, because she is human: “human rights arise from ‘the inherent dignity of the human person’” (Donnelly, 1989: 17). She has in herself dignity. From this it follows that this human must have a life in dignity, “a life worthy of a human being” (Donnelly, 2002: 80).

This dignity is not restricted to some chosen people, but to every human being: “human being are seen as equal and autonomous individuals” (Donnelly, 2002: 80). Humans have equal dignity and a right to live by their ideals or their understanding of the good life. Donnelly then argues that human rights “can be seen as resting on a moral vision of human nature” (Donnelly, 1989: 24). In another essay, he writes that human rights “rest on and seek to realise a particular conception of human nature, dignity, well-being, or flourishing” (Donnelly, 2002: 80). He mainly limits himself to these key words. He considers these values as the platform from which human rights are derived, without going into much detail about how these norms are developed. As a theory based on human dignity, he thinks it is better to avoid comprehensive interpretations or foundations of human rights and to ground them in general human dignity and a life in dignity, without further elaborations which will necessarily be controversial.

I think that his aim is to make human rights as inclusive and open as possible. His strategy is to give as little philosophy and foundation as possible because, as we saw at the beginning of my presentation of his position, these foundations will appeal only to those already committed to the theories. Instead of presenting and discussing some main normative contributions, he supplies as little foundation as is possible for his position.

He refers to 'human nature', but although he sees human rights as derived from this nature, he is unwilling to present a theory about human nature. Human nature will be integrated in social contexts, and it seems difficult or impossible to separate what is nature from what is social. Humans are embedded in culture and being a human being is by nature to be cultural. This makes the definition of what is nature and what is culture very complicated. "Human nature is thus a *social project* as much as it is given" (Donnelly, 1989: 18). Because agreements on this subject are not attainable, he abstains from any attempt to give a theory of human nature.

Human rights are given a universal validity based on human dignity and contingent human nature. When it is looked at more closely, this dignity is relative to context. Donnelly is a universalist, but he grants culture or context a decisive role. This is a dialectic where the universal is generated by the contingent.

"Like other social practices, human rights arise from human action; they are not given to man by God, Nature, or the physical facts of life. Human rights represent a social choice of a particular moral vision of human potentiality, which rests on a particular substantive account of the minimum requirements of a life of dignity" (Donnelly, 1989: 17).

He argues that human rights are results of special historical developments; the universal is the result of a concrete historical process. "All human rights are embedded in a

social context” (Donnelly, 1989: 20). This also means that human rights , must be open for yet further development and change.

“Our list of human rights has evolved and expanded, and will continue to do so, in response to such factors as changing ideas of human dignity, the rise of new political forces ...” (Donnelly, 1989: 26).

“The relationship between human nature, human rights, and political society is therefore ‘dialectical’. Human rights shape political society, so as to shape human beings, so as to realize the possibilities of human nature, which provided the basis for these rights in the first place” (Donnelly, 1989: 19).

The picture of human dignity from which rights derive will evolve and change, also thanks to influence from human rights norms themselves. It is the historical understanding of what a human life in dignity means that gives human rights their content and direction. But even though they are social constructions from special contexts, he argues that they are valid for all humans: everybody everywhere has equal human rights.

Donnelly also discusses relativism, and positions himself between radical cultural relativism on the one hand, where all norms or rights are local and one cannot criticise a culture from outside the given culture, only from within, and a radical universalism, where the universal status of human rights pays no attention to cultural differences. He balances between the two, supporting human rights as universal norms, but in practice and reality seeing that they can and must be adaptable to different forms, facing various cultures in varying ways. A culture may fulfil human rights without using human rights language, and here there is no difference. There can be different ways to practice the principles, but there are limits. For example, no negotiation is possible concerning slavery, which is incompatible with universal human rights.

2.1.1. Comments

Donnelly's arguments discuss cultures in relation to geographical areas, and he concludes that human rights are "relatively universal" (Donnelly, 1989: 124). I wonder what that relativism would mean for a multicultural or plural society, but he does not comment on that.

His key platform for human rights is "human dignity". This human dignity is a given. He does not indicate what he means by the concept, or how he constructs human rights from this. I am not convinced by his strategy of avoiding conflictual issues such as the construction of human rights. If human rights are important, I find it problematic that we should not discuss or argue about why they are important.

2.1.2. Minimalist universalism and HRE

Donnelly does not present a pedagogy of human rights, but among influential educationalists who have written on HRE I find several who take a similar approach to human rights as Donnelly. They do not refer to him, but they show similarities. What they have in common is a minimal understanding of human rights foundation. Human dignity is thought to be basic, and there is little further elaboration of what that means. Tibbitts is one example: "Human rights education has as its moral authority not the legitimacy of any particular state, but the inherent dignity and potential of each person as a physical, emotional, thoughtful and spiritual being" (Tibbitts, 1994: 366). Heater similarly claims: "The very concept of human rights is grounded in acceptance of the moral nature of the human being" (Heater, 1991: 241).

Reardon is another example: "As applied to human rights education, holism interprets all rights and entitlements as interrelated and interdependent components of the one central, generative principle: *human dignity*" (Reardon, 1995:2), Gundara; "human

dignity the cornerstone of rights”(Gundara, 2000b; 131), and Wiatr has also a natural law approach:

“Human rights are fundamental in the sense that they are derived from Natural Law and not from the will of the state. It is the legislation of a state that can and should be judged in terms of its accordance with the standards of human rights. In this sense human rights stand above the legislation of a state” (Wiatr, 2006/2007: 96).

Wiatr, without going more deeply into it, gives a clear natural-law foundation of human rights as above positive law, which is similar to Donnelly’s understanding of human rights as basically moral. Wiatr later lines up six points for education of civic education, which he defines as education in democracy and human rights. Yet his list does not give any foundation of human rights.

The majority of educationalists who write about HRE see human rights as basically moral and grounded in human dignity. They leave it there, and are more engaged in human rights with a view to bringing about change, like Donnelly. They want human rights to have an effect on society. This understanding will be particularly clear when we present the protest school.

Another natural-law educationalist is Norma Tarrow (Ray and Tarrow, 1987, Tarrow, 1990, 1992), who is an American. She defines HRE as follows:

“Human rights education has been defined as the conscious effort, both through specific content as well as process, to develop in students an awareness of their rights (and responsibilities), to sensitize them to the rights of others, and to encourage responsible action to secure the rights of all” (Tarrow, 1990:12).

The goal of HRE is awareness, to let the students get knowledge about their rights, and to hope that in this way the students will become competent and demand their human rights. She wants to develop responsibility for human rights on the basis of the awareness of these

rights. Tarrow sees two principal dimensions in HRE, content and process. Under “content” she presents the usual list: knowledge, skills and values. One further aspect of her list is “social participation” (Tarrow, 1992:23). Human rights knowledge must be combined with participation and competence to improve the human condition.

Parallel to content is process. It is important to note under what condition human rights education takes place: “a human rights curriculum requires an environment based on human rights principles” (Tarrow, 1992:24), and “‘proclaiming’ human rights in authoritarian classrooms conveys a contradictory (and hypocritical) message” (Tarrow, 1992:24). The atmosphere of HRE must live up to human rights norms. She relates this to school democracy. In her focus on democracy in schools she comes close to the deliberative school.

One of her arguments is that human rights education is a leitmotiv which can hold together many school subjects. Human rights should not be one subject on its own but should be integrated in many educational projects like peace, environment, development, and antiracist and multicultural education. What all of these projects have in common is human rights. This gives human rights a central place without themselves being a subject; this is almost an indirect HRE, a school culture as discussed in Chapter 1. As Tarrow understands HRE, human rights are a kind of glue.

I have placed her under the label of natural law, although she does not give clear references to any of the authors normally understood by this label. But there are two reasons for placing her here. She is close to Donnelly’s understanding, which is, as we saw, based on a minimalist foundation; the only fundamental concept he relied on was human dignity. Tarrow sees human rights as “essential for the maintenance of human dignity” (Ray and Tarrow, 1987: 3), and she does not include a further argumentation for rights. In contrast,

she lists many different “rationales that are intended to convince people” (Ray and Tarrow, 1987: 7) about human rights. These are (with a reference to Jefferson) “self-evident”, or they can be developed from interpretations of scriptures by

“priests, pastors, imams, gurus or the like”. Foundation of human rights may also be offered from “secular authority – a jurist, philosopher, king, president” and “for children, parents or teachers often serve as adequate authorities for assuring the proprieties of a right” (Ray and Tarrow, 1987: 7).

Tarrow hence claims that there are several ways to give human rights a moral background. What is surprising is that she categorizes them after the persons or professions rather than on the basis of content. She does not comment on what these different foundations mean for education. She does not discuss whether education should invoke and use some of these backgrounds.

For Tarrow, the most important thing is to legitimate HRE on the basis of the international conventions and covenants, declarations and treaties. She does not argue from a philosophical platform. Her arguments are more focused on political achievements and agreements, which give human rights education content and legitimation, see (Ray and Tarrow, 1987; 25ff).

Donnelly and Tarrow seem to follow a similar strategy, that is, to keep silent about possible conflictual issues and let the principles themselves do the job. HRE is about ‘awareness’. Donnelly was in part concerned with cultural differences, a topic which receives little or no attention from Tarrow and those who share her position on HRE.

2.2. Strong universalism

Alan Gewirth is very different from Donnelly, and, as we will also see, Joel Spring as an educationist is very different from Tarrow. Gewirth has presented a recognised philosophy

of human rights. He was an American working in field of normative and political philosophy. His perspective is what I call a strong universalism, as the following quotation makes clear: “human rights are grounded in reason so that they have a normative necessity or categorical obligatoriness that goes beyond the variable contents of social customs and positive law” (Gewirth, 1981: 134). They are above law and culture.

This theory has the ambition to deliver a strong and universal foundation of human rights. “For human rights to exist there must be valid moral criteria or principles that justify that all humans, qua humans, have the rights and hence also the correlative duties” (Gewirth, 1981: 120). In what follows, I shall give a short presentation of his philosophy and see how he arrives at these conclusions. His theory is based on formal logic and argumentation, and I will follow his main argumentation.

Gewirth starts with a general assumption, which in his view has to be so general that it covers all humans: everybody is an acting person, acting with the intention of providing a good life for themselves, “that is necessary or inescapable for all humans as actual or prospective agents” (Gewirth, 1996: 13). His agent is a self-interested and an amoral human being, looking for the best for himself. But this agent is also a reasonable human being who is acting with intentions. He acts with the intentions to reach a good life. He wants to achieve well-being.

From this general search for the good, the next step is a recognition that “my freedom and well-being are necessary goods” (Gewirth, 1996: 17). To pursue the good implies that the agent needs freedom: “I must have freedom and well-being” (Gewirth, 1996: 17). In the last step, the agent moves from confirming goods as good to claiming these as needed goods. This brings him further to claim these as his rights: “I have rights to freedom and well-being” (Gewirth, 1996: 17). Gewirth sees however that he cannot stop at this point, if he wants to

have a theoretical foundation for human rights. So far the arrangement has led only from a need or desire for goods to claiming these as rights, but the fact that a human being has needs or desires cannot mean that one possesses them as human rights.

Although the first part of the reasoning is straightforward, the second half is more complicated, and takes us from positive propositions to negative ones. Let us suppose that the reasonable agent rejects the last step so far (i.e., I have rights to freedom and well-being); in that case, he will not claim rights. Logically, he has also to reject the assertion that “all other persons ought ... to refrain from ... interfering with my freedom and well-being” (Gewirth, 1996: 17). He accepts that he has no right to freedom and well-being and he admits that other people may intervene and impede his search for the good life. They may remove his freedom and well-being.

Since he does not accept the basic rights to freedom and well-being, the agent is now logically in a position to accept that freedom and well-being are not necessary, because he has allowed others to interfere and prevent a search for those goods. But this contradicts the claim that freedom and well-being are necessary goods, so this negation leaves the agent in a logical contradiction. This, according to Gewirth, proves that the rights to freedom and well-being are logical basic rights, derived from the reasonable action of the agent with the purpose of achieving certain goods.

It is important for Gewirth that this agent is acting out of amoral self-interest. Starting from this selfish human being, we end up with a person who has to recognise basic rights and see human rights as necessary to freedom and well-being.

Gewirth also draws another conclusion: if these rights are important, there are good reasons for the agent to accept them as rights for others as well, as universal rights. This leads to the categorical principle, what Gewirth calls the Principle of Generic Consistency

(PGC): “*Act in accord with the generic rights of your recipients as well as of yourself*” (Gewirth, 1996: 19). This means that the agent should take responsibility for his own and others’ rights. Human rights are universal and belong to “the sphere of personal ethics as well as of social ethics” (Gewirth, 1996: 30).

In liberalism, a debate about human rights is often related to human rights as negative rights: the state authorities have to provide civil and political rights, and abstain from interfering with people’s lives. On this understanding, there is no obligation to provide support for those in need, because they have equal civil, liberal and participatory rights. Gewirth argues against this understanding, in favour of substantial rights, positive rights. This means that he argues that the agent must be able to pursue his freedom and well-being. But very often causes for which the individual is not responsible deprive people of their chances to get proper food, housing, health or education and so on, and in this way take away the possibility to search for freedom and well-being. Gewirth thinks that we have a responsibility to provide every human being with what he needs in order to be able to take responsibility for his own life: “A human society based on positive human rights requires not only that persons refrain from coercing or harming one another but also that they help one another” (Gewirth, 1996: 32)

The type of support and level of support is what he calls “needfulness for action” (Gewirth, 1996: 45). “We have duties to help persons to fulfil their generic rights of agency when they cannot do so by their own efforts” (Gewirth, 1996: 61). This includes providing people with basic housing, health, food and education. It is not a question of luxury, but of basic support which is necessary in order to be able to be an active agent who can take responsibility for oneself and take up a job to provide for oneself.

As we see, Gewirth argues not only for universalism, but also for a broad understanding of human rights. He argues for social and economic rights, not only for political and civil rights, and he calls this the ‘right to welfare’;

“by virtue of having the generic human rights to freedom and well-being, persons also have certain more specific positive rights, whose objects include welfare, education, property, employment, and other conditions that will be presented as means both for the relief of suffering and for the development and use of productive agency. The society, as a community of rights, is charged with helping to provide these conditions for all persons, and thus with fulfilling their rights to the necessary conditions of action” (Gewirth, 1996: 101).

Gewirth develops these ideas by means of an interesting reflection on reciprocity and mutuality. He posits an antithesis between them. Reciprocity exists among people where services can be returned and balanced. When a favour is done, people return the service in a proper manner. Reciprocity also covers charity, where good will leads people to decide to give support to those in needs. Mutuality, on the other hand, is more formal and based on rights: we have a mutual responsibility to look after each other’s rights. This means that there is a basic responsibility to support those who do not have their basic needs for basic action fulfilled, not as a return of former gifts, not as charity, but as a moral obligation to secure for everybody the condition of living in freedom and well-being. Mutuality is based on positive rights, rights to basic needs.

Gewirth also responds to criticism from communitarians such as Charles Taylor, who finds that human rights in some liberal theories lead to human atomism (Taylor, 1985). Liberal theories about rights mainly claim rights and protection from interference of the state, with the state providing security, private ownership and democracy, and the individual being responsible for taking care of his own well-being, without responsibility for the community as a whole.

Unlike this, communitarians operate with a common good, and Gewirth takes on this argument and argues for a community of human rights as this common good. His PGC imperative is a “right and duty” construction, where each one searches for himself, but also has a responsibility vis-à-vis the others, so that their rights too are fulfilled. As a community, we have to sponsor those who do not have their basic needs for action fulfilled. This community is the responsibility of each participant. Gewirth’s answer to the accusation of atomism is to develop human rights as norms which can be realised only within a community where the participants take responsibility for their own and others’ human rights, and where human rights are the common good.

“The psychological element of awareness, of understanding and rational and emotional acceptance and support, accompanies the institutional structure and makes it a community not only of institutions but also of fellow feeling ... The society does not, then, consist of “bare” individuals who are unaware of and indifferent to one another’s fates” (Gewirth, 1996: 86).

For Gewirth, human rights “are universal moral rights” (Gewirth, 1981: 120). This means that human rights are antecedent to positive laws. As moral principles, they have a broader and more compulsory order than positive law. This universalism means several things. First, it means that every human being has human rights. Second, he claims that they have universal geographical validity: human rights are valid wherever there are humans. Third, Gewirth proclaims that human rights have been a part of all cultures in all periods, which means that human rights are universal in time; changing history and cultures all have human rights, so that “viewed in both historical and geographical perspective, the concept of rights can be found in all cultures, ancient as well as modern” (Gewirth, 1996: 68).

His logic and philosophy are meant to be a universal theory which provides a foundation for universal human rights. The rights are universal, even those rights which

seem to be based on specific historical circumstances, like a right to vote and to employment. These are the reasons why I call this a strong universalism. There seems to be no need for cross-cultural dialogue or contextualisation, because human rights are above that. This theory claims to transcend history.

Gewirth's position is meant to cover every human being. It is not limited to citizenship rights in a state. He takes human rights to a cosmopolitical level. Like Thomas Pogge (Pogge, 1995, Pogge, 2007), another leading universalist, Gewirth seeks to lift the responsibility for human rights from a nation-state to a global level, "Insofar as those needs cannot be fulfilled in some countries, they are to be helped by others" (Gewirth, 1996: 67).

2.2.1. Comments

I have some problems with various aspects of Gewirth's project. To begin with, he relies on formal logical argumentation in constructions of ethical norms. To me ethics and logic belong to different spheres, but with an area of overlap. To give an example: to kill is not wrong primarily because you break a logical norm, but because of the harm you do to another in terms of harm. The victim supplies a moral impulse. On the other hand, norms which tell not to kill are also relevant, but on the basis of a combination of experience and reflection. My point is that formal logic cannot be the only source or approach in the construction of ethics.

Besides this, Gewirth's abstract human agent is not situated, nor has he a context. I doubt that a person would claim rights without being situated in a culture which thinks in categories of rights and which already possesses a language of rights.

His approach recalls the liberal split between private and public. What is public must be objective and universal. Culture and normative traditions are irrelevant in Gewirth's eyes – they are up to people's priorities and sense of well-being, and must not be confused with universal reason. This looks like an Enlightenment project: he constructs formal norms as if neither interests nor contextual elements have any influence, to me that is a simplification.

2.2.2. Strong universalism and HRE

Gewirth himself comments on HRE;

“Education and laws based on the principle of human rights are important helps toward motivating persons to act rationally and morally. But so too are the very ideas of reason and rights. When someone is aware of other persons' rights ... and this awareness is in large part a function of reason ... he can be strongly motivated to act accordingly” (Gewirth, 1996: 26).

For Gewirth, reason and human rights are two sides of the same coin. And from that standpoint, he introduces a third element, i.e. motivation for action. In other words, if everybody is enlightened with the right reasoning, they will understand and respect human rights as valid for themselves and others, and be motivated to practise them. For Gewirth, the project for education is to develop this reasoning, which leads to respect, responsibility, and generation of motivation. He is optimistic on behalf of education and reason.

The most natural prolongation of this understanding is to see HRE in the context of a progress of maturity and moral reasoning, as Kohlberg did. In HRE, there are two spokespersons of that kind of development, that is Reardon (1995) and Mihr (2004).

Among educationalists, Joel Spring, an American, is however the one with the most direct and open commitment to Gewirth's theory of human rights. Spring is a mixture of the natural law and the protest schools. He combines Gewirth and Freire, but here the main focus is on the former.

Spring sees the lack of justification or foundation of human rights in education and elsewhere as a hindrance to the establishing of human rights.

“Philosophical differences undermined attempts to implement the Universal Declaration of Human Rights and exposed the flaws caused by ignoring the difficult questions of political and cultural differences” (Spring, 2000: 27).

Like Gewirth, he thinks that there can be a universal justification of human rights, “regardless of differences in culture, religion, and political and social circumstances” (Spring, 2000: 3). Education should give human rights a foundation and face the difficult questions. This means making human rights universal human rights, not citizens’ rights in one particular country. Spring shares Gewirth’s understanding of human rights as entailing a global responsibility for all. Spring finds that most HRE avoids the radical challenge of human rights.

“Human rights doctrines must be protected from sloganeering terms, such as democracy, rule of law, and sustainable development. One mechanism for achieving this protection, I believe, is to include in human rights instruction the moral duty to protect the human rights of all. This avoids the problem endemic in human rights education of preaching a passive form of citizenship which defines responsibility as avoiding interference into the rights of others rather than a citizenship that actively works to protect the rights of all” (Spring, 2000: 86).

In leaving aside difficult questions, HRE, according to Spring is superficial because it does not tackle the basic issues: “highly complex issues are reduced to feel good about others” (Spring, 2000: 101). For Spring, it is important that human rights are claim rights, as opposed to liberty rights. The liberty rights are passive, they are based on, and fulfilled by, the non-interference by the state in human lives. Claim rights, on the other hand, are related to “necessary conditions for human action” (Spring, 2008: 228). He supports Gewirth’s

understanding of an agent who should be able to pursue his own interests. To be able to do this, he needs positive and active support, which claim rights provide.

Rights also impose a duty or responsibility. “Claim rights place a responsibility on all people and institutions, including government, to ensure that people have the ability to exercise a right” (Spring, 2000: 87). Human rights are not only rights, but just as much responsibilities and duties for the rights-holders to see that other people have their rights. Spring expresses this in relation to education: “It is my duty and the duty of all people to guarantee that all people can acquire an education” (Spring, 2008: 226). HRE also means learning responsibility and accepting one’s duty for the other person and for all humans.

Human rights, as high principles must be instilled in the students. They must internalise them because that is the way to secure freedom and social responsibility, according to Spring: “Instruction in human rights as claim rights creates a wheel in the head that ensures freedom of thought and democratic action, and creates a moral duty that serves as the basis for human relationships.” (Spring, 2008: 235). Spring thinks that if human rights are integrated and really understood, the students will be in a position to create and demand democracy and respect for human rights. “It resolves the problem of how to teach political ideas without those ideas becoming a source of outside control” (Spring, 2008: 235).

Then students have the tools necessary to be critical of governments and international institutions like UN. Again, Spring is critical of HRE, which he finds uncritical vis-à-vis an organisation like UN.:

“... human rights education needs to be protected from the self-interest of organizations such as the UN and nationalistic governments and also from those in power who want to interject their own ideologies into human rights principles” (Spring, 2000: 86).

“I think human rights education requires teaching people to question and be skeptical of the actions of any government or international power, including UN” (Spring, 2000: 81).

He is especially critical of a HRE that preaches loyalty to UN. Spring compares that to how governments use education for the construction of the nation and of identity. Even democracy needs to be monitored from the perspective of human rights, because “political democracy does not guarantee human rights” (Spring, 2000: 92).

Spring believes that human rights are antecedent not only to politics, but also to cultural and religious differences. On the other hand, he is concerned about respect for cultural differences and sees human rights as protecting cultures. Cultures today are intertwined, and they are part of multicultural societies. “The protection of local cultures now depends on the expanding protection of human rights” (Spring, 2000: 104). He further sees HRE in the light of respect for cultural differences: “human rights education must be sensitive to cultural differences if it is to recognize cultural rights” (Spring, 2000: 97). HRE should respect cultural rights; he claims that everybody has a right to culture. “Human rights education should avoid cultural insensitivity as highlighted by Eurocentric historical treatments of human rights and assumptions about the cultural appropriateness student activities” (Spring, 2000: 161). But it is not clear what this may mean. Yet he is clear on the position of human rights in relation to cultures and religions when they are in conflict: “Consequently, when there is a clash between culture and human rights, human rights must carry the day. This is also true for religious practices” (Spring, 2000: 104).

Spring is not easy to put into one school. He is critical of HRE avoidance of justificatory questions: “human rights are presented as universal values which require no justification” (Spring, 2000: 93). But Spring also understands HRE as a dialogue: “It seems logical that if a democratic classroom culture is to be developed then the very nature of universal rights should be open to debate” (Spring, 2000: 93). Different cultures and views

have room for contesting human rights norms. He advocates freedom of expression and participation in the classroom. How can he do that and at the same time take Gewirth's project as the platform? Spring seems convinced that Gewirth's theory is valid, universal and stands up to scrutiny. He delivers the following message: "There is a tendency for people to confuse their own beliefs and feelings of righteousness with human rights doctrines" (Spring, 2000: 84). It seems not to occur to him that others could accuse him of doing precisely this.

Spring is a strange mixture. He clearly believes in the objectivity and universality of human rights norms. The way he formulates his project is to instil human rights in the students like a "wheel in the head", and at the same time he sees HRE education as an instrument to attack a dominating education or other forms of oppression.

The strong universalism leads to strong HRE. Where Tarrow was discreet, Spring is direct; where justifications were avoided, he tackles this directly. He sees the teaching of human rights as a unique and universal project, which opens the door to a critique of governments, institutions, cultures and religions, in order to secure all human freedom and well-being. HRE must contribute a universal foundation. The construction has to be done in a correspondingly strong and clear manner. The mission is too important to be dealt with under all other kinds of subjects: in Spring's universe, human rights have to be dealt with directly.

2.3. Tentative universalism

Amartya Sen (1999, 1993) and Martha C. Nussbaum (1993, 1995, 2000) have both developed a universalist theory of capabilities. De Greiff and Cronin (De Greiff and Cronin,

2002) label Sen a weak universalist and Nussbaum a strong universalist; I follow Caney, who calls Nussbaum's theory a tentative universalism.

It is clear that we face a universalist theory, but there may be different views about how to understand it. The presentation of Nussbaum will show why I see her as tentative. The possible disagreements between Sen and Nussbaum are not an issue for me. Sen's background is in economic theory, and he develops his notion of capabilities as a response to utilitarian concepts and the measurement of well-being in relation to development. He is not willing to link his capability concept as closely to Aristotle as does Nussbaum. Her starting point is philosophy and studies in Aristotle. She is an American philosopher with an interest in antiquity, political philosophy and ethics. Other voices too in the human rights discourse take a neo-Aristotelian approach to human rights, such as Tasoulas (2002). I focus here mainly on Nussbaum.

Even though Nussbaum is an Aristotelian, she takes a Kantian starting point; each individual is an end in herself – “look at people one by one to see how each one is doing” (Nussbaum, 2000: 65). This person is a purpose in herself, and should not be reduced to a tool or instrument for other purposes.

Nussbaum refers to and comments on heated debates on universalism, feminism and postmodernism. Feminist, postmodern and left-wing critiques of ethical and metaphysical realism assert that this realism often turns out to be selective or even oppressive. Feminists argue that woman has often had more than a tendency to fall out of these theories which at the same time have pretended to be universal and have defined themselves as such. History has again and again shown that universality is a mirror of those who have the power to make the theories.

Nussbaum agrees with this critique of metaphysical realism, and decides to follow another way to universalism. Where postmodernists will refuse to talk about universalism, she is not willing to yield on this point, and claims that it is possible to discover universalism. For her, the only way to construct universalism is from inside history.

“There is no Archimedean point here, no pure access to unsullied “nature” – even, here, human nature – as it is in and of itself. There is just human life as it is lived. But in life as it is lived, we find a family of experiences, clustering around certain focuses, which can provide reasonable starting points for cross-cultural reflection” (Nussbaum, 1993: 265).

She argues that by observing and living human lives we get experiences of what is important and necessary for a flourishing human life. Her route to universalism is from within history: participation gives us basic knowledge about human lives.

“For universal ideas of the human do arise within history and from human experience, and they can ground themselves in experience. Indeed, if, as the critics of realism allege, we are always dealing with our own interpretations anyhow, they must acknowledge that universal conceptions of the human are prominent and pervasive among such interpretations, hardly to be relegated to the dustbin of metaphysical history along with rare and recondite philosophical entities such as the Platonic forms” (Nussbaum, 1995: 69).

Her assumption is that humans have much in common, although contexts and cultures may be different. Despite all variable human manifestations, she argues that there are enough common experiences and common nature to develop universal standards.

Nussbaum is a universalist, but a tentative one because she thinks that the ‘common knowledge’ can and should be scrutinised by people from different backgrounds and, as far as possible, also checked out in history. Through this critique, knowledge can be improved and changed over time as new perspectives and new knowledge about humans develop. Still she thinks that there is an essence:

“My proposal is frankly universalist and “essentialist”. That is, it asks us to focus on what is common to all, rather than on differences, and to see some capabilities and functions as more central, more at the core of human life, than others” (Nussbaum, 1995: 63).

This essence is an essence of human lives; the threshold is that of a dignified and flourishing human life. “What are the characteristic activities of the human being? what are the forms of activity, of doing and being, that constitute the human form of life” (Nussbaum, 1995: 72). The aim of the process is to find what is required in order for a human life to be a good human life. In other words, she is after normative guidelines. Without these activities and abilities, she would say that it is difficult to call it a human life worth the name. She calls them capabilities, which mean human functions, capacities and abilities. These core dimensions will and should guide us in how we act towards each other in politics and as individuals.

Other approaches have looked at human needs and desires, such as Shue (1980) and Nickel (1987), and as we have already seen, at well-being. Others are critical of these approaches, as Freeman says: “We do not have a human right to everything that is good, or to everything that we need” (Freeman, 2002: 63). Nussbaum and Sen likewise argue that these approaches miss very important dimensions. Nussbaum does not look for desire or need fulfilments. Both Sen and Nussbaum have political ambitions with their projects: they want to contribute to a better understanding of what development for the poor means. They believe that the instruments used up to now are inadequate, and that a better way is to identify the basic human capabilities.

Nussbaum has presented different lists of human capabilities; I take the one from 2000. She calls it “central human functional capabilities” in “Women and Human Development” (Nussbaum, 2000; 78f).

1. "Life. Being able to live to the end of a human life of normal length"
2. "Bodily Health. Being able to have good health"
3. "Bodily Integrity ... having one's bodily boundaries treated as sovereign"
4. "Senses, Imagination and Thought. Being able to use the senses, to imagine, think, and reason"
5. "Emotions. Being able to have attachments to things and people outside ourselves"
6. "Practical Reason. Being able to form a conception of the good"
7. "Affiliation. **A.** Being able to live with and toward others. **B** being able to be treated as a dignified being"
8. "Other Species. Being able to live with concern for and in relation to animals"
9. "Play. Being able to laugh, to play, to enjoy recreational activities"
10. "Control over One's Environment. **A.** Political. Being able to participate effectively in political choices that govern one's life. **B.** Material. Being able to hold property and having property rights on an equal basis with others".

This is not a theory of justice, but when justice is done, this list can be used to see to what extent each human person is living a flourishing life. Fulfilments of one's capabilities are the condition for a good life. Life is, *inter alia*, the ability to lead a "normal" life and not a life shortened because of malnutrition, lack of security and so on. Each person has one life and that life should be lived to a normal length, according to Nussbaum.

In terms of practical reason, as an Aristotelian, Nussbaum sees humans as political animals. People should be able to define what a good life is for themselves and for the community, and at both levels they should be able to take responsibility and argue for the good. Capacities must be developed, in order for people to be in a position to decide over their own lives, and to participate in the community; each person will need support, for example, in nutrition and good education. She develops this list to investigate how the conditions for leading a human life are met. These capabilities are in themselves good, but they are also the condition required in order to search for the good.

Nussbaum sees these capabilities as objective normative universals which are needed for a proper life and should serve as normative guidelines. But she combines capability with

another concept which she calls “functioning”. She argues that when capabilities (e.g. reason) are activated into functioning, capability of reasoning is universal, but the functioning or practice of that capability is realised in many different ways. The capabilities are objective, but their functioning is local. It is fundamental to be able to play and laugh, but how to play, or what makes you laugh will be realised in many different ways. In most of these capabilities, different cultures will show differences in how they are practised.

“(T)he constitutive circumstances of human life, while broadly shared, are themselves realized in different forms in different societies ... Nonetheless, we do have in these areas of our common humanity sufficient overlap to sustain a general conversation, focusing on our common problems and projects” (Nussbaum, 1995: 93).

These are the common capabilities. The normative aspect concerns the level of capabilities, not the level of functioning.

Conceptually, according to Nussbaum, capabilities are at their best when they are used as instruments to compare and evaluate societies. Both these concepts - comparing and evaluating – are complicated when we talk about societies which differ in so many ways. One of Nussbaum’s core arguments is that capabilities are by nature stable. Their functioning may differ, but capabilities in themselves are the same in different cultures. This means that she thinks we can evaluate different cultures and human lives on the basis of capabilities, not of functioning. That is may be an over-simplification of her theory, because she in her investigation of different cultures looks not only at women’s capabilities but also at whether they have a chance in terms of functioning, for instance whether they are able to take on work outside the home. She tries to avoid evaluating cultures, but she will criticise cultures when they prevent people from realising their capabilities.

How are human rights and capabilities related in her theory? Capabilities are not originally linked to human rights, and these rights and capabilities have two separate histories. But Nussbaum sees her theory about capability as a way to give human rights grounding. The capabilities are basic human capacities, and human rights refer to basic human conditions. Capabilities can serve as a background for rights. They can give a foundation to rights, and in Nussbaum's own words, "without such a justification the appeal to rights is quite mysterious" (Nussbaum, 1999: 58). She quotes Bernard Williams:

"I am not very happy myself with taking rights as a starting point. The notion of basic human rights seems to me obscure enough, and I would rather come at it from the perspective of basic human capabilities. I would prefer capabilities to do the work, and if we are going to have a language or rhetoric of rights, to have it delivered from them, rather than the other way around. But I think that there remains an unresolved problem: how we should see the relations between these concepts" (Nussbaum, 1999: 33) (B. Williams, "The Standard of Living: Interest and Capabilities", in *The Standard of Living*, editor G. Hawthorn, 1987: 100).

Williams and Nussbaum see the capability approach as delivering an anthropological platform for human rights in terms of common capabilities, a concrete ground for the rights. One of Nussbaum's arguments is that capabilities help to fill out human rights with more substance: "Thinking in terms of capability gives us a benchmark in thinking about what it is really to secure a right to someone" (Nussbaum, 2002: 137).

Human rights are more normative. To proclaim that humans have rights is a stronger normative appeal than just referring to capabilities. To claim a right is to assert something more than human capacities, it is a stronger claim than a reference to capabilities. Human rights can be useful in demanding respect for capabilities:

"We say that A has 'a right to' seek employment outside the home, even when the circumstances obviously do not secure such a right to her. When we use the term 'human right' in this way, we are saying that just by virtue of being human, a person has a justified claim to have the capability secured

to her: so a right in that sense would be prior to capability, and a ground for securing of capability” (Nussbaum, 1999: 54).

There seems to be a complementary relationship between human rights and capabilities.

She further relates the different capabilities as listed above to the different articles of the Universal Declaration, and she finds that “most of the central capabilities correspond to the essence of the rights proclaimed in the Universal Declaration” (Nussbaum, 1999: 44).

Human rights should be used to secure basic capabilities, but it should stop there, because the specific functioning, how the different capabilities are exercised, is up to each individual. For example, we should secure bodily capabilities by means of proper nutrition, but once the individuals have access to basic food, it is up to people’s own decision if (for instance) they decide for some reason to fast. The person who chooses to fast does so by free choice, or at least should do so by free choice. On the other hand a person who starves is not having a basic capability met, and can claim the fulfilment of this capability. Let us take the case of a person who wants to fast, but finds that this is prohibited for some reason. She will legitimately claim that her capability and rights are violated, not as regards nutrition but as regards the capability for reason or imagination. When basic capabilities are met, it is up to each person how she wants to practice. Thus, when one chooses freely to fast, this is a choice of functioning.

When people are assured of their capacities, skills, nutrition and so on, it is up to them to move into the society and culture and decide how to take part in political debates, the practice of religion, etc. The capability approach is to secure the basic functioning, and leave it up to diverse cultures to give the functioning meaning. In Nussbaum’s theory, it is very much up to the individual to decide. States should help and support with the basic requirements, so that each person can have a real choice and decide what a good life is.

Nussbaum moves further into this issue of capabilities and functioning when she addresses arguments against universalism and essentialism. The challenges come from feminism, the political left, and postmodernism. She argues about topics such as culture, diversity and paternalism. Nussbaum finds that the reference to culture is often too simple. She is attacked for being ignorant of culture and traditions. For example, the women in India live by norms and traditions which have existed there for centuries. To ignore this, and assume that women in those cultures are not happy with their traditions, is wrong; some will say that they are even happier than women in the West. Nussbaum's response is to study Indian culture. She finds that within the different cultures there are different voices. These include the voices of women, many of whom are critical of the traditions they are living under.

Her own experiences with women in India indicate that women are critical of their own traditions and cultures. For Nussbaum, the first point is that those who claim respect for culture often have a too simple understanding of culture: they see it as more homogenous than it is in reality. Accordingly, if culture is spoken of, this mixed picture should also be presented: "any story that attributes to India only a single set of cultural norms, even for women, is bound to be bizarrely inadequate" (Nussbaum, 2000: 47).

The cultural relativism against which Nussbaum argues here entails the assertion that change has to come from within a culture. She shows that in history, people have learned from foreign and different ideas, e.g. the Marxism which is adopted in China. Nussbaum maintains that people can learn from each other across cultural boundaries, and she also defends the legitimacy of criticising local cultures. She also makes a strong argument against those who see cultural relativism as synonymous with toleration;

“Most cultures have exhibited considerable intolerance of diversity over the ages, as well as at least some respect for diversity. By making each tradition the last word, we deprive ourselves of any more general norm of toleration or respect that could help us limit the intolerance of cultures. Once we see this, our interest in being relativist should rapidly diminish” (Nussbaum, 2000: 49).

In a similar way, she defends universalism and diversity. Diversity may be fine and good, but in order to see what is good and valuable we have also to criticise what is bad. It makes sense

“to preserve types of diversity that are compatible with human dignity and other basic values” (Nussbaum, 2000: 51).

“Pluralism and respect for difference are themselves universal values that are not everywhere observed; they require a normative articulation and defence ...” (Nussbaum, 2000: 32).

Nussbaum then takes up a criticism of paternalism, i.e. the idea that westerners know the best for people. She agrees that paternalism is negative, but again she turns this around and finds that those who level the charge of paternalism too easily forget the paternalism within the traditions which they defend. Her main argument is that each person is an end, which means that each person should have the freedom to think and speak and make decisions for herself. To struggle against paternalism is thus to struggle for each person as an end. “We dislike paternalism, insofar as we do, because there is something else that we like, namely each person’s liberty of choice in fundamental matters” (Nussbaum, 2000: 53).

Nussbaum is what she calls a universalist and essentialist. But she sees her own project as a cross-cultural project where people with different experiences and cultures should have an influence on the project. She advocates a “cross-cultural deliberation and criticism” (Nussbaum, 1999: 31)

In his reflection on the relation between capability and human rights, Freeman comments: “it provides a relatively strong philosophical-anthropological basis for the

justification of human rights” (Freeman, 2002: 68), and a similar view is expressed by Alexander (2004). I think it relevant to see human capability as one of the better ways to argue for and make sense of human rights. Nussbaum says: “the justification for saying that people have such natural rights usually proceeds by pointing to some capability-like feature of persons that they actually have” (Nussbaum, 2002: 138)

2.3.1. Comments

Nussbaum moves from “is” to “ought” by looking for the normative in human nature on the basis of the assumption that a human life has value and that one should be able to live a life in dignity. It is of course problematic when human nature becomes normative: where do we draw the line between what has normative value and what has not? And the argumentation easily becomes circular.

Some questions arise with regard to capability. Humans have several capabilities. For every human being there will also be limitations and obstacles to one’s capabilities, and some will not have full access to all of them. What is the threshold, what is a healthy and normatively acceptable level of these capabilities? Are people who by nature do not have all of these capabilities not fully human? How much capability do you need to be a human?

Her argumentation with regard to relativism and paternalism is interesting. She presents a critical understanding of diversity, which behind claims of respects for difference can protect oppressive systems. Cultures can and should be criticized when they are oppressive. She also defends the criticism of cultures, because cultures are mixed and have internal conflicts, and cultures have always influenced each other and learned from each other. She is critical, where claims for respect of diversity prevent a critique of oppressive practices within minorities, and I agree with her on this.

I am not convinced of her sensitivity to the perspectives from those who are different. I think her position is too much defined from her own horizon, and has too little focus on the other. She herself argues that her theory is based on cross-cultural dialogues, but the role of this dialogue is marginal. In fact, even her close ally Sen does not accept her list of capabilities. Her theory is mainly her own argumentative construction, and in the end there is little room for dialogue.

Nussbaum's capabilities are not the same thing as human rights, but the two can easily support each other. In a way, they are two similar stories in the same atmosphere, they are variations on the same, but sufficiently different to supplement each other.

2.3.2. Tentative universalism and HRE

Nussbaum and HRE is a short section, since as far as I can see she has had little influence on HRE. Donna Hicks (1997), has a human-needs-based approach to peace and conflict-resolving education programmes, but this is not based on capabilities. Nussbaum is more applied in education theories about development and gender equality: see Unterhalter (2005).

It surprises me that a theory like Nussbaum's has little impact on HRE, because the theory is not complicated and it is pedagogical in its construction. It is easy to transfer to HRE. It is concrete and invites us to reflect on experiences and on what is important for human flourishing; and it offers a way to make sense of human rights.

The distinction she draws between capabilities and functioning also suggests reflection on what is similar and what is different among people. For HRE, this is a relevant approach, since it opens the door to discussions about what we have in common as well as

what is different. As she herself says, it is important to see what we have in common; let me add that it is equally important to be aware of the differences.

2.4. Natural-law school and diversity

I now turn to the relation to diversity. The primary concern of the natural-law school is not diversity, but rather the constructions of norms or normative guidelines. They use different types of approaches in the development of the normative, but diversity is not a central topic in their projects.

Gewirth was the one who was most clear on this. He claimed that his philosophy was universal and in his establishment of human rights norms on the basis of formal and logical argumentations there was no room or need for inclusion of the issue that people may reason or approaches normative issues in different ways. He constructed norms in a way he considered to be general valid. Spring, who used Gewirth in HRE, saw human rights as protections for minorities, but I see no evidence that diversity played a role in how to make sense of human rights in his understanding of HRE.

Donnelly followed a different strategy. He was aware of diverse and conflictual issues and tried to avoid them, basing human rights on what he find as a minimum of firm and common ground – human dignity. In HRE, a similar view is common. Human dignity is referred to, but what it may mean or further constructions of the norms are not an issue – a parallel to Donnelly. The HRE literature studied in this thesis focuses only to a small extent on constructions or foundations of human rights in education, but it is common to refer to human dignity as their ground.

Donnelly gave room for diversity in the implementation of human rights in different cultural contexts. Human rights are universal, but have a kind of flexibility in terms of implementation. What this cultural sensitivity means in a pluralist society is not discussed.

Nussbaum claimed that her capability list was a result of cross-cultural dialogue. The influence of dialogue was hard to localize in her philosophy, but it is interesting that she sees the need for a cross-cultural dialogue to establish general norms. Global norms have to be recognized from different perspectives and cultural backgrounds, but on the other hand she was very firm on her own final argumentation to be generally valid, universal and essential. She defended her positions against accusations of being ignorant of 'the other', and of paternalism. Further she was clear on a critique of cultures, when they are paternalistic and oppressive, and this she supported in part from the argument that cultures have always been influenced from others.

The distinction she draws between capabilities and functioning opens up an interesting discussion on what is common and what is different. Nussbaum is mixed: on the one hand she recognizes diversity and takes it as elements of a society to be calculated and communicated with. But on the other hand she has a strong conviction that her theory on capability is more than just a way to see things, it is true. It can be used to evaluate any society or culture. To me she raises issues relevant to discuss in relation to HRE with regard to cultural diversity.

The natural-law school does not have much focus on diversity or pluralism. The primary concern is with the constructions and foundations of norms and human rights, and diversity had little influence on those projects. Nor did the HRE material discussed here address diversity.

2.5. Comments

The natural law school addresses fundamental questions in relation to foundation of norms. One such issue is that they think norms are objective and true. This will be criticised by others who see norms as social constructions, which are developed in history under influence from context, situation, interests, power and language; we will meet that later in the thesis. The natural law school will most likely not see norms as constructions but rather as uncovered norms, which are independent of context and historical factors. A natural law theory, like Gewirth's, aims directly at establishing the normative foundation of human rights. He intends to find the true foundation of human rights and true norms, similar to physical laws.

I think there are normative intuitions and impulses which influence and put claims on us as humans, but from these impulses to constructions of norms and practice of norms there is a long way and several factors that may influence the path. Gewirth's theory is building on formal logic but I am not sure that that is a guarantee of moral truths, and it is a theory constructed in a particular culture in a particular time.

To follow such a theory may makes one think, like Spring, that the norms should be installed into the students like "wheels in the head"; after they have been put into place, the norms can start to be critical. If norms are objective and above discussion the most likely way to think is that these norms have to be learned and installed. This is authoritarian and I believe this is due to the theories themselves.

To me they avoid the human condition. Norms have been constructed in all societies but norms have also been constructed with significant bias at all times; norms have been and can be oppressive both as norms and in practical applications. A feminist critique of male

dominated norms is an example of that. Formal logic and argumentation is not a guarantee against these biases. I prefer to start from human experiences, reflections and languages, which means *inter alia* that what we see as morally wrong and bad has an impact on what we understand as morally good. We discover norms not only by a logical line of arguments, but also in tensions, conflicts and our experiences as humans. In other words, violations of human rights are important aids in understand why human rights are morally relevant. From experiences, we develop general theories, but these have the limitations of having an origin, a place of birth. They can probably be improved, and they can be deconstructed. What I advocate is less absolute than Gewirth, but it is no less genuine in its search for the morally good and right.

To take Gewirth as a guide to education of human rights will mean focusing on reasoning or argumentation and on formal logic. To arrive at the categorical imperative, Gewirth made a complicated but stringent argumentative move. To transpose this to HRE implies learning and being able to repeat a set of arguments, just as one needs to know the rules of multiplications in maths in order to do multiplications. In terms of education, this is a top-down model where the students learn the right way of thinking and how to repeat the arguments.

On the other hand, it is scarcely possible to formulate any norms without logic and the Kantian aspiration to universality. Generalisation is relevant, but it is harder to attain than Kantians seem to think. However, I follow Gewirth in holding that the construction of human rights has to do with generalisation or universality and thinking in general terms, even without Gewirth's philosophical system.

Gewirth gives strong support to human rights and also to duty, responsibility and mutuality. In HRE, the aspects of duty and responsibility are central both in international

guiding documents and in theories. This shows that in the field of HRE a moral understanding of human rights is dominant; but there is little discussion of how this normativity is constructed. Of the three theories presented here, Gewirth makes the clearest attempt at an answer to this question, by showing the importance for human rights of duty and mutuality, which in his theory are binding on every human being. As Spring has made clear, everyone bears the responsibility that all human beings should have their rights. This is a cosmopolitical responsibility. From this perspective, HRE entails developing responsibility for human rights.

From a Gewirthian perspective, reasoning and logic bring understanding and motivation for human rights. I agree with Gewirth that a deeper understanding of human rights may contribute to develop respect and responsibility for the norms. But I think that responsibility is developed not only by reasoning, but also on the basis of relations and of the understanding of the implications of own actions. Some will probably be motivated by Gewirth's philosophy, like Spring, but I doubt that it would generally lead to enthusiasm for human rights. It is tempting to quote Wong's comment on moral truths: "Would people be any more inclined to be more cooperative, less self-serving, when moved to recognize that there is a set of universal moral truths?" (Wong, 2006: 230).

I have been quite critical of Gewirth and I have reservations about adopting certain aspects of his project, but still I find many good points and arguments in his theory. The most important is his willingness to go head on to the foundation of human rights. It is hard to follow his solutions but I think it is important to go into the issues of why human rights matter. There is much material for HRE in his theory, such as the idea of general law as universal, and the implications of this idea. His defence of positive rights, mutuality, duty,

and also the community of rights as well as the common good, are all relevant issues for HRE.

Nussbaum follows a different route from Gewirth in her construction of human rights. She starts from experiences or human participation, and moves on to reflection on human nature and criteria for the evaluation of a flourishing life. From her participation perspective, she draws up the list of capabilities. She takes a firm stance on this: one cannot negotiate or give in to violations of basic human capabilities such as the lack of nutrition or the circumcision of women, etc. Yet I believe that capabilities and functioning are more intertwined and interrelated than she thinks. As I have said above, I think context has more influence than she admits, and that makes the understanding of capabilities and functioning and the relation between the two more complicated. I am not sure that for instance the capability to play or take up relations to animals will everywhere be taken into a list of capabilities. But her twin concepts of capability and functioning open the door to reflection and discussions in classrooms of what is common and what is different. Her capability approach is highly relevant and fruitful for HRE.

What is attractive in Nussbaum's theory is that she starts from the bottom, from lived life – participation. Her project contains an appeal to life-experiences. Her approach is logical and cognitive, but there is also room for both experiences and reflection on what it is to lead a flourishing life. She invites HRE to a broad and more holistic engagement in making sense of human rights.

Another point with a theory like Nussbaum's is that her capability approach does show that human rights are not the sole coercive force. We can have different sets of standards or norms that can do a similar job as human rights, like the capability approach. As

such, her capability approach can stand on its own, and does not need human rights. The point is that human rights and other systems of norms are constructions and not compelling on grounds of nature or reason. Norms are necessary, but this need can be met or developed in different ways. One point is to be aware that norms are constructions; my next point is that the different sets of normative constructions have different strengths and weaknesses. Capabilities are in many ways more concrete and closer to human existence than human rights, but human rights have stronger claims. This means that different normative systems can supplement each other. Capabilities can help make sense of human rights, and I would like to see them in HRE.

Gewirth and Nussbaum address difficult tasks and go directly to the complicated issues of constructing norms or normative guidelines. Donnelly and most educationalists in the field of HRE display a very different attitude - a willingness to avoid the complicated issues. I do not know why the educationalists do not deal with this, because they do not discuss the issue, but for Donnelly it is a strategic decision. He wants to avoid divisive issues and focus on what can be a common ground, i.e. human dignity and the norms themselves.

To me it seems counterproductive for HRE to follow this avoidance of the construction of human rights. If we find human rights important, we should also address them directly and argue for their importance and relevance. To defend or make sense of human rights, we have to argue for them. The issue here is how to deal with conflicts and disagreements about the basis of human rights. Even if theories are in conflict, I think that pluralism in human rights approaches is a positive source on which to draw, rather than a problem. Sometimes one learns more from theories with which one disagrees than theories that are not challenging. Even if we disagree with the theoretical positions, they may have

great value. To look into theories with different approaches is one way to get a deeper understanding of human rights.

We may disagree about how to argue or what are good argumentations, but the disagreements can be positive. This shows that human rights are approved on the basis of different types of argumentation. I argue for the opposite strategy to that of Donnelly. I think that diverse ways to argue for human rights are a fruitful source on which HRE can draw, and offer various ways to include different students in the human rights discourse – for example, what they would understand by ‘dignity’ or ‘human nature’.

It is in the natural-law school that we find the most substantial and direct approach to the meaning and to the constructions of human rights, but it becomes problematic if one of these theories defines HRE, like Spring did. Yet I think that this school has much to offer in terms of content and ways to make sense of human rights in HRE. In HRE the weakest. The most minimal of the natural-law theories has proved to be most influential or popular. But I prefer to draw more on those theories which offer more substance on the construction and meaning of human rights. Diversity was not important in this school, but Nussbaum appealed to a cross-cultural dialogue, and this is a topic in the next chapter.

Chapter 3: The deliberative school

The topic of this chapter is human rights in the deliberative school, the second school in Dembour's categorisation and, together with the previous school, the most influential in the human rights discourse. I will examine how human rights are approached and how the school is reflected in HRE, and discuss what perspectives it may bring to HRE. I will also comment on the question of diversity

These are political, normative theories, influential both as political theories and as theories about human rights. These approaches are interested primarily in procedure: how consensus can be achieved on normative matters which concerns society as a whole. Dialogues or deliberations play a key role in this procedure. The school could also have been called "consensus", because a main goal of the project is to reach agreement on basic normative issues. These approaches are not directly concerned with human rights, but with an infrastructure which gives human rights their foundation and legitimation.

One of the main reasons why dialogue becomes central relates to pluralism in societies. In this school, diversity is a condition which requires particular attention, and it is the school which most directly engages with the issue of diversity. It develops procedures to solve normative matters for societies containing wide-ranging or conflicting value positions.

Two of the main proponents of this type of political philosophy are Jürgen Habermas and John Rawls, both of whom put forward theories rooted in political liberalism and influenced by Kantianism. Habermas is a German and European and Rawls an American writing from the context of USA. I will present them briefly. Both talk about consensus, but in different ways, and they have different understandings of dialogue. The consequences of diversity differ in the two approaches. What I give is in no way a complete presentation of

the two authors; I will focus on some main concepts which are relevant to their philosophies in relation to human rights. As far as I can see, Rawls is the more influential of the two in human rights discourse.

They are debated and discussed by many authors. I include in this chapter a few who comment, criticise or elaborate on their theories. Although they have critical comments and reflections, they operate in the same theoretical landscape. Those I will present are An-Na'im, Parekh, Young and Ingram. It will be seen that the contributions of these four, when taken together, suggest the possibility of taking a third view from Habermas and Rawls.

I will then sum up how the school has understood diversity and in the last part of the chapter I will discuss HRE using the perspectives from this school.

3.1. Jürgen Habermas

Habermas seeks to provide a foundation and legitimation for human rights and he follows a different route from those we have seen in the first school. He criticises Gewirth's teleology, which constructed a foundation for human rights based on every human being's desire for well-being: "the teleological concept of action is inadequate to provide a transcendental pragmatic justification of the notion of a *right*" (Habermas, 1990; 101).

Habermas nonetheless agrees with Gewirth in seeing philosophy as a way to provide human rights with a legitimation and foundation. Habermas sees himself in the tradition of Kant with a strong commitment to cognition and reason. He argues against sceptics of ethics and he looks for solid ground for human rights. This ground is formal and procedural. The discussion is not so much about norms as about how to achieve valid norms; his discourse ethics is meant to provide a framework for that goal.

To read Habermas is challenging, and to give a short presentation as I do here is not fair to his theory, but I will try to present some central ideas with relevance to this thesis.

Habermas talks about communicative action, which means:

“I speak of communicative action when actors are prepared to harmonize their plans of action through means, committing themselves to pursuing their goals only on the condition of an agreement – one that already exists or one to be negotiated – about definitions of the situation and prospective outcomes” (Habermas, 1990; 134).

Fundamental to Habermas is this will to find harmony and a kind of common ground. The alternative is struggle and the use of diverse techniques to convince or manipulate the other, to try to win over the other to favour one’s own interests, which for Habermas is not an acceptable way. In opposition to a conflict of interests, he sees the search for harmony and negotiated solutions as the moral way, and this way is his discourse ethics.

Like most Kantian philosophers, Habermas sees the universality test as the way to secure valid norms. For Kant, each individual should see himself as responsible for the moral laws and find the norm that everybody should use in an identical situation. This process is something that should take place in each individual; every person is responsible for finding the universal norms, according to Kant.

Habermas uses also the universality criteria, but not like Kant:

“For a norm to be valid, the consequences and side effects that its general observance can be expected to have for the satisfaction of the particular interests of each person affected must be such that all affected can accept them freely” (Habermas, 1990; 120).

It is no longer the individual who can develop the universal norm in isolation. For Habermas, the norm must pass a test which implies acceptance by the people concerned. This is a pragmatic principle: each person can evaluate what the norm will mean for his or her life,

and on the basis of this evaluation approve the norm or refuse it: “All affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of everyone’s interests” (Habermas, 1990; 65).

Habermas thinks that ethical actions in everyday life can be defended and explained: ethics can be rational. It is a cognitive ethics. When people retrospectively explain and defend their choices, they can do this because morality has a cognitive content and rationale. Habermas underlines this against empiricists and their view of moral norms or values as subjective. He affirms that norms are true and filled with substance. Moral decisions can be argued for.

The moral norms are not ‘true’ as in natural science where validation can be checked empirically. The moral truth is weaker but still true. The norms which are developed in his discourse ethics have a substance, and the participants can evaluate and reflect on them. If they pass the test from the participants they are not only rational but also become objectively true. For Habermas, norms must be universal, and the test of approval by those concerned gives the norms universality. His opposition to relativism means that in his view, norms must be universal in order to avoid being relative; otherwise, they lack normative force.

He seems also to pit his discourse ethics against “material ethics”. By this he means that the universal norms should avoid being reduced to the cultural domain. Ethics developed and practised at the cultural level are “material ethics”. I understand him to mean that such an ethic is contextual, helping to give people good lives. His own normative ethics is, according to Habermas, on a different level: “discourse ethics sets the domain of moral validity off from the domain of cultural value contents” (Habermas, 1990; 121). He does not mean to disqualify local normative traditions, but they cannot be universally valid. On the other hand, he argues that his discourse ethics manages to avoid being caught up in the local

dimension by way of reason and formal logic, and by the general acceptance of the norms. This split between cultural norms and discourse ethics also implies that discourse ethics is basically related to justice rather than to a good and meaningful life in general.

The second main principle is the discourse, the procedure whereby the universal norms are constructed and acquire validity. Habermas lays down a number of conditions for this discourse, some of which are related to participation and others to argumentation. The principle for discourse ethics is:

“every valid norm would meet with the approval of all concerned if they could take part in a practical discourse” (Habermas, 1990; 121).

It is a fundamental requirement and condition that all who are affected by the norms should be participants in the argument. They should at least have the possibility to participate and contribute with their view of the norm. A consensus reached on the condition that some of those involved are excluded is illegitimate.

According to Habermas, we participate in an argumentative community where we argue or defend our decisions and actions, and this community should be open to all. The participant should be able to promote their needs, demands and wishes. Habermas calls this discourse “an ideal speech situation” (Habermas, 1990; 88). As we have seen, the process of argumentation should lead in communicative action to harmony or consensus; “Moral argumentation ... serves to settle conflicts by consensual means” (Habermas, 1990; 67). But these criteria are not enough to ensure valid norms. The discourse itself must also follow several rules or principles.

One of the conditions is that the participants should be impartial and reciprocate in their judgments. A norm must take all the different aspects into account and search for a

general solution which does not favour or oppress any interests. The participants should take a more abstract and overall view of the matter and reason from that general position, abstaining from selfish interests. That does not mean that one should have to accept negative consequences that are biased, or that one should impose more burdens on oneself. A universal norm should be found to be valid for all, with equal or acceptable consequences for those involved. In order to achieve this, the participants should exercise impartiality and reciprocity.

Habermas also proposes a number of logical and semantic claims, e.g.: “No speaker may contradict himself. Every speaker who applies predicate F to object A must be prepared to apply F to all other objects resembling A in all relevant aspects” (Habermas, 1990; 87). The process of dialogue will also imply a commitment to speak the truth: “Every speaker may assert only what he really believes” (Habermas, 1990; 88). What is claimed must be true as well as truthful and trustworthy. The other participants must see that the arguments are true and sincerely meant by the participant.

In the end, is it the quality of the arguments that have to bear the burden and lead to agreements. The only acceptable force in the dialogue is “the force of the better argument” (Habermas, 1990; 89). This means that if participants are to be true and truthful, they must be honest in their considerations of arguments, and if they cannot come up with a better argument they have to play by the rule and follow the better argument. The only force acceptable is the arguments, which can lead to a consensus, an unforced consensus.

Another dimension which follows from the above-mentioned conditions is that every participant can raise and question any norm. “Everyone is allowed to question any assertion whatever. Everyone is allowed to introduce any assertion whatever into the discourse. Everyone is allowed to express his attitudes, desires, and needs” (Habermas, 1990; 89). But

on the other hand, if they cannot come up with a better argument, the participants have to follow the already established best argument. Through this process, the norms pass the universalization test, “the universalization principle” (Habermas, 1990; 93). Only these norms will have the necessary formal and rational quality.

Discourse ethics is a formal procedural ethics based on argumentation, dialogue and participation, provided that one plays by the formal rules and requirements of logic. So far the focus has been on the procedure. Human rights are not themselves argued for, but the framework presented here can explain how human rights as universal norms get their foundation and validity in Habermas’ philosophy.

He elaborates the relation between human rights, law and morality, and democracy in his book *Between Facts and Norms* (Habermas, 1996). But the main plan for his argumentation is given in the discourse principles. I will now briefly introduce his construction. The previous participants are now the citizens.

“The citizens themselves become those who deliberate and, acting as a constitutional assembly, decide how they must fashion the rights that give the discourse principle legal shape as a principle of democracy. According to the discourse principle, just those norms deserve to be valid that could meet with the approval of those potentially affected, insofar as the latter participate in rational discourses” (Habermas, 1996; 127).

Human rights are understood to be the rights that the free consensus secures for its people in a democracy. On the other hand a democracy, in order to become a democracy, also depends on human rights. Human rights are both a condition for democracy and the result of democracy. People have a basic right to take part in the “opinion- and will-formation” (p. 12). The autonomy of the individual and the community is basic to democracy.

In the Kantian tradition, morality is commonly given a superior position to positive law, but this is not how Habermas sees it. He sees the discourse which establishes moral norms as the same processes that generate laws. Laws and moral norms are based on the same procedure and are complementary. Citizens should have the same respect for the moral and legal laws, because they are rational and universal. The aspect of legality gives the laws a greater force than the ethical norms and entails potential sanctions which the norms do not have. But ideally, they have the same validity and obligatory character, and demand the same respect. Human rights should be equally mandatory in the private sphere and the public sphere, because their validity in terms of reason and consensus makes no difference between the private and the public. “(P)opular sovereignty and human rights go hand in hand, and hence grasp the co-originality of civic and private autonomy” (Habermas, 1996; 127).

In Habermas’ discourse all take part in the same argumentation, and they can all challenge each other and discuss the different propositions. To refuse to take part in the discourse and claim subjective or irrational norms will sideline the participants who do not play by the rules. Everyone must be ready to formulate their views and defend their standpoints, and everyone can be challenged on their argumentation. In Habermas’ theory, the consensus which is achieved is meant to take the form of substantial and true norms. These norms can be used to criticise a society’s conventions and conventional norms, because the discourse norms, as consensus norms, are universal, whereas and the others are local or habitual.

3.1.1. Comments

Habermas’ discourse theory is apparently inclusive and depends on the participation of all in the discourse. But when one reads the formal conditions for taking part, one wonders

why the rules for taking part and the rules for argumentation are so complicated. What seemed inclusive is more an elitist dialogue, designed for philosophers and experts in argumentation. It is not for ordinary people.

I find Habermas right in giving the dialogue an important role in development of common norms. It is hard to see an alternative to that in modern pluralist societies. Yet he puts too much into the dialogue when he sees the dialogues providing foundation and legitimation of norms. He can do that because of his “ideal speech situation”, but that is not a real dialogue and to take that framework over to substantively agreed norms is, as I see it, out of proportion. A real normative dialogue and consensus is unfortunately not a guaranty for true norms; they are not given an uncontestable platform or foundation by a consensus – or, put another way, agreed norms may be wrong. It is more realistic to think that the norms achieve legitimation in the dialogues and that the issue of foundation is more complex, which I will come back to later in the chapter.

Beneath the discourse, Habermas assumes that the participants wish to achieve a consensus, but why is that so obvious? I do not see why a slave should find agreement with a slaveholder; or conversely what makes one think that a slaveholder would give up his privileges in return for an agreement that at the same time would oblige him to release his slaves? That is not only a challenge for Habermas but for any approach that sees dialogue to have a role in matters concerning norms. Again Habermas can avoid these issues because of his ‘ideal’ dialogue, but to get real people to a consensus in dialogues, which will reduce or take away their privileges or goods, is an Achilles’ heel for any dialogue based approach. In the next chapter we will see that Baxi is critical of dialogue for that reason. Yet I find it hard, even though dialogues face challenges, to see an alternative to dialogue. At times norms must be approved and action taken even against people’s will, when they violate others or

have unjustified privileges, but these challenges Habermas circumvents around because of his ideal situation. Consensus on the level that Habermas expects is not likely to be achieved in real life.

The conditions for his dialogue allow him also to avoid issues like influence from power, interests or dominance. He has a strong commitment to formal rules, but does not discuss the possibility of manipulation also through the route of formal rules. Nor does he discuss where this dialogue may take place, which is interesting in terms of who can take part in the dialogues. As said, I still think Habermas is right in his focus on dialogue, but he expects too much from it.

His ideas about accountability, impartiality and reciprocity I support. I will come back to these concepts and modify in particular the last two, when later in this chapter I present writers who have critical issues in relation to the dialogue while still holding on to it. Before that I turn to Rawls who also has a commitment to dialogues and consensus, but in a different way from Habermas.

3.2. John Rawls

Rawls' theory is political. He emphasises this, in order to distinguish what he has to say from complex philosophical issues like human nature or moral foundations. Rawls' idea of a modern democratic state is "reasonable pluralism", where several normative traditions and theories are dimensions of a lasting situation in a free and democratic society. These normative systems he calls 'comprehensive views'.

“We try, so far as we can, neither to assert nor to deny any particular comprehensive religious, philosophical, or moral view, or its associated theory of truth and the status of values. Since we assume each citizen to affirm some such view, we hope to make it possible for all to accept the political conception as true or reasonable from the standpoint of their own comprehensive view, whatever it may be” (Rawls, 1996; 150).

He does not want to overcome all these normative positions, but instead he develops a political theory where there can be room for these differences. At the same time he searches for a social and political stability. “(H)ow is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines?” (Rawls, 1996; 133). His way to deal with it is based on a theory of social contract.

Compared with the other theories presented in this thesis, Rawls is one of the few who actually deals with religion as a factor in his theory. Once again, what he discusses is the role of religion in politics; he does not conduct a discussion of truth or falsehood in religious propositions. Religion is recognised as one type of what Rawls calls comprehensive views. A modern society operates with several such comprehensive views, some religious and some secular. Kantianism and utilitarianism are examples of secular comprehensive views. In Rawls’ terminology the latter views are advocated in universities and the former in religious communities; and he seems to think that most people have some kind of comprehensive view.

I will focus in my presentation on two concepts from his theory, public reason and overlapping consensus. In human rights theory, the latter concept has made a significant impact, and I will start with this concept.

Habermas based his consensus on common argumentation, the obligation to follow the better argument, and a pragmatic element secured by the participation of all who are

affected by the decision. This consensus is substantial, since all share the same argumentation. Overlapping consensus, on the other hand, does not expect such a level of substantial agreement on argumentation. There will be, and there is, a plurality of normative theories in pluralist societies, all claiming to have the truth. No one of these will by itself be able to gain acceptance as the platform for a pluralist society. There will be no common agreement on one comprehensive view. “(N)o comprehensive doctrine is appropriate as a political conception for a constitutional regime” (Rawls, 1996; 135). To build on one such view would violate the other. Rawls sees the response to this situation as overlapping consensus.

The meaning of this overlapping consensus is that all participants are supposed to belong more or less to one or another comprehensive view. They still keep their overall positions, but can at the same time come to an agreement with others who keep *their* views. It is overlapping in the sense that the consensus does not demand change or agreement on basic views. It is an agreement, and at the same time a disagreement about the reasons for the agreement.

Rawls argues against several critical remarks made about his theory, one of which is related to *Modus Vivendi*, which means a critical minimum of agreements where the agreement is not substantial, but rather a balance of terror. The first development of tolerance as *Modus Vivendi* came after the European wars of religion in the seventeenth century. This was an agreement to respect the other, even if each side saw the other side as heretics; and if the power balance between the two parts changed so could also the parameters of the agreement.

Unlike this, Rawls’ theory is based on a respect for the other views, which does not mean an agreement. But when the parties decide to arrive at an overlapping consensus, each

will from their own position argue in favour of the agreement from within their overall position. This agreement will then be substantial, because the adherents of the various normative traditions all argue from within their own tradition, but all can share the consensus while still respecting their own and others' positions. This agreement is much deeper and more reliable for a stable society than a *Modus Vivendi* solution, which according to Rawls would be quite superficial and bring little stability. "All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides" (Rawls, 1996; 147). In this overlapping consensus there is room for very different understandings of human nature, moral philosophy and so on, but nevertheless there is room for agreement. Rawls accepts that there is more than one legitimate view and that consensus can still be achieved.

The content of this overlapping consensus is "the constitutional essentials and basic questions of justice" (Rawls, 1996; 156). "(T)he consensus goes down to the fundamental ideas within which justice as fairness is worked out" (Rawls, 1996; 149). According to Rawls, there is a need in a pluralist state for consensus on basic questions of how democratic institutions are organised, rule of democratic participation, rule of law and so on. The consensus should cover basic rights and liberties on the basis of the equality and freedom of all persons. Rawls theory is not strictly human rights theory, but a theory about constitutional questions and basic rights, but also for human rights. In human rights discourse, the overlapping consensus concept is taken up from Rawls and has been related to a general and cross cultural and cross pluralist consensus on human rights norms.

The overlapping consensus in terms of human rights gives room for religious and philosophical diversity and the possibility of supporting human rights on the basis of very different traditions. Rawls' overlapping consensus not only accords recognition to different

traditions, but also uses the different traditions to make the consensus more stable and better justified. His approach opens up multiple justifications. By defining his project as political, he is not required to take a stand on the different justifications: he accepts that there are several legitimate ways to justify basic rights and liberties, and also human rights.

“These rights do not depend on any particular comprehensive religious doctrine or philosophical doctrine of human nature. The Law of Peoples does not say, for example, that human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights. To argue in these ways would involve religious or philosophical doctrines that many decent hierarchical peoples might reject as liberal or democratic, or as in some way distinctive of Western political tradition and prejudicial to other cultures. Still, the Law of Peoples does not deny these doctrines” (Rawls, 2002; 68).

But even this overlapping consensus needs more common ground and rules for dialogue, in order to identify the basic principles. This sphere of dialogue is called ‘public reason’ in Rawls’ theory. “An ideal of public reason is an appropriate complement of a constitutional democracy, the culture of which is bound to be marked by a plurality of reasonable comprehensive doctrines” (Rawls, 1996; 252). Although it is not meant to be a comprehensive view, he nevertheless argues for quite a substantial public reasoning. He envisages several components or criteria for this dialogue. It is not difficult to recognise some relation to Kantian theory when he asserts that basic principles for society can be constructed in a kind of objectivity. His debt to Kant is also obvious in a comment such as: “all reasonable citizens think of themselves ideally as if they were legislators following public reason” (Rawls, 2002; 137).

The first criterion is rules of argumentation, where he supports formal argumentative rules. “A way of reasoning, then, must incorporate the fundamental concepts and principles of reason, and include standards of correctness and criteria of justification. A capacity to

master these ideas is part of common human reason” (Rawls, 1996; 220). These elements, which cover logic and truthfulness, are also seen as part of common human rationality. “(W)e view citizens as reasonable and rational, as well as free and equal” (Rawls, 1996; 136).

Not only is argumentation required, it is also important to get support from other citizens. And because there are several comprehensive views, the public reason is a space for argumentation which does not activate these deeper assumptions.

“The point of the ideal of public reason is that citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood. This means that each of us must have, and be ready to explain, a criterion of what principles and guidelines we think other citizens may reasonably be expected to endorse along with us. We must have some test we are ready to state as to when this condition is met. I have elsewhere suggested as a criterion the values expressed by the principles and guidelines that would be agreed to in the original position” (Rawls, 1996; 226f).

Public reasoning must be argumentative and use arguments that others may find acceptable and in this way convince each other in public dialogue. It is to debate over common normative issues in ways that can be acceptable.

As an earlier quotation from Rawls showed, the public reasoning to be developed is a response to justice. He thinks of justice in terms of the ‘original position’, where everyone must imagine being in the ideal position behind the ‘veil of ignorance’. That means no one knows which part of the real society one will get, since all the goods and rights of society are up for distribution. From this position, everybody is supposed to find a just distribution. The distribution of rights and goods will be based on reciprocity, impartiality and justice as fairness. One must secure for every human the rights that one would oneself like to have. Rawls thinks that this original position is common and can work as a platform for public

reasoning. He seems to suppose that everyone will draw the same conclusions from this reasoning. It is for the benefit of the society: “Public reason ... its subject is the good of the public and matters of fundamental justice; and its nature and content is public” (Rawls, 1996; 213)

The public reasoning is based on a type of argumentation among citizens which tries to move on a general and inclusive level.

“As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines, they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality” (Rawls, 1996; 218).

Sometimes, it is also necessary for the participants to explain to each other the deeper roots for their argumentation, on the basis of their comprehensive positions, to let the other understand why one argues as one does. But according to Rawls, the argumentation should mainly be general and inclusive.

Rawls saw that this public reasoning had to be formulated and expressed to all citizens with the purpose of convincing the people, in order thus to establish a culture of basic rights and goods that would shape and develop people to be positive about this just society. In this way, these rights will be strengthened, and people will be socialised to support the principles.

According to Rawls, there are three groups of people who are particularly responsible in a special way for the public reasoning. First come the judges, and in particular the judges in the high court, who need to explain the reasons for their verdicts and also to be careful to explain their understanding of the law. Secondly, the legislators must present their arguments for laws. The last group to be mentioned by Rawls is the executives, the bureaucrats in state

departments, who must explain the reasoning behind their praxis. I mention this here because, as we will see later in this and in the next chapter, some, like Ingram and others, have a much more critical understanding of these groups. For Rawls, however, they represent the cornerstones in a liberal public reasoning. They have the most important role in supporting society with public reason, to “win its (justice as fairness) support by addressing each citizen’s reason” (Rawls, 1996; 143).

Rawls sums all this up as follows:

“(W)e seek a shareable public basis of justification for all citizens in society, giving justifications to particular persons or groups here and there until all are covered fails to do that ... In political liberalism ... we try to avoid natural or psychological views ... as well as theological or secular doctrines. Accounts of human nature we put aside and rely on a political conception of persons as citizens instead” (Rawls, 2002; 172).

3.2.1. Comments

Rawls’ public reason is grounded in his theory of justice and the ‘original position’. But his theory of justice is likely to entail a comprehensive view such as the one he refuses to make a starting point. Habermas makes a similar criticism: “Once a normative theory like Rawls’s theory of justice strays into substantive issues, it becomes just one contribution to practical discourse among many” (Habermas, 1990; 122).

People in the original position will probably not even think of rights if they do not already live in a culture of rights, and it is doubtful whether people will actually agree on the distribution of rights and goods. But Rawls’ aims and intentions when he speaks of the public reason are attractive. If consensus is to be achieved, people cannot expect to find support or universal acceptance for their own comprehensive views. His overlapping

consensus is what we can hope for; it is harder to achieve than Rawls seems to think, but it is a promising concept, even if in an overlapping consensus some are most likely to place themselves outside of the agreements.

Rawls like Habermas based his model on the principles of impartiality and reciprocity. To me these seem more as ideals than real conditions. While I can see the relevance, particularly to diversity, there is too much optimism on the practicality of achieving them. Like Habermas, Rawls also seems to see the public reasoning and dialogues to be without influence from majority power or other forces. They both are too optimistic on how public dialogues operate or are then taken into policy.

Rawls mentions both religious and secular comprehensive views, and in general he respects them. Only exceptionally does he demand that they explain their view to the others; mostly, he focuses on public reason, where the comprehensive views are in the background. They are also in the background in the overlapping consensus, where they support the agreements but for different reasons. What he expects from all those who hold these comprehensive views is that they are able to take part in public reasoning and in dialogue, seeking to be inclusive and open to all. In this way he achieves several things, I will comment on two. First, the fundamentalists who are not able to take part in such dialogues deprive themselves of influence, and secondly, he thinks that religious people will be able to take part in the public reasoning – which however will be secular.

His concept of overlapping consensus is fascinating and open to differences and ways to deal with diversity. His attitude to diversity in society is very promising and provides an avenue for perspectives on education in normative issues. But in my opinion, he is too optimistic about the neutrality of his own theories, i.e. with regard to the original position

and how the comprehensive views will have an impact on how people argue and operate in public reasoning.

3.3. A third way

In what follows, I will focus on some theories which criticise and supplement Habermas and Rawls. Together, they open the door to an extension or modification of deliberative views, although they do not relate to each other in their texts. At the end of this chapter, I shall integrate some of their views into my discussion of the deliberative school.

3.3.1. David Ingram

David Ingram, who is a professor of philosophy in the USA, takes up Habermas' theory of consensus and Rawls' theory of overlapping consensus and contrasts them as two different political models. The Habermas-inspired politics is called ST (syncretist-transformative), and Rawls' is labelled SP (separatist-preservative). He sees these two models in relation to identity politics. In Habermas' theory, differences were irrelevant because of the type of argumentation, while Rawls recognised a pluralism of comprehensive views. Rawls did not define these as 'identity groups', but that is how Ingram sees them.

In the course of this discussion, Ingram hints at a different understanding of dialogue from these two writers – I say "hints" because he does not give a complete presentation of his understanding of the dialogue, but he makes several comments which show a different way to perceive dialogue.

Ingram's understanding of identity is based on "a reflexive understanding of identity" (Ingram, 2004; 43), by which he means that identity "is shaped by the values and frames of linguistic-cultural meaning that have been inculcated in one by one's peers" (Ingram, 2004; 43). By learning a language, participation in dialogue and being challenged with different stories, habits, cultures or arguments, one is shaped and a self-reflective identity is constructed. Identity is basically linguistically shaped. It is informed and changes through new language experiences, and it is "continually fluid and open ended" (Ingram, 2004; 44).

For Ingram, identity politics is related to groups. He specifies two types of groups. He calls the first "aggregate" groups, i.e. groups of which one is not a member by choice, like statistical groups such as brown-eyed people. He calls the other "affinal" groups, i.e. "groups whose members actively identify with one another" (Ingram, 2004; 17). Being a woman makes you belong to an aggregate group (i.e. women), but by becoming a feminist one moves over to an affinal group. An affinal group is based on some kind of conscious identification with the group. The members of a group have identities, but not the group itself: "only individuals possess an identity (a personal one), whereas identity groups really possess nothing more than overlapping sympathies and identifications" (Ingram, 2004; 190).

The groups on which Ingram dwells most are groups related to ethnicity and disability and their claims to rights and recognition from their communities (in this case, in the USA). But in principle, he is concerned with a broader spectrum of identity groups, such as ethnic, immigrant, language, class, religious or cultural groups.

Ingram constructs his theory, as mentioned above, around the two types of identity politics. The first, separatist-preservative (SP) model, can be related to Rawls' theory. One implication of the SP politics is that the differences are respected and not challenged; the groups are left to themselves. The space for dialogue and discussions, for public reasoning, is

narrow. If the aim is to achieve agreements on common issues, the focus is on overlapping consensus where people agree on some rights as basic, but not for the same reasons. In the context of this agreement, people do not know why the different groups agree or how they internally explain their foundations of rights. Those who defend this position will see more comprehensive dialogical approaches as “threatening to the preservation of one’s identity “ (Ingram, 2004; 43). This model means, according to Ingram, the separation between groups, the preservation of differences, and little knowledge about each other’s groups.

Ingram calls the second model “syncretist-transformative” (ST). Whereas the first model does not make the participants accountable for their positions and arguments, this second model has precisely accountability as its goal. Here, deliberation is thought to be more thoroughgoing: arguments will be scrutinised, evaluated and criticised, and also met with counterarguments. One is not supposed to get away with an argument just by referring to an identity or a comprehensive view. Arguments should be held in the open and the deliberation allows for questions and the critique of each other’s arguments. The goal is to achieve a substantial consensus. The consensus here is close to Habermas and his discourse ethics. An agreement is an agreement in argumentation: the participants know the other participants’ arguments and reasoning, and the consensus is based on a common reasoning. Ingram says:

“what makes “identity politics” so dangerous is its implicit threat to any rational consensus on basic rights and impartial procedures. If nations (groups, persons, etc.) disagree about these fundamentals, how can they be expected to live in peace, let alone cooperate in solving common problems” (Ingram, 2004; 30).

He links dialogue, openness and basic rights to a peaceful coexistence; this can be secured only by a transparent and frank dialogue where participants hold each other accountable and

construct real agreements, and where the participants know where the other person is coming from. In this respect, he is closer to Habermas than to Rawls.

But Ingram does recognise that Habermas' strict formalism has its limitations. Habermas assumes that all participants are equal and that all have equal access to the dialogue, but Ingram realises that this dialogue can force minorities into a dialogue which is dominated by some. The effect of this dialogue and consensus can be assimilationist.

“According to Habermas' model of rational communication (the ideal speech situation), speakers must satisfy the formal logical requirement of semantic consistency. This consistency can have the effect of submerging and assimilating a subaltern minority voice into a hegemonic one, thereby suppressing (excluding) it” (Ingram, 2004; 42).

In Ingram's theory, the two types of dialogue imply two different processes, one separatist and the other assimilationist. For a dialogue and HRE, these seem dramatic options. Ingram's focus is not on education, but if his analysis is correct, education based on Habermas' discourse implies assimilation, while if Rawls lays the ground, that leads to separation and uncertainty between the different comprehensive views.

As I read Ingram, the dialogue in his theory is based on rational argumentation but is also closer to an everyday type of dialogue. He seems not to use all the requirements of formality which Habermas included in the dialogue. Like Rawls, Ingram finds that there are several acceptable ways to give a foundation to human rights, not only Habermas' monolithic understanding of discourse as the only legitimate way to give a foundation to human rights.

“Our reasons for accepting these rights need not be metaphysical or transcendental; nor need they privilege any particular comprehensive moral doctrine – utility, divinity, legality, practicality, tradition, and rationality are all acceptable grounds for affirming rights” (Ingram, 2004; 11).

Although Ingram defends accountability and openness, he also recognises that there is need for respect for groups which represent this diversity.

“The formal languages of mathematics and science may be universal and cross-cultural, but the vernacular languages and value systems in which we live our daily lives are not. Because these collective goods are sustained by particular groups, it is important that they be assured negative freedom to do so unhindered by other groups. In some cases groups might even legitimately claim special rights to protect or sustain this cultivation ...” (Ingram, 2004; 192).

Ingram writes that to protect individuals can often mean to protect a group. He has an interesting reflection on individuals versus groups:

“First, many (perhaps most) rights attributed to individuals can only be exercised by them in tandem with others, as a group. Protecting the group in which the right is exercised – by assigning the group a right – thus becomes instrumental in protecting the individual and her or his right. Second, when an individual is harmed because of membership in a group, then other individuals in the group feel vulnerable as well. So rights are needed to protect individuals not as individuals but as members of groups” (Ingram, 2004; 192).

The either/or discussion about individual or group rights is given a refreshing new look here. The individual needs protection, and sometimes that means respect for the group in which the individual lives.

On the other hand, Ingram also makes demands of groups, for example immigrants. They have to accept “particular constitutional traditions and acquisition of a dominant language” (Ingram, 2004; 208). In the case of religious people, they may live by their sources and traditions, but they must be aware that these beliefs are not valid for others. For this reason, they must accept “the necessity of appealing to reasons shared across a broad spectrum of belief – reasons drawn from science, among other sources – in order to defend their faith-based initiatives” (Ingram, 2004; 201). Here, his understanding of dialogue is close to Rawls’ public reasoning, but without Rawls’ original position.

Ingram also takes up some of Lyotard's comments on law and the "differend", who is the one without a voice in the game of speaking (Lyotard, 1999). "A differend occurs 'whenever a plaintiff is deprived of the means of arguing and by this fact becomes a victim'" (Ingram, 2004; 41). An example of such persons today is might be people living illegally in foreign countries with no possibility to make their voices heard.

But the differend is also a subject in relation to lawmaking. Lawmaking is a relationship between those addressing and who are addressed by the substance of the law. Lyotard's analysis of the French Declaration of 1789 focuses on the language which combines the universal and the local: it was a universal declaration, but only for French men (Lyotard, 1988). The act of Declaration installed a law that actually silenced and made many persons into "differends". The rights were in fact privileges for a select group of people, who had the power to declare the law. The way in which the declaration brings together the abstract and the concrete "opens up a space for identity politics based on excluding those who do not have the right (European) form of rational identity" (Ingram, 2004; 38). Being French and a white male with a decent income and property was what counted; others were silenced.

Another issue formulated by Ingram concerns human rights in relation to the procedure of the construction and materialisation of rights. In our democracy, it is left to experts in various fields to close the gap between the general and open formulations of the rights and their concrete content. First, the lawmakers, the politicians, operate at one level in political processes. Second, the lawyers and judges interpret the laws and operate them in their own discourse. Third, we have the economists, the bureaucrats who calculate the costs entailed by the different rights, e.g. the right to education – how much should a state put into that right in terms of money, and what should the level of spending be in relation to the costs

entailed by other rights? What can one afford without having a bad influence on a country's economy with regard to inflation, and so on?

These levels operate on their own in separate language games. Lyotard and Ingram call them incommensurable, in the sense that the games do not communicate with each other. The logic of the games separates the levels. This is to see the interpretations of rights as a "hijacking" (Ingram, 2004; 41), where the experts tell the people what the meaning of rights are in practice, in law or in politics. Ordinary people have handed over the power of implementation and interpretation to the experts – because of their lack of competence.

As we have seen, Rawls attributed a special responsibility to the groups just criticised by Ingram, a special responsibility for justifications in public reasoning. Ingram for his part sees those groups of experts as a threat to human rights. Ingram's theory advocates a dialogue with space for ordinary people. It is crucial for him that ordinary people from the different groups with different foundations of human rights can agree on human rights and discuss their meaning.

"Most important, if rights are not to be regarded as imposed from above, they must – at least in principle, if not in actual fact - be agreeable to all concerned. As progressive realists have argued, such rights must be defined and legitimated in accordance with democratic procedure that allows for the freest, fairest, and most reciprocal communication between different legal languages and group perspectives. Indeed, even human rights must encompass this plurality. Although such rights by definition protect capacities that are universal to human nature, what defines human nature are particular languages of interpretation that reflect our distinctive social, cultural, and economical standpoints. In short, rights are perfected ... by democracy and identity politics" (Ingram, 2004; 178).

The dialogue on human rights is vital here, as a broad dialogue in view of the legitimation of the norms and also as a discussion of the interpretations and the priorities of norms.

3.3.2. Iris Marion Young

As a professor of political philosophy in the USA, Young's main focus is on political theory rather than on human rights, but her theory contains elements which are relevant for deliberative theory. In particular, I have in mind her reflection on participation in political dialogues and in public reasoning.

The common understanding of law and rights is that they are equal for all: they "transcend particularity and difference" (Young, 1998; 263). Everybody is supposed to have the same status with regard to the law and rights. This can be called a universal citizenship and it is based on:

"(a) (generality) universality defined as general in opposition to particular, what citizens have in common as opposed to how they differ, and (b) (equal treatment) universality in the sense of laws and rules say the same and apply to all in the same way; laws and rules that are blind to individual and group differences" (Young, 1998; 263).

In this perspective there is no room for particularistic interests. To take part in discussions on rights, one must be able to take the position of a universal citizen and eliminate the private. Young criticises this universalism, since she finds that "such an impartial general perspective is a myth" (Young, 1998; 270), and she contests a core element in Habermas and Rawls, i.e. the universal thinker or impartiality, "the ideal of disembodied and disembedded reason ... is a fiction" (Young, 2000; 63).

The problem for Young is that the so-called common interests or universal law are based on some groups and exclude others. The universal is defined by those in power, and as such the "the principle of equal treatment tends to perpetuate oppression and disadvantage" (Young, 1998; 265). Some people and groups experience common laws and rights not

bringing justice: they are continually exploited and lack the goods and rights that they see the privileged have.

According to Young, one of the strategies that manage to reserve privileges for the dominant groups is the dichotomy between public and private. Only the general is legitimate, and when private aspects arise, they have to be suppressed because they are particularistic and irrelevant. In other words, these perspectives are accused of advocating only private interests and losing sight of the common good, with the result that women, working class people, coloured people etc. were (or still are) disqualified from public debate, because of a perceived lack of generality or neutrality. The issues which women and other groups took up were defined as private.

Young does not reject the ambition of achieving a common reasoning and law, but before we can reach that stage, groups which have not been given a voice must be heard. This leads Young to defend group-based rights. Because groups have been silenced by the structures, they need rights to give them protection and influence in society; in fact, the general rights have been oppressive and exclusive. For Young, these groups are the oppressed, but they need not be cultural groups. As I have mentioned, she refers to groups based on skin colour, sex and social class.

The oppression not only affects individuals. If the various oppressed groups and their experiences are to be heard in public deliberation, they need to be empowered to have influence. She argues for an inclusive democracy, or what she calls a communicative democracy, which looks for the solutions and the common ground as the outcome of an inclusive process of political deliberation.

Her interest is in justice, in the sense of bringing justice to the groups that democracy so far has silenced. In order to achieve this, there must be a concern to include the excluded and to have a pluralistic understanding of public debate:

“A conception of publicity that requires its members to put aside their differences in order to uncover their common good destroys the very meaning of publicity because it aims to turn the many into one” (Young, 1997; 401).

She turns the problem of diversity into a resource; the different experiences have a legitimate place in public debate, in order to avoid oppression and domination. The only way to achieve that is to bring their experiences into public debate and to make corrections to what has hitherto been the common good. “Group difference is a necessary resource for making more just and wise decisions by means of democratic discussion” (Young, 1997; 402). In the end, this undermines the so-called universal or impartial perspective, and means that every participant has a bias towards where she/he is coming from. The inclusive democracy opens up for participants and “reveals to me my own experiences as perspectival” (Young, 1996; 128).

Young is also involved in dialogues on a practical level. She argues that the way in which rules of public debate are practised, the form in itself, discriminates against those who do not master those legitimate forms of argumentation. As part of her project, she argues for more inclusive ways and forms of promoting one’s messages. She takes up the old topic of rhetoric:

“while argument is a necessary element in ... effort to discuss with and persuade one another about political issues, argument is not the only mode of political communication, and argument can be expressed in a plurality of ways” (Young, 1996; 125)

and:

“rhetoric (is) the best means to get publics to discuss important issues and have all the opinions and perspectives on them taken seriously” (Young, 2000; 67).

Concretely, she mentions storytelling as an example of one type of argumentation in an inclusive deliberative community.

In Young’s understanding, rhetoric paves the way for a closer relation to life, emotions and experiences, and for her this meaning reveals a broader spectrum of political voices which have been silenced in a purely formal argumentative debate. Rhetoric gives room for different forms of arguments: it is “an enlarged conception of democratic engagement” (Young, 2000; 79). An assumption she shares with Habermas is that democratic communication “should be grounded in everyday communicative ethics” (Young, 2000; 59), but at the same time her position is very different from that of Habermas. Applied to human rights, I take her understanding to mean that there must be a more inclusive deliberation about the norms and their interpretations, where marginalised people will hopefully be heard.

She shares with Rawls the intention of a public reasoning, but she is critical of the way in which he idealises the process. Both Rawls and Habermas have an excessively naive understanding of impartiality. As I understand her, impartiality can be achieved only through an inclusive dialogue.

3.3.3. Abdullahi Ahmed An-Na’im

Rawls was open to a variety of comprehensive views, among which he included secular and religious views. He recognised them as facts of a pluralist society. On the other hand, he operated with public reasoning as something independent of the comprehensive views. His contribution raises several questions, e.g.: is it possible to have a public reasoning

which is not influenced by comprehensive views? We have seen in the previous section that Young did not think of this public reasoning as neutral. In the present section, I will address some aspects of An-Na'im's thinking. His starting point is a religious position with an African Islamic horizon. He is a Sudanese working in the USA as a professor of law with Islam and human rights as his specialties. In his thinking, he takes up several of Rawls' concepts and introduces new elements into them. He sees human rights as a consensus project, and like Rawls he understands this as an overlapping consensus. It is "a deliberate effort at building an overlapping consensus around the normative content ... of human rights" (An-Na'im and Hammond, 2002; 16). He transposes the overlapping consensus from one single pluralist society to an international cross-country and cross-cultural consensus.

This effort to build an international human rights paradigm faces several challenges, since their historical roots lie in the West, and few African or colonial states were involved in the process of developing the human rights instruments. But despite these problems he argues that human rights can and should be relevant in Africa too. However, if human rights are only seen as enforced from the outside, they will face resistance. "I maintain that the lack or insufficiency of cultural legitimacy of human rights standards is one of the main underlying causes of violations of those standards" (An-Na'im, 1995b; 19). Human rights must find support from within local cultural and normative traditions, if they are to be accepted. I understand these local normative traditions as An-Na'im's version of comprehensive views.

An-Na'im understands cultures as dynamic and changeable. He believes that "culture is a primary force in the socialization of individuals and major determinant of the consciousness and experience of the community" (An-Na'im, 1995b; 23). This means that one has to take these cultures seriously. He sees internal processes, but also cross-cultural dialogues, as

important for change: “the process of cultural transformation can be seen in terms of internal discourse and cross cultural dialogue” (An-Na’im and Hammond, 2002; 33). An-Na’im together with Hammond also says:

“Since different cultures embody varied moral views, would it not be a form of cultural imperialism to use the standards of one culture to judge another? The only way to avoid that charge, we suggest, is by developing and applying a collaboratively constructed set of standards that are not peculiar to a specific culture, if not equally valid for all cultures. This is what the human rights paradigm should seek to achieve, and is capable of achieving” (An-Na’im and Hammond, 2002; 34).

What they here request is similar to Rawls’ public reasoning.

An-Na’im is clear about the need for an internal process in local normative traditions and at the same time for a cross-cultural dialogue.

“I propose to broaden and deepen universal consensus on the formulation and implementation of human rights through internal reinterpretation of, and cross-cultural dialogue about, the meaning and implications of basic human values and norms” (An-Na’im, 1995b; 21).

He is also clear that: “human rights are meaningless unless they are universal” (An-Na’im and Hammond, 2002; 18).

An-Na’im is inspired by Rawls and his concept of public reasoning. An-Na’im takes up this concept, but he calls it civic reason. Civic reasoning is based on acceptance and participation by the citizens, and argumentation should mainly be generally acceptable;

“let me first recall my definition of civic reason as the requirement that the rationale and purpose of public policy or legislation be based on the sort of reasoning that most citizens can accept or reject and use to make counterproposals through public debate without reference to religious belief as such” (An-Na’im, 2008; 100).

As in Rawls, the debate should be conducted and the principles should be argued for in a way acceptable to everybody, independently of comprehensive views.

But An-Na'im differs from Rawls in his understanding of the relation between comprehensive views and public reasoning. An-Na'im argues that Rawls draws too much of a distinction between the two. An-Na'im thinks that the comprehensive views will have more impact on public reasoning than Rawls seems to think. An-Na'im holds that quite often, arguments in civic reason will be inspired and guided by the comprehensive views the participants hold. As I read this, An-Na'im thinks that public reasoning is not as impartial as Rawls seemed to think. It is influenced by comprehensive views.

An-Na'im is also aware of "power relations between different participants in these consensus-building processes, within as well as among cultures" (An-Na'im, 2008; 114). He points to a problem of power and dominance, but as far as I can see without discussing the kind of consequences this may have for the dialogue in civic reasoning.

Another difference is the location of civic reasoning. Rawls attributed a particular responsibility to the judges, and in particular to the judges in the high court, as well as to the bureaucrats and politicians to deliver justifications of the norms in the public reasoning. This takes the public reasoning away from ordinary people. An-Na'im disagrees with this and wants to see public reasoning taking place in the news media and other public arenas.

An-Na'im sees human rights in a framework of overlapping consensus. He concretises the need for internal processes among the comprehensive views and he highlights the problematic aspects of the public reasoning. On the one hand, he argues for a common ground, but at the same time he thinks that this space is influenced by comprehensive views, and this in turn is related to the power of the different comprehensive views.

An-Na'im has done much work on bridging human rights and Islam. We find similar projects in other major religions like Hinduism (Sharma, 2004, 2006, Pannikar, 2000) and Buddhism (Keown et al., 1998, Perera, 1991, Garfield, 1998). They all attempt to integrate human rights into their way of thinking, but they have difficulties with various aspects of human rights, like the human rights' lack of duties. There are several positive links but also complicated aspects of the projects, such as internal disagreements in relation to human rights (Bielefeldt, 1995).

Charles Taylor takes up Rawls concepts of overlapping consensus in relation to these diverse religious and cultural divides. He requests a cross-cultural dialogue in which these different normative traditions may also influence and improve the human rights instruments. Taylor sees this process as a way to "unforced international consensus" (Taylor, 1999; 124); a similar position is held by Galtung (1994).

3.3.4. Bikhu Parekh

Parekh presents a theory which emphasises community, identity and culture, a political theory about multiculturalism. He is a professor of political philosophy in England. He holds a communitarian position. He clearly represents a different political theory from those presented above. In his view, most political and rights theories are insufficiently involved with dimensions of identity. We have seen that An-Na'im gave more room for comprehensive views than Rawls, and that An-Na'im's primary concern was with cross-cultural dialogue as a dialogue mainly between the West and Africa. Parekh gives even more room for identity and culture than An-Na'im, and he focuses on the issue of how to live

together in a multicultural society. When he talks about cross-cultural dialogue, he refers to an internal dialogue, within society.

He is critical of Rawls' public reasoning that goes back to the "original position".

Parekh makes his view very clear:

"John Rawls' view in his *A Theory of Justice* that universal principles are best arrived at by exploring what individuals would agree upon behind the veil of ignorance fares no better. Although it ensures impartiality and filters out morally irrelevant considerations, it is open to several objections. He so oversimplifies the process of moral deliberation that it bears little relevance to human life as we know it. Individuals behind the veil of ignorance are almost identical, thinking in the same way and being guided by the same considerations as others. Furthermore, they all reason privately on the basis of their own interests, and do not engage in a transformative rational discussion that might force them to be clear about what they want and to change their views. Rawls even suggests that we might imagine a courier collecting their proposals, and informing them when they have come to an agreement. By removing religion, culture, nationality and so on, which profoundly shape people's views and values, Rawls makes moral deliberation and agreement infinitely easier than it is in reality" (Parekh, 2008; 212).

The public reasoning in John Rawls' theory is based on an impartial and neutral ground for reasoning, where his "original position" is the basic and recurrent position. Parekh does not share the assumptions on which this anthropology, common in liberal political theory, is based. For Parekh, humans share a common nature, "common anatomy" (Parekh, 2000; 116), "common bodily-derived desires" (116), in short "a minimalist view of human nature" (115).

But this common nature is too thin to really deliver the substance of what is a good life and society, both of which are rooted in culture. The most influential dimension, as I read him, comes from culture. "Human beings are culturally embedded" (Parekh, 2000; 120); our values, morality and so on come from culture, which is lived in communities. We are

embedded in cultures and relations as a basic condition of human lives. “To be human is to belong to a common species and to a distinct culture” (Parekh, 2000; 124). He sums this up:

“we do not automatically assume that others are either basically like us as the concept of human nature encourages us to do, or totally different as the concept of cultural determinism or culturalism implies. We approach them on the assumption that they are similar enough to be intelligible and make dialogue possible, and different enough to be puzzling and make dialogue necessary” (Parekh, 2000; 124).

In Parekh’s theory, the comprehensive views, which for Rawls belonged to the private, comes more into the public sphere. He does not accept the neutrality of public reasoning. For Parekh, it is impossible to have a public reasoning which is not grounded in a culture. What easily becomes “neutral” in a society will often be values from a majority culture. Parekh affirms that this means that the rules for public dialogue will necessarily be dominated by the strongest and most powerful traditions. But since modern societies are multicultural, there is a need to recognise the minorities, who, like the majority, will participate in the dialogue under the influence of their cultures. Dialogue is then cross-cultural.

A dialogue takes place in a society and this dialogue is regulated by “society’s operative public values” (Parekh, 2000; 267). These will mainly represent the dominant culture, and that is unavoidable; but these public values can be criticised and changed to become more open to minorities. Parekh argues that both majority and minority will have to adapt to a common ground in a way that is “bifocal” (p. 271), which means that both majority and minority are challenged by dialogue. It is not only minorities that must transform to fit into what is established: the majority too must change. The dialogue should have a “transformative effect” (p. 271) on all partners.

Parekh does not find proper institutions for political dialogues today. A new “public forum” must be invented (Parekh, 2000; 306) for this purpose. Behind his way of arguing lies an opposition to Rawls and Habermas. Parekh accuses them of being assimilationists: “for the civic assimilationist the public realm represents uniformity; and the private realm, which includes the family and civil society, represents diversity” (Parekh, 2000; 200). The assimilationist position means that minorities will have to adapt to the so-called public reasoning, which Parekh holds is dominated by the majority culture.

Parekh too has a concept of deliberation, which is reminiscent of Rawls; it

“requires participants to defend their views in a manner intelligible to others, it encourages them to appreciate the contingency of and thus to take a critical view of their beliefs. Contra Rawls, public reason is not a presupposition or a brute fact of political life but the product of political debate, and constantly reconstituted and pluralized by it. Political deliberation should therefore be judged not merely in terms of its immediate and tangible results but also its moral, epistemological and community-sustaining role ... Consensus is a subtle, complex and dynamic process, and we should not take a static and positivist view of it” (Parekh, 2000; 307).

Reason and consensus are processes and the results of dynamical processes, by which he means that there is more to these processes than just reasoning and agreements, or an “original position”. His theory about persuasion and argumentation is based more on rhetoric than on formal logic. To convince is not only a question of having the best logical arguments; rather, to persuade is “based on interpersonal sharable reasons and leaves room for judgement” (p. 308). The receiver is taken into consideration, and this moves this reasoning away from pure logic. It is intended to have an impact on the participants. To achieve this, one must be able to communicate and understand the receiver’s positions and to connect with her understandings. Arguments are “rarely compelling or irresistible” (p. 308), and it will most frequently be possible to argue from different positions and challenge the given argumentation. These disagreements are to be seen as a part of political deliberation.

He supports public reasoning and arguments, but not in a narrow sense, and again we can see how he argues against Habermas and Rawls: “Arguments represent particular kinds of reasons and involve a particular form of reasoning, and should not be equated with reasons or reasoning per se” (Parekh, 2000; 309). A cross-cultural dialogue will have to take into account much more than strict logical reasoning; it must be open to reactions and processes based on different perspectives, cultures and values. When formalists push logic in front of them they are in fact pushing one kind of culture in front of them, where the position of formal reasoning has become established as the most important, or as the way to solve normative and political issues. For Parekh, political deliberation is “contextual and culturally embedded” (p. 312).

So far, this presentation of Parekh has said little about his understanding of human rights. It is no surprise that he defends group and cultural rights: “individuals with different cultural backgrounds and needs might require different rights to enjoy equality in respect of whatever happens to be the content of their rights” (Parekh, 2000; 240). His standpoint on group rights is controversial. Cultural group rights are not generally acknowledged, (Kukathas, 1992), but some share Parekh’s view (Kelly, 2002). I do not go further into that discussion here, but I do not follow Parekh on this issue.

While as we saw, Parekh finds a ‘common human nature’ too thin to give general guidance, it opens up enough ground for a consensus on universal human rights, which are “born out of the ... cross cultural dialogue” (Parekh, 2000; 133). But as soon as he supports human rights, he finds points to criticise. There are rights that he finds lack general support, such as “freedom of expression, to marriage based on ‘free and full consent’ ... and unlimited property” (Parekh, 2000; 134). His position means that human rights dialogues too have been, and will be, carried on as a cultural dialogue, where differences are part of the process.

He touches on education in the course of his argumentation. He is concerned about “a multicultural curriculum” (227), which means teaching history and literature with respect for cultural diversity. Parekh looks for new forums for dialogue and envisages new public institutions, but he does not mention education as a possible place for learning and developing skills in cross-cultural dialogues; he mentions it (229), but quite superficially. Given Parekh’s concern for culture and communities, one could expect him to be more interested in how students in everyday life practise cross-cultural dialogues. A subject like human rights should be a suitable topic for that dialogue.

To sum up: we see that Parekh affirms that cultural positions and values will influence public reasoning. There is a pluralistic dialogue, and consensus is a result of cross-cultural dialogue. This dialogue or deliberation is guided by arguments, but in a broader sense than formal logic. Disagreements will also be a part of this process. Human rights belong to this cross-cultural dialogue, which is an ongoing dialogue related to foundations, interpretations and implementations.

3.3.5. Comments

Before I go on to comment on diversity in the deliberative school I will give a short overview of where the discussion has taken me. I have used the four last presented to develop the deliberative project, as I think that they put deliberation into another framework. I am aware that they have disagreements between them and that their agendas differ to some extent, but taken together they bring the normative dialogue into more real circumstances, closer to a real dialogue.

Young brought in a critique of dialogue. She is concerned about mechanisms which exclude people and groups from the dialogues. This is again related to the issues, the topics

for the dialogue, what is defined as private or public matters, what is discussed. I think Young has a good point when she argues that this can be a way to marginalise groups by not dealing with what are important issues for them. With Young, but also with Ingram, attention is drawn to experience-based groups and their influence or lack of influence in the dialogues. Both Young and Parekh gave more room for rhetoric with the intention to broaden and give wider access to the dialogue. They loosened the strictly formal argumentation which had priority in particular for Habermas, but also for Rawls. The last four presented take the dialogue closer to ordinary people, which I find beneficial. Ingram was in particular critical of the experts' "hijacking" of the human rights discourse, which is a challenge for the human rights project as I see it.

Behind this is also an admission that power and different kinds of influence or dominance may take place in dialogues. The way I understand this is that there is a need for dialogues, but at the same time a need for a critical eye on how they work, to let the marginal have more influence and voice and to protect the dialogues from being tools for the already powerful and influential.

Ingram and Parekh did see the dialogue as possible processes for assimilation. The majorities and their powerful ways of reasoning on normative matters can be taken as common ground and in that way they repress other ways of normative reasoning. As I understand Ingram the dialogues work as a balance between on the one hand segregation or isolation and on the other hand assimilation. Parekh and An-Na'im both admit more influence for the majority, but Parekh demands that both majority and minority adjust in the dialogues. To me this issue about assimilation in relation to normative reasoning is addressing an important dimension of the dialogues. Different cultures develop ways to reason on normative issues, and within cultures there are competing normative constructions.

Habermas operated with a universal reasoning and argumentation, and like Ingram argued this means assimilation because all have to reason in the same way. This is a challenge for human rights and in particular for HRE. I follow Rawls and Ingram in that there are several comprehensive views and legitimate ways to reason on normative matters, and I do not think that the “original position” represents an objective or neutral reasoning. As I see it we have several views and to find common ground is a process of dialogue between the views, and overlapping consensus.

For An-Na’im, Parekh and also Ingram the comprehensive views have an impact on public reasoning. For Rawls the public reasoning should avoid the comprehensive views. I follow An-Na’im and Parekh in that the public reasoning is influenced from the different views. The majority view will unavoidably have more to say, but it is a concern also to let minorities have an impact. People will be influenced from their comprehensive views and social positions or experiences when they participate in public reasoning, and public reasoning as a common reasoning is a product of these interactions, dialogues and processes. Public reasoning is an interesting and positive concept, but it is far more complex than Rawls thought.

Ingram, influenced by Habermas, meant that the dialogues should be transparent, which mean that people get to know why other people argue the way they do. He would make people hold each other to account, and let people challenge each other. In this way Ingram follows Habermas and raises a significant demand for accountability and transparency; yet to achieve transparency depends on trust, and for minorities or marginal groups that can be a challenge. Conversely, if there is going to be transparency this depends not at least on the majorities’ flexibility and ability to let the minorities feel free and welcome in the dialogue.

An-Na'im addressed the need for internal support for human rights in comprehensive views, which was also a point for Rawls. People must integrate human rights into their own normative systems or set of values. An-Na'im saw that this was essential for approval of human rights, talking in relation to different geographical areas, but I think that it is an important point also in relation to multicultural societies. People with different comprehensive views will have to develop internal support for human rights. At the same time they should in a multicultural society participate in public and common reasoning with argumentations which may be approved by others who hold different views. This means a double challenge, i.e. both external and internal dialogues.

An-Na'im and Parekh were the two who asked for concrete places for the dialogue. Habermas was not explicit on this and Rawls gave judges and political leaders a special responsibility. Parekh requested new, appropriate places for dialogues, An-Na'im placed them in media and places where people meet, and I would like to add the new social media and education.

Even if impartiality and reciprocity remain an ideal, the position now developed is more realistic, in the sense that there is recognition that it is harder to achieve in real life. Public reason will be influenced by dominant groups and dominant comprehensive views, and this makes it necessary to conduct a critical dialogue about how the dialogue works in public reasoning. For Parekh and Young the rules of the dialogue itself should be addressed in the dialogues.

Parekh also pointed out that there will be disagreements in the dialogues and there will not always be consensus. This is an issue which can torpedo much of the project in this school, it is a challenge how to deal with permanent disagreements and with groups not wanting to take part in the dialogues to find consensus. To resolve this problem would take

us into a lot of issues, such as whether those who refuse to take part do so because their issues are not dealt with or whether they are against dialogue because they have some kind of fundamentalist views. I find that Parekh has a point that there will be conflicts and disagreements not just within but about the notion of dialogue. There is also the issue that human rights cause disagreements over competing norms, such as freedom of expression versus freedom of religion, a conflict made very clear lately in relation to the Muhammad cartoons.

As I see it, the contributions from the last four have made the dialogues more complex and real. This has to do with a correspondingly development in the understanding of the complexity of diversity. Human rights operates in an arena of overlapping consensus: there are agreements but for different reasons, there are also disagreements because of different comprehensive views and experiences. There is a need for dialogue and at the same a need for a continual critique of the dialogues to allow it to be inclusive.

3.4. Diversity and the deliberative school

Diversity is a major topic in this school. Several of the authors presented use pluralism or multiculturalism as a clear context for their approaches. This is the school which most directly addresses diversity in relation to the construction and interpretations of norms in this thesis.

Habermas sees the need for consensus in democracies with diverse interests to secure stability, and to do that discourse is the way. He is concerned about letting all participate in the dialogues. Yet he develops his understanding of the dialogue in a way which reduces the

meaning of diversity. Everyone has to operate at a level of impartiality and reciprocity and apply the same formal logical argumentations. His pragmatic criteria are that everybody concerned with the norms should have a say in their development' yet the effects of this diversity are limited by the formal rules for the dialogue.

The diversity issue takes another twist with Rawls. For him the comprehensive views are real factors to contend with in pluralist societies. None of these views is possible to be taken as a common platform in a pluralist society. For him overlapping consensus and public reasoning were developed to meet the challenge of this diversity. He used the notion of comprehensive views in support of the common norms and argued for a public reasoning which should search to be acceptable across the divides. Rawls brings a framework for reflection on construction and interpretations of norms in a pluralist society, which should, as I see it, be applied to education of normative issues in pluralist societies, but that was not a concern for him.

An Na'im and Parekh were concerned about cross-cultural and multicultural dialogues. Both were close to Rawls' understanding of comprehensive views. They saw the comprehensive views as being more influential on the dialogues and understandings of norms than Rawls.

With Ingram and Young the identity groups were broadened from comprehensive views to also be related to social positioning – of class, ethnicity, disability and other experiences which individuals have together with other persons. The impact on normative dialogue is expanded to a range of groups with some common identities.

With the contributions from the last four the complexity of the normative dialogue became increased, but made the dialogues more real and for me more relevant. Ingram most but also Parekh related the process and the normative dialogues to the issue of assimilation or

segregation, which throws in what these issues are about: it is to balance respect for diversity with a need for common norms and universal human rights.

3.5. HRE and the deliberative school

In what follows, I will discuss the deliberative school in relation to HRE. First I will see how ideas from the deliberative school are applied in HRE, using the theoretical HRE sources. Then I will use perspectives from the presentations of the deliberative school which have *not* been discussed in the HRE sources for this thesis, which bring some interesting contributions. In the general human rights discourse, there is a strong commitment to deliberative ideas. In relation to HRE it is less influential: Rawls and his approach have had little influence, while some explicitly refer to Habermas.

Several authors in HRE use ideas that can be related to the deliberative school. In particular they build on human rights as a common ground or a consensus. This provides the schools with a normative platform in pluralist societies. Spencer states:

“The ethical framework provided by international human rights standards is particularly important in a multicultural country in which we need a basic set of common values which amount to more than the majority imposing their values on minorities” (Spencer, 2000; 25).

Lister comments:

“(I)t is important to assert that teaching about Human Rights, and the procedural values embodied in the Charter, are themselves in the consensus area. This is one great virtue of the Universal Declaration to teachers” (Lister, 1984; 6).

Some see HRE in relation to concepts such as the climate, democracy and participation in schools; we also met this in the previous chapter, from for instance Tarrow. Schmidt-Sinns argues that HRE should be done in a “climate” where the school and teachers themselves practise human rights “in a climate of openness in which controversial issues can be discussed and in which students believe that they can influence the rules and working in the classroom” (Schmidt-Sinns, 1980; 179). Dorsey relates HRE to a process of dialogue and participation (Dorsey, 1997). Cunningham relates HRE to fair processes when something wrong occurs among the students in the school (Cunningham, 1991).

These examples show much of the same spirit as we find in the general discourse in the deliberative school, but they do not explicitly refer to the authors of the deliberative school, nor do they adopt a broader set of concepts from the deliberative school. They stay at a general level of common ground and democracy in schools: schools are to function as a society in miniature, where students learn to practise human rights as the consensus ground.

Some educationalists do take on more of a deliberative framework in HRE and refer to authors who represent the school, such as Anja Mihr from Germany and Audrey Osler and Hugh Starkey, both from England. Mihr is also influenced from activity- and experience- or participation -based education but she also takes up Habermas’ discourse ethics in her understanding of HRE. She says:

“(T)he German philosopher Jürgen Habermas argues for a need for a discourse on human rights. Habermas aims to demonstrate that rationality potentialities are set within the communicative everyday praxis: a discourse or speech. Habermas’ answer is based in his theory of communication, which culminates in a conception of reason. This concept of reason claims the capability of joining universal foundations and concrete contexts of every day life such as experience of injustice and a universal understanding of human rights. In other words, human reason is able to combine the Golden Rule and

moral values with everyday life experience. It is reflecting upon to own day-to-day environment and enabling oneself to start an ideal dialogue in favour of ethical behavior” (Mihr, 2004; 14f)

“This ethical behavior is based on rational reflection of the outside world and transmitted through a communicative action via dialogue and speech ...” (Mihr, 2004; 39).

Mihr follows Habermas in his understanding of ethics; it is like “joining universal foundations”. As we saw for Habermas there is one common reasoning or rationality that gives content to ethics, or provides universal norms. It is possible to reason about everyday events in a rational argumentative language which everybody shares, and in fact all are in the same rational community. Mihr builds on this framework, with HRE grounded in this common and universal rationality.

Osler and Starkey discuss the need for common norms in schools. The background is the “lack of consensus about values education in England” (Osler and Starkey, 1996; 1). They argue that human rights should take the place of common norms and give education a needed normative platform.

“Schools, being in the public domain, need basic minimum standards, the ground rules within which diversity and creativity can flourish without oppressing others. The human rights values of respect for human dignity and equality of rights at least provide a minimum framework for decision-making. To reject such norms in the name of a worldview based on cultural relativism is to surrender the capacity to make rational decisions” (Osler and Starkey, 1996; 13).

They justify their position on human rights legitimation by referring to an international consensus, which is quite common in HRE literature, for example Benedek (Benedek, 2006). This refers to the fact that most nations have ratified human rights and reconfirmed them during the World Conference on Human Rights in Vienna in 1993, where “171 states, representing 98 per cent of the world population” (Osler and Starkey, 2005; 32) put their signatures to the reconfirmation of human rights principles. “There is a consensus view by

all the governments of the world” (Osler and Starkey, 2005; 32) that human rights are universal. They are of course aware of the lack of respect for human rights *de facto* in many countries, cultures and religions. Nevertheless, still the principles are recognised, and there is an international consensus on which they build.

Osler and Starkey’s understanding of this consensus is also linked to ideas similar to Habermas and Kohlberg and their rationally and argumentative based ethics. They operate on the post-conventional level in the Kohlberg hierarchy of moral reasoning, where the participants have reached a level which “looks beyond the group to a transcendental moral code. It takes its legitimacy ... from universal principles” (Osler and Starkey, 1996; 14). They adopt an ideal of rational universality when they establish a foundation for human rights. But as far as I can see, they do not always have a strongly rationalistic position. They take a more mixed view, where affective dimensions (Osler and Starkey, 2003) and also the role of identity (Osler and Starkey, 1999) are given a role in the development of democratic skills. Their argumentation on human rights is closer to Kohlberg and Kant than to Habermas.

However, this is not the whole story, because they also show a deliberative understanding:

“What is required is the building of a human rights culture where diversity is seen as a strength. Such a culture must include opportunities for all communities to engage in public debate and deliberation so that decision-making is informed not just by the perspectives of elected representatives and powerful elites, including those who are disadvantaged. Such decisions are more likely to address current injustices” (Osler, 2005; 4).

This is an inclusive understanding of deliberation where issues of power and dominance are also addressed, and minorities are included, so that decisions may be more just. Osler and Starkey support a deliberative democracy model as part of education, but the norms and the basis for this deliberation are given. Human rights are the platform which provides the basis

for the deliberation. “Human rights can provide a real primary guaranty of pluralism and equality for all” (Carter and Osler, 2000; 335) And this seems to be the position taken by the educationalists in this chapter: human rights are the ground. The references to a common platform or consensus refer to a platform already constructed and approved. They take human rights as a starting point. Human rights provide for diversity and overcome the differences. “HRE aims to overcome divergences in society through a self-reflexive education process focusing on human rights values” (Mihir, 2004; 14). Human rights are both the ground and the goal.

The project for the deliberative school is to achieve and give foundation for common norms in societies which are dominated by diversity. They provide a procedure to find common ground. They do this because they find that the common ground is needed and because it is difficult to establish. The natural law projects are not able to do the job alone. This deliberative project, which places foundation and developments of the norms in dialogues, in search for a consensus is not much discussed in relation to HRE. The references in HRE are to existing common ground and consensus and not to the processes or foundation. The deliberative project however revolves around normative dialogues where the norms are argued for and questioned again and again and given foundation again and again. This is a vital and necessary dialogue in a pluralist society. I regard as one of the best sides from the deliberative school their will to engage in normative dialogues which are always open to questions and which recall and test the argumentations which give foundation to the norms. I think this normative dialogue and discussion of human rights belong also to HRE. The dialogue should not take human rights for granted and as a unquestionable platform like

the educationalists in this school do. There should in HRE be place to ask critical question on human rights, and a place to argue for the norms.

In the above presentation of the deliberative school Habermas and Rawls gave two different models. Habermas has a limited influence on HRE, but I prefer Rawls model, which have had hardly any impact on HRE. Ingram criticised Habermas for assimilation and Rawls for segregation. Both of these have problematic sides, but I find Rawls, with modifications, to be more relevant to approach HRE in a pluralist society, school and classroom. Ray, an educationalist writing on HRE has also a comment on assimilation or integration of minorities.

“The right of minorities to variations on general education can be provided, even when they attend majority schools. The integration of minority ideals and content into lessons, and the affirmation of mutual rights and responsibilities, reflects a higher order of educational accommodation, legitimating diversity rather than tolerating it. Integration rather than assimilation or segregation reflects a step forward” (Ray, 1994; 30).

Ray’s integration has to do with a teaching of human rights as mutual rights and responsibilities. Human rights provide the platform to ensure that assimilation does not happen. Yet he appears not to reflect on the possibility that HRE also can contribute to assimilation. The common universal rationale which Mihr operated with means a form of assimilation as I see it. HRE needs to discuss this and Rawls opens up a different horizon in relation to diversity. There is an important distinction here between seeing human rights grounded in one universal argumentation and seeing human rights supported from diverse and conflicting rationales, from, in Rawls’ language, comprehensive views. For Habermas, Mihr, Osler and Starkey human rights achieve their status because of one common rationale. Rawls, Ingram, Parekh and An Na’im see human rights grounded in several diverse and conflicting rationalities. Human rights are as I see them an overlapping consensus project,

where people agree on the norms but for very different reasons. It is these overlapping consensuses that bring human rights their unique position and status. It is not because people share the reasons for why they are important, but because, despite conflicting reasons they can agree on human rights norms and still disagree on the reasons for why they are good norms. HRE has to start from this pluralist assumption and understanding of human rights.

Sumner Twiss comments:

“human rights identify a common morality of norms and values that are commonly regarded as being so important that they ought to be socially guaranteed ... but also a common morality that is not tied to some transcendental source of natural law ... Of course it is open to particular discursive ethical communities to use (or not) transcendental appeals as they see fit, with the understanding that that other communities might operate and reason quite differently” (Twiss, 2005; 655) .

Twiss thus refers to the common ground and the diversity in approaches to the same common ground. I like to see HRE in a Rawls inspired framework with modifications from his critics. The situation of pluralism in normative approaches represents a challenge and an opportunity for HRE, where HRE should, as I see it, both apply diverse comprehensive views to rights and let rights be argued for from diverse comprehensive views of students and others. To see human rights as overlapping consensus has a particular appeal and may work as an appeal in itself by showing the relevance and support for rights from a whole range of different comprehensive views.

The deliberative approach not only offers informative concepts and criteria for the dialogue, it also presents theories for practical use. It is a process. The dialogue or the deliberations are meant to be real and HRE should be places for these dialogues. The framework that the deliberative school offers should itself be a topic in HRE and the dialogue about rights. I will give more content on this later. Cunningham has an interesting argument for a community of discussion in connection to HRE:

“The philosophy of human rights provides a value system which is tolerant and yet firm. There is a recognition that, because of the indivisibility of human rights, reason and discussion will always be needed to resolve particular disputes and dilemmas. Human rights must not become another doctrine to be learnt by heart and applied by rule in every case” (Cunningham, 1991; 103).

I agree with the many voices in education who want schools to be democratic, so that they will be places where democracy is learnt. The deliberative approach is however more than school democracy: it is also dealing with the basic norms, why they matter and how they are to be understood. HRE should be a place for this dialogue. Formal and international political consensus cannot compensate for this dialogue, and HRE has a role to play in this. It is important that the dialogue or deliberation engage ordinary people and students.

The educationalists in this chapter start from the international and political agreements of the norms. Yet this is a too simple approach to HRE. In my experience as a teacher of human rights, I have several times encountered critical questions about human rights – both about the very existence of human rights and about how they work. These questions from the students should not be avoided, rather addressed. Mihr points to how there is a way to go before people in general understand human rights: “Surveys have shown that the normative understanding of human rights, such as that of the UDHR, is very limited among citizens in European countries and the awareness even lower” (Mihr, 2004; 35). To take a general support for human rights for granted is not a good starting point for HRE. I think Rudelius – Palmer who comments on HRE in a multicultural context is rights when she says that human rights can be provocative, HRE may be a sensitive subject. “Difficulties will inevitably arise, especially when dealing with sensitive subject matter like human rights”(Rudelius-Palmer, 2006; 141).

I think the deliberative school is right in their stress on substantial foundation, in order to get approval and acceptance of the norms. The natural law school approaches have their place in HRE as ways to make sense of the norms, but none of them should stand alone as the one right way. I think both secular and religious comprehensive views should be included, presented and discussed in HRE. This has also to do with the fact that the students have different comprehensive views or may not always have a clear or consistent view at all, even if probably leaning towards one. An-Na'im argued that there is a need for the "local traditions" to give internal support to human rights. In a multicultural society and classroom human rights have to communicate with the diversity among the students. The students have to make sense of human rights in relation to their own comprehensive views as well as their experiences. This addresses an issue that is usually overlooked in HRE, i.e. the fact that students will sometimes operate across cultures and have a range of complex internal processes. If they are allowed to talk about these processes, they will generate a variety of challenges that will activate diverse learning approaches and issues. Radcliffe has a relevant comment on this, in relation in particular to Buddhist and Confucianism where the "self" which we use as a concept in the West is foreign or absent. She says:

"We can now turn to reflection on the implications of the differing values on self-hood for the promotion and protection of self-fulfillment as a human right. In so far as education has a role to play in ensuring the free development of personality, it is important to understand the variation of meanings with which differing world views express self-identity and define self-fulfillment, and consider how these values might be reflected in education" (Radcliffe, 1994; 43).

I do not think that addressing students' internal processes towards self-identity are necessarily a task for schools or colleges; but we should be concerned about being relevant, meeting the students where they currently are, and allowing them to put forward their own questions and ideas. If HRE is "about changing belief systems and ways of acting" (Davies,

2000; 28), we must also surface their differing comprehensive views and that again means working around different belief systems to assess their relevance to human rights. It thus means allowing students with different backgrounds to ‘struggle’ with their human rights issues in a classroom or dialogical setting.

A number of comprehensive views contain practices and ideas which are in conflict with or even violate human rights. Lynn Davies writes about these intolerable aspects in her work on education and conflict (Davies, 2004) and against extremism (Davies, 2008). She is critical of many of the comprehensive views, and in particular of the weight given to religious views. But she is positive about an open dialogue where the controversial views, or even extremist views, can be discussed, “...permitting the expression of extremist attitudes, so that they can be discussed as attitudes and logic” (Davies, 2008; 149). A dialogue about human rights and the teaching of human rights may also mean confronting the norms, practices or values in comprehensive views, and HRE can be a safe and relevant place to undertake such confrontations.

This then links with *how* the dialogue and struggle takes place, and who is included. Habermas proposed one common argumentation in one common discourse. Rawls also looked for common reasoning and called it public reasoning. He had the view that the ‘original position’ was common and objective. But Parekh and An-Na’im argued that public reason is the result of a process of real dialogues under the influence of diverse comprehensive views and experiences, I follow them on this. I do not think there is one mode of common reasoning. Public reasoning will be polyphonous, floating and moving. The strongest and most powerful, the majority, will inevitably have more influence on public reasoning than minorities. Yet it is important to include minorities in that dialogue. There is no reason to think that this will be any different in classrooms or in HRE.

The question of inclusion relates to the issues that are discussed. Young made it clear that this is a sensitive area: very often marginalised groups have the experience that their issues are not dealt with in the dialogues, their issues are privatized. It is important in HRE to be concerned about an inclusive dialogue where minorities' issues can also be debated. Again this foregrounds room for diversity in HRE. Habermas and Young made a point about participation in the dialogue, in that in normative dialogues everybody affected by the norms should have access to the discussion. For Young, Habermas ignored the issues of power, domination and mechanisms of exclusion from the dialogues. It is important to be aware of that the issue of participation can be complex and that there are several ways to silence people. As well as consideration of minority views, it is important that students can argue over these issues and not let the experts “hijack” the human rights discourse.

The benefit of inclusive and participatory public reasoning is developing a space for argumentation and discussion both of norms and of contemporary issues. These dialogue spaces do not in fact need all the time to go back to discussion of comprehensive views themselves, but act to provide experience in how to reason and argue in public, how to get support for one's views from people with diverse experiences and belief systems. This means also that the students will have to recognise, as Young said, that their view may be partial or may not get broader acceptance. They may find some alliances across views and disagree with others; in that way public reasoning is multi-vocal and conflicting, albeit still in the public realm. This public reasoning now takes place in media, social media, internet, public meeting places and in schools, classrooms and in HRE.

Recognition of diversity and controversy relates also to the style, or form of the argumentation. Young and Parekh argued for rhetoric and storytelling. There should be flexibility and toleration of different types of argumentation, not only the formal logical and

argumentative argumentation of Habermas. HRE should follow Young and Parekh in these issues of participation and argumentation.

For both Habermas and Rawls impartiality and reciprocity were necessary requirements for the argumentation. In different ways, these principles were integrated into the theories as conditions for the dialogues. In HRE, the concept of reciprocity is often combined with responsibility, for instance by Starkey (1992). While the responsibility to accord others their rights is discussed in HRE, impartiality is less so. To me, both Habermas and Rawls have an excessively optimistic view of impartiality and of how easy it is to achieve. Impartiality cannot be taken for granted as a condition for argumentation. I follow the criticism by Young, An Na'im and Parekh, who argue that we will always be influenced from somewhere, and that when we think we are impartial, perhaps we are not. Impartiality is a very ambitious ideal and could be seen to be in contrast to a committed approach and the desire to persuade; people should be allowed to struggle for their rights in their self-interests, and the demand for impartiality can easily be used to neutralize people's claims, by designating their claims as not being impartial. Having said this, I see also the relevance of this ideal in a pluralist society not at least in relation to institutions such as education and courts and to the way they practice human rights. Rights that are fought for in legitimate struggles will have also to be reflected on in broad perspectives and what this implies for different groups. Both reciprocity and impartiality have a role to play, even if they are hard to achieve and have some problematic sides. They can be developed in dialogues where confrontations between different views and interests become visible and can be tested and evaluated.

To sum up, a normative dialogue takes place in tension both between comprehensive views and between different groups who have common experiences or competing identity politics. It is important to develop the understanding of public reasoning, impartiality and reciprocity, and of inclusive participation, and it is equally important to learn about common ground, overlapping consensus, and the value and dangers which these entail. These elements have a place in the inclusive normative dialogue, and it is essential to develop an understanding of the role of this dialogue. All these are tasks for HRE. Students should also learn to argue in ways that others can accept, and they must be accountable for their own arguments.

In the midst of these confrontations and exchanges in dialogues, human rights can show their relevance as common overlapping norms. This means that the dialogue must not silence comprehensive views, or differing value positions. Furthermore, this openness also opens the door to a critique of violations of human rights *within* comprehensive views, as in society in general. A dialogue which follows only Habermas' design for discourse ethics or Rawls' derivation from the original position will not do the job. I agree with Osler that: "the challenge is to nurture diversity and foster cohesion and unity" (Osler, 2005; 3). I have here taken the normative dialogue into the heart of HRE as a real and ongoing dialogue, where both the critique and the defence of human rights, as well as a reflection on disagreements and agreements, take place – a vibrant human rights dialogue.

Chapter 4: The protest school

In the present chapter, I shall discuss the “protest school”, what this school stands for in general human rights theories, and how it is reflected in HRE. I focus on main ideas in the school. It is Dembour who coined this label, and she gives the following definition of the “protest school”:

“human rights represent a perpetual calling, an ideal that can never fully be achieved. Human rights are not about entitlements, but about claims and aspirations. Protest scholars firmly believe that human rights are (a) are moral, (b) must be raised when they are not socially recognized, and (c) should concern every human being, especially those who are ‘forgotten’” (Dembour, 2006; 245).

I imagine that Dembour gives it the label “protest school” because these scholars are not satisfied with the established legal and political discourse on human rights. They take a ‘bottom-up’ approach to human rights against violations of these norms. At times, this leads even to fights against human rights experts and practices. It is a mixture of support and critique, and that makes this school very refreshing and interesting to study.

Another label might have been the “struggle school”. Many theoreticians understand human rights from a perspective of struggle, not at least historians and sociologists such as Hunt (2007) and Lauren (1998). Human rights are understood to have their origin in struggles, and they will also remain in a struggle, in a continual fight, because of their challenging messages and demands. These claims will be fought for inside and outside the traditional human rights forums: “The struggle for human rights needs to continue both within and beyond the legal debates and the corridors of international organizations” (Ishay, 2004; 354).

Dembour mentions key scholars whom she considers to belong to this school: Douzinas, Baxi and Levinas. I will focus first on Douzinas; I will include Levinas at those points where the ideas that he represent occur, since his direct involvement in human rights issues was marginal. The second thinker whom I will present at greatest depth is Upendra Baxi, who is the most relevant in the context of this thesis. Baxi is an Indian with a background as a human rights activist and participant at international meetings on human rights, but first and foremost, he is a learned human rights expert. His view of human rights is influenced by the experiences of a former colonised people. His view diverges from mainstream and common understandings of some main human rights issues. Another fact that makes him relevant is that he is one of the very few authors on human rights theory who has directly discussed issues concerning the education of human rights (Baxi and Mann, 2006, Baxi, 1997).

After the presentation of protest school theories I move to the implications for human rights education. Dembour says that HRE is dominated by views of this protest school, where we find a significant influence from Paolo Freire (1996) and his empowerment education. Some of the teachers of human rights whom I have met seem to find theories about human rights superfluous. They regard them as a waste of time, because what matters is to bring about a change and to use human rights for that purpose. This action-oriented understanding is likely to find an echo in the protest school. But some have taken the time to develop theories about human rights education from a protest school perspective; we will return to this below.

4.1. Costas Douzinas

Douzinas, who is a professor of Law in London, uses a postmodern approach in discussions of human rights discourse, which means that he could also have been regarded as belonging to the next school. Dembour has nonetheless included him in the protest school, and I agree with her. He takes a “struggle” approach to human rights. He has been, and still is, provocative for many in the dominant human rights discourse. His title *The End of Human Rights* (Douzinas, 2000) is controversial, and it is natural to read it against the background of Fukuyama’s famous book *The End of History*. But it is probably more than just the title that provokes. He has a critical understanding of the dominant human rights discourses. Douzinas argues that the dominant liberal discourse on human rights will lead to an end of human rights. He argues for a different view of human rights, a view that will save them from their end:

“Social and political systems become hegemonic by turning their ideological priorities into universal principles and values. The rulers must adjust their ideas to those of the ruled to have them accepted and adopted; in reverse, the ruled accept the (adjusted) ideology of the rulers as their own. In the new world order, human rights are the perfect candidate for this role. Their core principles, interpreted negatively and economically, promote neo-liberal capitalist penetration. Under a different construction, their abstract provisions could subject the inequalities and indignities to withering attack. But this cannot happen as long as they are used by the dominant powers to spread the ‘values’ of nihilistic ideology” (Douzinas, 2007; 196).

In this quotation we find a criticism of how human rights are used to serve liberal ideology and capitalism, which is a main target for Douzinas’ critique. But he also shows a potential for human rights, if they are used in a different, non-hegemonic way.

Douzinas names his enemies. First comes liberalism as a political and philosophical ideology, immediately followed by capitalism. The third element that he attacks is the

practice of human rights by the henchmen of liberalism in jurisprudence and bureaucracy, who are accused of reducing human rights to questions of minor technical legal issues and to bureaucratic and legal trivialities. Human rights move into corridors and meeting rooms for legal experts and diplomats. It is necessary to criticise the way the establishment in legal, political and also philosophical and ideological domains talk about and practice human rights. This scepticism and lack of confidence vis-à-vis the establishment and professional human rights experts is central to Douzinas.

Human rights may be formal and empty, following Douzinas, like for instance in relation to refugees, who are in need of human rights, which they in principle are entitled to, but do not get because they are not citizens of the state they fled to (Douzinas, 2007; 96-101).

Human rights must be restored to where they belong, to the grassroots and to those who experience oppression and violence and suffering. The real protectors of human rights, in Douzinas' understanding, are not the human rights courts or legal experts, but ordinary people, those who experience the lack of human rights: "human rights are still predominantly violated or protected at the local level ... human rights are violated or upheld in the street, the workplace and the local police station" (Douzinas, 2000; 118). As I understand him, the local level is the place where human rights have their potential, their force and their future, where people need their rights and struggle for real change in society.

Douzinas attempts to establish a transcendental philosophy of human rights, a foundation in a kind of natural-law tradition (Douzinas, 1994):

"... can there be an ethics that respects the pluralism of values and communities? Can we discover in history a non-absolute conception of the good, that could be used as a quasi-transcendental principle of critique?" (Douzinas, 2000; 13).

He constructs a platform where law is moving between the real and an ideal, which is the “quasi-transcendental principle”. His approach is however very different from the natural-law approach we analysed in the second chapter.

“Humanity is not a property shared, it has no foundation and no ends, it is the definition of groundlessness. It is discernible in the incessant surprising of the human condition and its exposure to an undecided open future. Its function lies not in a philosophical essence but in its non-essence, in the endless process of redefinition and the contentious but impossible attempt to escape fate and external determination. In this ontology, what links me to the other is not common membership of humanity, common ethnicity or even common citizenship. Each one is a unique world, the point of knotting of singular memories, desires, fantasies, needs, planned and random encounters. This infinite and ever changing set of events, people and thoughts is unrepeated and unrepeatable, unique for each of us like our face, unexpected and surprising like a *coup de foudre*. Each one is unique but this uniqueness is always created with others, the other is part of me and I am part of the other. But by being – always a being together – each is on the move, created and recreated in the infinite number of encounters with unique worlds of the other singular beings” (Douzinas, 2007; 57).

If I may permit myself a little irony, this quotation presents the essence in a philosophy which declares that it is against any essence. He refuses any common human nature, no essence; each human being is an individual and unique and cannot be subsumed under any common denominators or categories. There is no common human nature to ground human rights on. The individual is historical with a particular identity as a result of several experiences and influences from cultures and relationships and so on (Douzinas, 2002, Douzinas, 2007; 36-50).

Douzinas attempts to ground human rights elsewhere. He looks to the human imagination. Despite their differences, people share the imagination of freedom, authenticity and an end of suffering and oppression. This is a common imagination. Human rights belong to these shared imaginations. This is an important point in Douzinas’ assumptions:

“The imaginary domain of each society is partly constructed as a reaction to specific injustices and multiple instances of major and petty dominations and oppressions, it draws its force from the *a priori* pain of human life. When the struggle against injustice takes the form of human rights, they become invested with the energy and creativity of this imagination” (Douzinas, 2000; 341).

This imagination is utopian: “utopian hope is necessary and impossible” (Douzinas, 2000; 340). Human rights belong to the ideal, as opposed to the real, and that ideal can never fully take place. When the human rights experts deal with human rights, they do so in the sphere of the real, and they transform the ideal. They reduce and destroy the force and potentiality of the ideal. In Hegel these two levels, real and ideal, met in the Prussian state. Douzinas follows Hegel, but he does not believe that the real and universal ideal law will ever find a harmony. The universal law, which for Douzinas is imagined human rights law, is distant from the real. It is a utopian dream.

This split between the real, which is trivial and interwoven in forces and games of power and domination, and the imagined law of hope is vital for Douzinas. The ideal law lives at a critical distance vis-à-vis the wrongs in real life. This imagination lives between the yet and not yet. Human rights belong to this not yet. This not yet is a dimension of the critical force and potentiality of human rights, which are ethical rather than legal: human rights are the “instrument of ethics” (Douzinas, 2000; 353).

This is a world away from the bureaucrats and experts who deal with human rights as positive law, and from the practical and negotiable principles of law courts and politics. Douzinas sees this kind of human rights reductionism – and ‘equalisation’ - as an enemy. He believes in human rights as an instrument, a rationale for a continuous improvement of the “real” of today, in opposition to the “trivialities” of liberals and bureaucrats.

“(W)e must resist this equalisation of rights and human rights, which are the promise of a future and the critique of all positive law and systems of rights” (Douzinas, 2000; 374).

Further:

“resist the real in the name of the many rationalities to come” (Douzinas, 2000; 378).

The rationality of the real will change, and human rights must be open and offer a standpoint from which these current and future rationalities may be criticised, for otherwise, according to Douzinas, human rights will take its place in the histories of ideas as something that once was a nice dream. They will lose their force.

These quotations show that Douzinas focuses on diversity, emphasizing the individuals qua individuals will have diverse interests and have different rationalities. He is also concerned about different minorities for instance gays and the excluded like refugees. But when he refers to traditions and different cultures he becomes ironic: they claim rights, but in the end they themselves do not respect these rights. They are “like some Western communist parties, demand autonomy, human rights and respect for their practices only to use them to suppress smaller minorities in their body ...” (Douzinas, 2000; 138). Douzinas is supporting a radical diversity, which is grounded in his ontology which stressed individuality.

4.1.1. Comments

In a pluralist democracy, even without claiming group rights, people will organise and feel committed to groups or collective identities, interests groups, cultures, traditions, religion and languages – something they have in common with others and want to transform, uphold or preserve together. People are usually victims together with others, for structural reasons. Douzinas supports marginalized and excluded groups who struggle to get recognition, and he opens up for new rationalities which have not yet arrived. But for me, these new perspectives not only belong to the future, but are in fact also present in today’s

reality. What this diversity in rationalities may mean for human rights seems to me unclear in Douzinas' theory.

Despite this critical comment, I have much sympathy with his focus on individuals, with the affirmation that people should not be dealt with as common identities or essences. A Muslim woman is not only defined by being a Muslim, since there are many ways to be a Muslim and there are many ways to be a woman. To see the individual is to relate to the unique individual.

Douzinas' critique of the hegemonic discourse on human rights is relevant, when this reduces human rights to minimum standards, and priority is given to political and civil rights. His view of human rights as visions and imaginations affirms that there must be more in human rights than minimum standards. The idea of human rights as a radical vision is interesting, but if they are to have influence, it is important that they become positive law and can be enforced in courts.

Douzinas located human rights in the realm of the imagination and refused to accept a common ground in human nature as a platform for these rights. For Douzinas, the common ground seems to be based on experiences and reactions to suffering and oppression, as a result of which human rights become common imaginations. But I believe that there are diverse imaginations and hopes among those who 'suffer'.

I can nonetheless follow Douzinas in his view of human rights as a potential and critical force. I also understand parts of his critique of a human rights discourse which may reduce the force of these rights. He locates human rights, in a situation of struggle, on the side of the victims, and this becomes even more explicit when we now look at Baxi.

4.2. Upendra Baxi

Baxi, who is working in the field of Law at University of Warwick in England, approaches human rights from a perspective of social theory. His position is realism, as this presentation will show. He applies discourse theory as follows:

“By “discursivity”, I refer to orders of both erudite and lay (everyday) practices of the “rights-talk”. Rights talk (or discursive practices) occurs within traditions (discursive formation). Traditions themselves code for power and hierarchy, allocate competences (who may speak), construct forms (how may one speak, what forms of discourse are proper), determine boundaries (what may not be named or conversed about), and structure exclusion (denial of voice)” (Baxi, 2006b; 22f).

The “discourses” are every kind of speech, professional and educated, as well as lay people’s talk about human rights; and the discourses are theoretical and practical, philosophical as well as political. This establishes hierarchies, where some voices are acceptable and leading, while others are ignored and devalued. For Baxi, the human rights discourse is related to all of these levels. From his perspective, these levels must be analyzed in order to understand how human rights work as a discourse. This multifaceted approach is also reflected when he moves from analysis to prescriptions of what he thinks human rights discourse should be. Baxi is not only analytical: he is also normative.

“Respect for human rights entails sustenance of a complex, interlocking network of meanings and conducts at all levels: individuals, associations, markets, states, regional organizations of the states, and international agencies and organizations” (Baxi, 2006b; 166).

Baxi constructs his theory around two concepts, “modern” and “contemporary” human rights. This distinction represents an original opinion that goes against the dominant voices in the human rights discourse. The two types of rights have to do with several things,

but one basic issue is the origin of human rights. It is almost a truism that human rights are generated in western law, philosophy and history. This is a widely held belief, shared by very different philosophical voices, from Donnelly (1989) to Derrida (2002a). Baxi challenges this when he draws a distinction between “modern” and “contemporary” human rights.

According to Baxi, the “modern” rights are Enlightenment constructions which developed in the West. One core aspect of “modern” human rights was their logic of exclusion. What he attacks is an implicit violence, which was not an innocent side-effect, but was at the centre of “modern” human rights ideology, thanks to a distinction between those who were qualified or humans and on the other side those who were not so human and thus did not qualify for rights. The so-called universal was based on inclusion and exclusion.

“Only those beings were to be regarded as ‘human’ who were possessed of the capacity for *reason* and autonomous moral *will*. What counted as *reason* and *will* varied in the long development of European liberal traditions; however, the modern paradigm of human rights, in its major phases of development, excluded ‘slaves’, ‘heathens’, ‘barbarians’, colonized peoples, indigenous populations, women, children, the impoverished, and the ‘insane’, at various times and in various ways from those considered worthy of being bearers of human rights. The discursive devise of Enlightenment rationality constituted the grammars of violent social exclusion” (Baxi, 2006b; 44)

These modern human rights went well with colonialism, imperialism, liberalism and capitalism. What he calls “modern” rights were in effect white men’s rights: they had rights which others did not have. This was a very limited universalism, which gave a right to dominate and rule the world of those who were “not so human”, those who were insufficiently civilized or did not live up to European culture. They did not qualify for rights. Rather than provide protection, “modern” human rights opened the door for millions of people to experience violence, oppression, rape and suffering.

“We have noted repeatedly, how the histories of universality of “modern” human rights contributed to enormous human/social suffering during long periods of colonization and imperialism and also raised concerns regarding the production of rightlessness and human exclusion” (Baxi, 2006b; 196) .

In contrast, Baxi sees “the contemporary” human rights as inclusive. These are the rights developed in the aftermath of the Second World War. Unlike the “modern” rights, they are based on the proposition that absolutely every human being has human rights: being a human qualifies one for human rights. In this logic, everybody counts – in strong contrast to the “modern” rights.

Another aspect of the “contemporary” human rights which is very important for Baxi is that they are not the result of an exclusively European or western influence. The “contemporary” human rights are developed with the participation of the former colonized peoples. He sees these former colonies as a driving force behind much of the recent human rights documents and progress. He repeatedly attacks the common understanding that human rights are western in origin. For Baxi they are global forces. Different cultures and corners of the world have participated in the creation of “contemporary” human rights. One example of this participation is the role that the former colonized peoples had in pushing for self-determination on the governmental level during the years of the cold war, which led to decolonization. Sovereignty and people’s rights to decide their own future and destiny were the forces leading to decolonization: sovereignty should be given to those people and countries under former colonial rule. That was a dimension of the “contemporary” human rights.

Baxi asks for a new historiography of the origin of human rights. He sees the investigation of the various backgrounds to rights as necessary for the future of human rights, and his main point here is that “contemporary” human rights have roots in plural cultural and geographical places. The role and the participation of the so-called Third World in the

development of human rights have not been recognized, and according to Baxi, it is vital for the future of human rights that this should be done.

“The future of human rights is serviced only when theory and practice develops the narrative potential to pluralize the originary meta-narratives of the past of human rights, beyond the timespace of the European imagination, even in its critical postmodern incarnations. This work outlines the beginnings of a mammoth task. But it needs reiteration that such an endeavour must rest on the premise that *all nations come as strangers to the task of protection and promotion of human rights*” (Baxi, 2006b; 40).

He wants to pluralize narratives about human rights, in order to visualize their different cultural roots. He emphasises that the European Enlightenment’s rights, the “modern” rights, had a history in religious and philosophical traditions in the West before the secular version of Enlightenment’s rights took over. In similar ways, the roots of “contemporary human rights” in different cultures and traditions need to be worked out. One of the questions he asks is; “How did the classical traditions of thought (African, Buddhist, Confucian, Hindu, Islamic, and indigenous civilizations) configure the notion of what it meant to be *human*?” (Baxi, 2006b; 40). His argument is that these normative traditions also have standards about right and wrong, justice and injustice, as well as a concept of what it means to be human. For Baxi, to pluralize human rights is to show that these different normative traditions are familiar with human rights. “To say that the ‘non-Western’ societies and cultures did not possess notions of human rights is patently untrue; they did” (Baxi, 2006b; 36).

Baxi’s understanding of the “origin” of the “contemporary” human rights is also important in his argumentation about relativism, postmodernism and multiculturalism. These last three perspectives are often related in various ways to claims that human rights are rooted in the West and that they “colonize” the rest of the world, that they are the language of the dominant. Baxi attacks these understandings as wrong because, as we have seen

above, they give no adequate answer to the question of origins as regards “contemporary” human rights. Because Baxi sees human rights as products originating from east and west, south and north, he argues that they are not external, nor are they a way for the West to impose its will on the rest of the world. Baxi’s affirmation that the “contemporary” human rights have their provenance in all these diverse cultures, and that these rights are global, sweeps the carpet from under the relativist critique (and every other type of critique). There is no imperialism in “contemporary” human rights, as Baxi sees it.

“That arrogance which regards all human rights imaginations as the estate of the West, which others can at best only mime, prevents recognition of authorship of human rights by states and peoples of the Third World” (Baxi, 2006b; 183).

The critique by relativists, multiculturalists and postmodernists is in fact irrelevant, and based on incorrect assumptions:

“In complete disregard of the fact that contemporary human rights norms and standards are not monologically, but dialogically, produced and enacted, some critics of contemporary human rights still maintain that these ignore cultural and civilizational diversity” (Baxi, 2006b; 187).

As he sees it, “contemporary” human rights are from the outset rooted in diverse cultures, since such human rights are globally valid and possess *a priori* their cultural approbation.

Nonetheless, according to Baxi, the “contemporary” rights are threatened by the repeated reduction and manipulation of these rights under the influence of the logic from the older or “modern” rights. The politics and language of human rights continually risk ending up as Enlightenment exclusions which cause suffering and the violation of human rights in the name of the very same rights. He sees this expressed in parts of the human rights discourse, for instance when human rights become a tool for capitalism. He criticizes much of human rights discourse for these reasons.

Baxi acknowledges that NGOs are very influential in human rights discourse. They are active in both the formation of the discourse and the boundaries round it. He is in two minds about human rights activism. On one level, this is necessary for the human rights movement, but on the other hand, he is quite critical of it. He classifies human rights activism under different categories such as dialogism, evangelism, romanticism, and bureaucratization.

Dialogism is the movement which sees human rights as a dialogical process; it “assumes procedural deliberative rationality” (Baxi, 2006b; 89). We have seen above that he regards the origin of contemporary human rights as a dialogical rather than monological process, but here he is much more critical. In fact, he takes a negative view of deliberative dialogues. He attacks the strong movement which supports and argues for dialogues, claiming:

“The due process fetishism and the valourization of ‘even-handedness’ does raise grave issues concerning the mode of production of belief in the idea of ‘human rights’ among the growing communities of misfortune and injustice. For the violated, such forms of dialogism seem to serve more as a shield, than as a sword against the perpetration of terror as a mode of governance” (Baxi, 2006b; 89).

He criticizes the fact that the violators of human rights are invited to take part in the dialogue on the same level as the violated. This may delegitimize human rights “amongst the violated” (Baxi, 2006b; 89). As I understand him, the inclusiveness of deliberation may take away the force of human rights, so that in the end, these rights serve the violators. Baxi sees human rights not as compromises, but as claims justified by the victims against violators. Equal roles in dialogues is unfair and counterproductive for human rights norms.

With his designation of activism as “human rights evangelism”, he comes close to Ignatieff’s critiques of some human rights activists: “human rights has become a secular article of faith” (Ignatieff, 2001a; 77). Baxi too holds that these believers in human rights have a tendency to convert every kind of struggle into a struggle for rights. Every kind of wrong is interpreted as a violation of the relevant human rights. Baxi see here the risk of “creating a metadiscourse, betraying in the process, creativity, diversity, and solidarity in human resistance to violation” (Baxi, 2006b; 90). Human rights evangelism has an excessively strong belief in human rights, bordering on fanaticism. Unintentionally, such persons may become part of the problem in their ignorance and lack of respect for other ways of fighting against violation and human suffering. The evangelists absolutize human rights language in a way that has too little respect for human culture, history and differences. “The international Bill of Human Rights is their sacred text; human rights education is their mission” (Baxi, 2006b; 89). It is worth underlining that he relates this view to HRE.

Human rights romanticism, thirdly, is a label given to the participants who represent NGOs at international human rights summits. They are active and influence the documents and treaties which are produced by the conferences. They believe that this influence constitutes progress in human rights: “many ‘summit’-going NGOs feel truly empowered by the participation” (Baxi, 2006b; 91). Baxi criticizes them for being too optimistic and for exaggerating their contribution, because in real life, progress in human rights is not achieved at international conferences and by diplomatic negotiations.

The bureaucratization of human rights, finally, is another trend which Baxi criticizes: “more and more state agencies are established and justified as a creative state response to peoples’ aspiration for the future making human rights secure” (Baxi, 2006b; 92). Baxi

warns against this praxis because it eliminates the creativity and fresh approaches to human rights violation which we need. Through bureaucratization, human rights move into offices and end up as an issue reserved for state administrations. Human rights become a road to careers in a variety of professions. This may lead the persons involved to focus on their own interests, their own benefits and influence, rather than on the rights themselves.

Baxi is not only critical of human rights activism in its varied forms. He is also concerned about other aspects of the human rights discourse, in particular. how it may serve other interests such as globalizing capitalism. He speaks of “human rights markets”. Human rights are used in alliance with capital and with political powers, and become tools for the interests of both politics and capital. This is another threat which can make “contemporary” human rights revert to “modern” rights. They become universals in the interest of the few, and prevent the many from taking part or letting their voice be heard. This is the politics of domination and suppression. Rajagopal (2003) formulates a similar critique: the human right to development has been used as a tool by the government to impose devastating projects on its victims in the name of progress and development. Rajagopal’s main example is Indian authorities (Rajagopal, 2005) who sited a large dam where many people were living on their farmlands. They were obliged to leave without compensation or receiving any new land. Here the question concerning the right to development is controversial: whose development are we talking about?

The clause about exceptionalism in the Covenant on Political and Civil Rights is also well known: in an emergency, state authorities may set the rights aside for the sake of state security, and this has led to a permanent state of emergency in several federal states. Here, the rights are counterproductive.

Baxi's critique of human rights discourse is broad; he sees parts of this discourse becoming hegemonic and oppressive. Human rights must be protected from manipulations. If we are not careful, they may be used to enforce and create new victims. "All too often, human rights languages become stratagems of imperialistic foreign policy through military invasion as well as global economic diplomacy" (Baxi, 2006b; 157). If "contemporary" human rights end up like the "modern" rights, we will in future see people rising up against human rights:

"Wretched of the earth unite, you have nothing to lose but the chain of human rights activism" may well become the slogan of tomorrow. When the violated feel that like previous languages 'human rights' languages, too, fail to address rightlessness and violation ..." (Baxi, 2006b; 95).

According to Baxi, there are good reasons to be on our guard against the misuse of human rights

Baxi refers to postmodern and left-wing theories in his discussion of human rights discourse. Like the postmodern theories which he critiques, he too emphasizes the origin: where do the "contemporary" human rights come from? This question of origin is different from the one just discussed with regard to cultural roots in the West or the Third World.

The place of origin is now local. For Baxi, human rights are a bottom-up project: "In the making of human rights, the local translates its aspiration for a just world into the reality of global languages" (Baxi, 2006b; 184). This means that there is not one narrative of human rights, but many: "there is not *one* world of human rights but many conflicting worlds" (Baxi, 2006b; 11). Here, human rights are grounded in plural stories and locations.

Baxi locates human rights in the local sphere, and more precisely in human suffering. "The *moral ought* stands derived from an *inhuman is*. Put another way, radical evil is the

womb that nurtures the embryo of the ‘contemporary’ human rights” (Baxi, 2006b; 28). Human rights get their normative origin and force from people’s suffering, from pain, which is always concrete and has a specific location. In Nussbaum’s theory, human rights get their normative force from what a human needs in order to lead a flourishing life. Baxi follows a different route and denies that there is a human essence on which human rights can build: “there may not exist any trans-ideological ‘essence’ of what constitutes ‘human’” (Baxi, 2006b; 142). Further, he thinks the flourishing life is for the privileged:

“The notion that human rights regimes may, or ought to, contribute to the ‘pursuit of happiness’ remains the privilege of a minuscule of humanity. For the hundreds of millions of the ‘wretched of the earth’, human rights enunciations matter, if at all, as and when they provide, even if contingently, shields against torture and tyranny, deprivation and destitution, pauperization and powerlessness, desexualization and degradation” (Baxi, 2006b; 6).

The focus is not on human essence or happiness, but in contrast on human suffering as the source of human rights.

Baxi quotes Klaus Günther (1999) and writes: “human rights may best be understood as ‘the result of the process of the loss and recovery of voice with regard to negative experiences like pain, fear, and suffering’” (Baxi, 2006b; 199). Baxi gives suffering a crucial role in his theory, but he leaves many questions open.

For Baxi the basic step is to listen to the suffering, the pain of the victims. He recommends imagining what it is like to be the concrete sufferer and imagine a change of roles, taking on the role of the victims. From such experiences one may learn to see the world from a different perspective. “To give language to pain, to experience the pain of the Other inside you, remains the task, always, of human rights narratology.” (Baxi, 2006b; 159).

Baxi has a broad view of ‘suffering’, distinguishing necessary and unnecessary sufferings. Necessary suffering is when for instance patriarchal systems have to give room for equality, or apartheid has to give up its privileges. Both of these cause some pain for those who lose their superior status. Even human rights law involves violence. To implement human rights standards will often cause ‘inconvenience’ for some. The question we must bear in mind is: When is suffering necessary to achieve basic rights for others, and when is it unnecessary? According to Baxi, the discussion about necessary and unnecessary suffering should be an issue in human rights discourse.

He sees human suffering as the grounding point, a point zero of human rights. Human suffering entails a moral impulse – it is a moral obligation to respond. He thinks of suffering as something that we share and have a common understanding of. We can have different understandings of what it is to be a human, what is a good life and so on, but we share an understanding of suffering. Turner formulates it like this: “While there is a diversity of happiness, there is a unity of human misery” (Turner, 2006; 22).

In this context, we note once again the difference between Baxi and the postmodernists, in this case a different logic and a different understanding of identity. The postmodern understanding of identity is that it is fluid, multiple, contingent and even contradictory. Importantly, people can change and modify their identities themselves. In opposition to this, Baxi turns to people whose identity is imposed, e.g. the Untouchables in Hindu cultures. They do not have any options; they cannot change or transform their identity or life conditions, because of their imposed identity as Untouchables. Are not the sufferings one dimension of the imposed identity? Baxi writes that this suffering is real and imposed, not a game or a matter of choice.

Postmodern theories also have a tendency to see human rights discourse as a language of the dominant. But Baxi turns this around and claims that it is precisely the universality of contemporary human rights that means the inclusion of the excluded, so that they can claim their universal human rights (Baxi, 2006b; 178). Human rights give those who suffer under oppressive formations a tool to achieve an end to their suffering. As such, human rights include those who otherwise have no hope, or no way to claim their humanity. Once again, we can take the Untouchables as an example. They will never find support in the Hindu culture and religion for their claim to a decent humanity, but human rights as universal norms entitle them to claim their humanity, following Baxi. They are given hope and can stand up against local, cultural and religious oppression. Here, human rights include those who otherwise find no moral support in their own traditions. For Baxi, human rights is a language for the oppressed, not for the dominant.

In these examples, Baxi also shows his mixed attitudes to local narratives, cultures and religions. Earlier, we saw that they played a role in the development of human rights, as dialogue between cultures. But in the last section, the same rights return to the local cultures with a critique. Human rights are supported by different cultures, but act to criticize the same cultures.

Baxi warns also against discourse theories, since these may ultimately eliminate the reality of suffering and pain. Postmodern theories operate by seeing everything as discourses, as signs in oppositions to other signs in discourse: there is nothing outside of the discourse.

“This talk (discourse theories) *disembodies human suffering here and now*, for future ameliorative/redemptive purposes, whose status (at least from the standpoint of those that suffer) is *very obscure, indeed to a point of cruelty of theory*. The non-discursive order of reality, the materiality of human violence is just as important, if not more so, from the standpoint of the violated” (Baxi, 2006b; 24).

The suffering is real, it is not only a discourse. For the violated, the pain is real. For Baxi, this is “to take human and social suffering seriously” (Baxi, 2006b; 64). Here we see most clearly that Baxi is a realist.

Accordingly, it should come as no surprise that Baxi locates human rights in struggles against human suffering, in struggles to rescue people from domination, humiliation, oppression and pain. He shares this perspective with several others, e.g. Fields (Fields and Narr, 1992) and Heyns (2001). Another writer who thinks along these lines is Weston, who sees the ‘three generations’ of human rights as the result of struggles between different political visions and wills. The first generation concerns political and civil rights, the second generation concerns social, cultural and economic rights, and the third concerns collective rights: “The debate about the nature and content of human rights reflects, after all, a struggle for power and for favoured conceptions of the ‘good society’” (Weston, 2006; 23). Stammers (1999) investigates the circumstances and conditions under which human rights norms were created and enforced, since this can teach us how to implement them. He too sees the creation of human rights in the light of movements and struggles.

For Baxi, it is the local where the struggle is born and human rights belong.

“Thus the summons for the destruction of ‘narrative monopolies’, in human rights theory and practice, is of enormous importance, as it enables us to recognize that the authorship of human rights rests with communities in struggle against illegitimate power formations and the politics of cruelty. The local, not the global ... remains the crucial site of struggle for enunciation, implementation, and enjoyment and exercise of human rights. The pre-history of almost every global institutionalization of human rights is furnished everywhere by the local” (Baxi, 2006b; 158)

and:

“human rights values, standards, and norms are created by people’s praxes of resistance and struggle” (Baxi, 2006b; 94).

As we have seen in his critique of the bureaucratization of human rights, Baxi locates human rights in struggles far away from the diplomat's luxury meetings and conferences of the diplomats or even NGOs. The locality provides the real content and meaning:

“Some insist (like me) that the real birthplaces or sites of human rights are far removed from the ornate rooms of international conferences - being located in the struggle in the farm and the factory, the home and the hearth” (Baxi, 2006b; 81).

Baxi takes his definition of struggle from Foucault. It is a battle against powers both hidden and open, and at different levels. Struggles are “an opposition to the effect of power linked with knowledge, competence, and qualification – struggles against secrecy, deformation, and mystifying representation imposed on people” (Baxi, 2006b; 66). Human rights struggles have their place here, giving the strength to stand up against all these powers and the domination of the hegemony. These struggles seek to make a difference, to transform societies.

“Yet it remains important to understand human rights activism as a set of practices, forms of social action, that engage the ‘labour of transformation’. What do, then, the practices of human rights activism work with and transform? In the present opinion, human rights activism works with the raw material of human suffering arising from the denial of dignity, equal worth, and concern for all human beings. Its transformative practices combat human rightlessness at myriad institutional sites and with divergent ideological orientations” (Baxi, 2006b; 59).

Baxi and those who agree with him see the changes and progress in history as the result of struggles, for example the fight against apartheid, against slavery, for working class rights, or for women's rights.

These transformative struggles can mean two things: they can be episodic or structural. The episodic struggles are actions or events intended to intensify the focus on a wrong, as for example when some pop stars arranged Live 8 in 2006. It was a big event, but

had a short-term impact. The other kind of struggle is structural, aiming at a more comprehensive transformation or structural change of society, where there is a will to change the deeper causes of the suffering. As we have seen, the struggle is carried out on several levels, and the deeper roots and the diverse expressions of the problem have to be transformed in order to bring about a structural change. A key concept – and dilemma - is ‘reflexivity’, for if only the participants change, but there is no change of the rules and the structures, the transformation will be superficial.

“The question ... is whether human rights reflexivity from below transforms just the *players* in the game or the very rules that constitute the grammars of the game and the notions of ‘playing’ and the ‘game’ ... Put another way, resistant self-reflexivity may as often serve the ends of dominance (politics *of* human rights) as it may (via politics *for* human rights) serve the ends of transformation of ‘a technique, a form of power’” (Baxi, 2006b; 120).

Baxi believes that NGO’s often act on the episodic level, where they join capitalists in human rights stunts. Instead, they should be critical and see the role of capitalism as part of the problematic forces. Human rights movements should be concerned about the structural level.

Baxi’s understanding of history does not include a state where these fights will become superfluous. Human rights live on in struggles, and will always involve struggles:

“the tasks of human rights movements are never ever done; global human rights movements emerge as a kind of permanent revolution!” (Baxi, 2006b; 211).

And:

““Human rights’ discourses forever carry the burden of a transformative vision of the world, which demands that the state incrementally become ethical, governance just, and power accountable” (Baxi, 2006b; 15):

What we see in Baxi is a double approach to human rights. He deals with it as a discourse where he uses postmodern critiques of human rights discourse to expose the

dangers in the discourse, where human rights language can support and camouflage the causes of oppression and domination. On the other hand, human rights belong to the oppressed and are universal moral and legal tools which again and again must be brought back to the basic level, to powerless people's fight for their rights and for an end to suffering – a suffering which is a real fact, outside the discourse. Human rights, as Baxi sees them, are not automatically good. We must be critical, identifying the victims who need them, and establishing for whom they are fair claims.

4.2.1. Comments

Much of Baxi's theory and argumentation is based on the distinction between "modern" and "contemporary" human rights which stands and falls with his historical interpretation of the development of human rights. Is it correct to posit such a gap between "modern" and "contemporary"? Will not the "contemporary" human rights be in debt to the "modern" human rights and build on these? Or, putting this point in a different way, there may be an important difference in meaning and implications, but there is nevertheless also a continuum between the two.

I find his critique of human rights discourse and activism interesting and relevant. But on several points he displays an ambivalence: on the one hand, he is critical, while on the other hand, he in fact depends on the same activists. He belongs to them, in that he employs the same discourse.

In the same way, he is ambivalent in relation to normative traditions. On one level, human rights are tools against oppressive cultures and religions, and overcome them. On another level, he sees human rights as a result of contribution from the different cultures.

The ‘multicultural’ background which he posits for human rights is also in tension with his other view about the origin of human rights. In the latter perspective, it is the suffering victims in concrete places that are the origin of human rights.

He does not make a synthesis of these views, nor does he comment on the tensions. Accordingly, it is up to the reader to understand and evaluate what is most important. I do not want to resolve the tensions, but the lack of human rights seems the most obvious place to struggle for human rights. However, I am not convinced that this alone is the origin of human rights. It is more likely that they have diverse origins.

Baxi’s concern is mainly on victims. He wants to be on the side of the suffering people. Often, these happen to be minorities of different kinds as well as people having different battles and struggles; as such, diversity becomes a perspective. He speaks also explicitly about cultural diversity in relation to the fundamentals of human rights.

In Baxi’s frameworks, human rights become revolutionary and always exist in a state of struggle. I find this relevant in some contexts, but not in all. His main construction becomes too much of an “either/or”. It is probably correct in the case of those without any human rights, who have the priority in Baxi’s eyes. People who may have most rights may want to struggle for the rights they do not have, but that is a different context from the victims whom Baxi addresses. His view is relevant in many places, but not everywhere. His reflection on suffering is thought-provoking, and I believe that it takes human rights into a cosmopolitical horizon.

I also find it interesting that he combines discourse theory with realism. Where discourse approaches can produce a distance and be preoccupied with language games, he protests with the realism of suffering: pain is real. Here he is close to Levinas (2007,

1993/2008) who also takes the other as real. In his language, “the other” is antecedent to language. The other’s suffering is a call to take responsibility for the other, and human rights are meant to protect the otherness of the other. Levinas locates human rights against a different horizon from Baxi, but both take human suffering as real and as a call to action. I share this perspective. Cotler sums it up like this:

“This then must be the task for the human rights movement wherever it may be. To speak on behalf of those who cannot be heard. To bear witness on behalf of those who cannot testify. To act on behalf of those who continue to put not only their livelihood but their lives on the line ... For in a world of growing indifference, characterized by the culture of narcissism and of the politics of appeasement, there are increasingly few who are prepared to stand, let alone to be counted” (Cotler, 1993; 20).

Baxi was critical of discourse theories’ ignorance of real suffering. But at the same time he was very serious about discourses and their influence: discourses too are real. Human rights too must be seen as a discourse, in my opinion.

4.3. The Protest school and HRE

A comprehensive understanding of HRE prevails in this school. It is a human rights culture which takes human rights norms not only into law, but above all into politics and morality, in order to make an impact on society. In the Ten Guiding Principles for Human Rights Education of the People's Movement for Human Rights Learning (PDHRE), authored by Steven Marks, we can see this over-arching approach. I quote paragraph 9:

“The mission and mandate of human rights education extends to the creation and development of cultures of rights wherein the basic material and non-material needs of all human beings are met and

all victims of historic discrimination, including indigenous peoples, excluded peoples, and ethnic minorities stand redressed” (PDHRE, 2006; 3).

PDHRE is an organisation whose understanding of HRE has a clear protest-school profile.

As mentioned in chapter one, Tibbitts, who is one of the founders and Executive Director of Human Rights Education Associates (HREA), organises HRE into three main types, the “values and awareness model” (Tibbitts, 2002; 163), the “accountability model” for professionals and the “transformational model” (Tibbitts, 2002; 166). It is the last which can be apprehended as a protest school position, and with this name, she introduces a key word for the protest school’s understanding of HRE: transformation. In the words of Magendzo: “Through human rights education, teachers are reinforcing the principles of transformative learning ... From this perspective, human rights education should be considered ethical and political education” (Magendzo, 2005; 142).

For the protest school, transformation through HRE addresses two main levels. The first aims to change the persons. HRE is meant to have an impact on the students, who are to integrate it into their lives, changing their behaviour and commitment and becoming active in support of human rights: “HRE has successfully achieved its aims if human rights becomes an inclusive part of the overall behavior of people” (Mihr, 2004; 12). It is about “fostering personal action” (Tibbitts, 2005; 107). Mihr and Schmitz say that HRE “aims at moving individuals from simple knowledge of abuses to an awareness that leads to activism” (Mihr and Schmitz, 2007; 981), and “HRE is designed to ... turn bystanders into activists” (Mihr and Schmitz, 2007; 981).

Closely related to transformation of the person, in this connection, is responsibility. Tibbitts’ third model is about “respect for rights as well as social responsibility” (Tibbitts, 1994; 366). HRE aims at making students familiar with the norms, but also making them

actively responsible, developing solidarity with those whose human rights are not respected. She moves away from a narrowly legalistic understanding of human rights. HRE is an ethical project: “Several components of HRE may be linked directly with a broadly interpreted moral education” (Mihir et al., 2008; 117).

The second dimension of transformation is the change in society. The protest school, as reflected in education, is more radical and direct than the other schools. Personal change is not enough; the further goal is to provide “social change” (Tibbitts, 2005; 109). One example is Margherita Rendel (1991, 1997), who sees human rights and HRE as a struggle for women’s rights.

This model of transformation is founded on a reaction to oppressions: the “teaching of human rights appears to be a reaction to human rights violations” (Quezada-Reyes, 2004; 37). Where human rights are violated or transgressed, societies are in need of change, of real and lasting changes. In the language of Baxi, these changes cannot be episodic, but should be the structural transformation of societies at deeper and comprehensive levels, the change of oppressive structures. HRE should be “transformative – empowering the people they work with to make changes in their own lives, as well as in their families, communities and institutions around them” (Tibbitts, 2005; 107).

One of the first to express this understanding of HRE was Derek Heater. It means not only knowing one’s rights, but also participating in the improvement of human rights.

“Teaching about human rights must ... lead inevitably to the denunciation of regimes where human rights are denied or abridged and to the mobilisation of the pupils for the protection and extension of their own and others’ rights” (Heater, 1984; 6).

This education cannot and should not be neutral; it must get people involved and mobilise them for change. “I really believe that education for peace is in a sense a revolutionary activity. For ‘education for peace’ read ‘human rights education’” (Heater, 1984; 6).

Tibbitts used the word “empowerment”, which is the second key word in this school. It refers to Freire and his “Pedagogy of the oppressed” (Freire, 1996). The understanding of HRE in the protest school gains inspiration more from Freire and theories about transformation than from theories about human rights themselves. The key is action-oriented practitioners: they “are ‘doers’, people whose lives are dedicated to action ... few have had the leisure or inclination to write about their work” (Flowers, 2004; 120).

Teachers of HRE in this school integrate it into Freire’s framework and see HRE as an empowerment project. Examples are Meintjes (1997) and Modrowski:

“As long as human rights educators are content to disseminate knowledge of human rights instruments without creating space for transformative action within a society, then human rights education will remain merely informative” (Modrowski, 2006; 66)

and:

“HRE programs which do not go beyond the transfer of information cannot be considered programs of learning” (Modrowski, 2006; 73).

Joel Spring, on whom I commented in chapter two, can also be mentioned in this connection.

“Learning about” is a passive learning and repetition of the “right answers”, but “empowerment” focuses on getting people committed and active, giving them the ability and the space to analyse their situation, their understanding of their problems, and to stimulate them to formulate what has to be changed, developing ideas about what to do in order to correct the situation. It means giving people the ability to claim their rights and to apply

these rights in relation to and in their own living conditions. This must be translated into action, thus transforming the situation.

Traditional education, teacher-controlled, is in Freire's terminology "banking" education, the opposite of empowerment education. But HRE may also be "banking". "Rights understood as universal principles (rather than political goals) limit discourse to elite level of those sharing similar ideas, but fail to create a wider culture of human rights affecting all social levels" (Mihr and Schmitz, 2007; 992). Mihr and Schmitz' point is similar to Douzinas, who saw human rights as visions and ideals. Other approaches to HRE seem to be regarded as banking and as acting in the interest of the elite.

But at the same time, it is strange that Freire has become so popular in this school. I think Flowers has a point when she comments on this use of Freire in HRE: "In fact, I think Freire would reject the ideas of universal norms and standards altogether, along with most definitions of human rights education, as too 'top-down'" (Flowers, 2004; 120). I am not sure that he would have refused human rights, but I think that Flowers has a relevant point. HRE can easily be a top-down project, even within an empowerment framework. The teachers have the norms; they know what is wrong in society and they focus on the wrongs. It is they who possess the knowledge about the situation and what to do and how to do it.

Alicia Ely-Jamin reflects on this issue of the relation between "bottom-up" and "top-down" with regard to HRE. She posits them in a dialectical process, even if she also sees "human rights as implying empowerment" (Ely-Yamin, 1993; 643). She structures her essay around dialectical oppositions, one of which is between the students' life experiences and the curriculum. The tension is between what the students know and experience on the one hand, and a given content formulated in a curriculum on the other hand. This last formal position starts from the

“premise that the universal truths of human rights are far more important than the student’s petty and crude understanding of life ... human rights education in this view is ... that it transcends the self-centered life of the child by presenting a universe of truth, law and order” (Ely-Yamin, 1993; 674).

The norms and values are by nature above individual experiences. They are achievements which suspend the personal. From the point of view of a curriculum, human rights as a topic must simply be learned by the students. The other side in her dialectic is the life and the life experiences of the students:

“Human rights, in this view, should focus on the development of the student’s character and his ability to understand the world around him on his own terms, and not on inculcation of universal principles or standards, or ideologies” (Ely-Yamin, 1993; 674).

HRE, in this view, focuses on making sense of human rights in the contexts and the personal understandings of the students. It starts from the bottom. Yet she warns that this student-centred approach can however become empty, devoid of substance. It “can be completely vacuous” (Ely-Yamin, 1993; 675).

She posits therefore a dialectical interplay between these two positions. The abstraction of human rights, where their content is the same and unchangeable, “must be ‘problematized’ for these tensions between the ideal of human rights and the present reality” (Ely-Yamin, 1993; 676). Students have experiences before they enter schools, and HRE must relate to that. Her example is related to political participation, the experiences of rights in the USA by black and white persons. Both in the light of history and in contemporary politics, these experiences will show us how human rights are understood and evaluated. She is close to Douzinas’ understanding of rights when she claims that:

“the rights itself – or the concept of the right – may be a universal ideal, but to be effective the human rights class must explore how different experiences of rights assertion affects the students and society at large” (Ely-Yamin, 1993; 677).

Her argument is that the student’s own experiences should be used and be valid in human rights education; however, she also finds that a formal education in the norms is important. In the encounter between the students’ experiences and the knowledge of human rights, room is opened up for critical reflection on the relation between norms and life experiences.

Ely-Yamin also reflects on the dialectic between school and society. One position, the formal, sees education as a place where students learn democracy and how to practice human rights values. They learn the rules of democratic societies, e.g. about voting. This may also stimulate the students to discuss and get involved in democratic processes, learning to be participants in democracy, socialised into a human rights society. “The players – the major governmental powers – decide what is appropriate conduct” and “human rights might play a moderate role” (Ely-Yamin, 1993; 683).

The second type is system-critical. Students are to see the educational systems as controlled and defined by those in power, who may have open or hidden ideological interests with regard to education – since education is the most basic instrument available to state leaders for socialization. School is a kind of governance. This concerns HRE too. Eide formulates it like this: “A risk exists therefore, that human rights education conveys a selected set of values conforming to the particular make-up of the domestic political and economic system” (Eide, 1983; 115). In that case, socialization will ultimately mean prolonging and making natural the structures of oppression and injustice. In this way education can

“mean the adaptation also to the existing injustices, privileges of power and dominance, subordination in terms of class or ethnic group: in short, socialization to a pattern which contradicts the human rights requirements” (Eide, 1983; 113).

In this view, the “student is himself created by the pre existing power structures in society” (Ely-Yamin, 1993; 678). The consequence is that “before human rights education can be transformative, the nature of the social institutions in society have to be altered” (Ely-Yamin, 1993; 678). The school system must change, if it is to serve the students rather than the state authorities.

Ely-Yamin’s dialectical understanding seeks to combine the two positions, both the student-centred and the approach centred on formal knowledge. This assumes ‘autonomous moral judgement’ to be both the foundation and goal of HRE:

That is, it seeks to use human rights to imbue students with a commitment to the utopian promise while it simultaneously alerts them to the disappointment of the social reality” (Ely-Yamin, 1993; 684). “Human rights education must simultaneously instil and fortify a moral commitment to human integrity that transcends the vicissitudes of time and culture, and unveil the multivalent mechanisms of power that operate to deny that integrity” (Ely-Yamin, 1993; 685).

Students need to learn the principles, but it is equally important that the student manages to activate his or her own histories to see transgressions of human rights, and becomes able to have influence and transform society.

“The dialectical approach allows space for the student’s individual agency in the process of achieving human rights, but also recognizes the need for structural transformation. Neither of the two alone can realize the radical potential for empowerment that the human rights enterprise envisions” (Ely-Yamin, 1993; 680).

Ely–Yamin addressed the school system which is funded and controlled by state authorities, and she described the problem of formal education being a tool for socialisation

in the way the leaders of the society want. For this reason, many in the protest school do not regard formal education as the proper place for their empowerment approach. They look instead to a non-formal education as a more proper place for HRE. The protest school educators often prefer to “work outside the arena of public education” (Modrowski, 2006; 73). They engage in grassroots movements outside the formal education system, see for example Dias (1993, 1994, 1997), Ilkkaracan and Amodo (Ilkkaracan and Amado, 2005), and Claude (1991).

Dias calls this “the participatory Human Rights – empowerment approach” (Dias, 1994; 360). He is critical of a liberal understanding of human rights, which in his opinion is based on four myths. First, the myth about harmony, i.e. that human rights can be realised in harmony. He argues against this myth and claims that human rights must cause conflicts if there is to be a change: “the rights of the have nots can only be successfully realized by restricting the rights of the haves” (Dias, 1994). This is Baxi’s ‘necessary suffering’. The second myth we also recognise from Baxi; it is about universality, which for Dias too often has been “an excuse by the west to justify cultural imperialism to impose economic ideologies of capitalism and the free market system” (Dias, 1994; 355). The third myth is related to equality: he thinks that some are more equal than others in the dominant human rights discourse. The last and fourth myth is about governmental lawfulness. The human rights discourse pretends that the state authorities are lawful, but Dias argues that these authorities are often violators of human rights and do not obey the law.

Human rights and HRE are about development, according to Dias, and more precisely about development for the victims. Education is a grassroots mobilisation, a way to teach people their rights and to struggle for their rights against more powerful and often state authorities:

“Human rights lawyers will need to rethink their basic assumptions if they are to be of any help in work aimed at human rights education at the grassroots. They will need to start with an unlearning process: discovering how irrelevant is much of what they know and realising how little they in fact know. They will then need to undergo a relearning process: learning from the victims and realizing that education is not a process of ‘putting in’ but rather is one of ‘drawing out’. They will need to devise a people-based and not a law-based approach to human rights education ...” (Dias, 1994; 375).

An important part of transformation is the vision of the future and how we see ‘the other’. Nancy Flowers can be seen in some regards as taking a natural-law position, but what interests me here is that she takes up the issue about imagination and vision. We have seen how Douzinas gave imagination a central place as a source of human rights, and that human rights are a vision in his understanding; for Ely-Yamin, they are “a prophetic vision” (Ely-Yamin, 1993; 683), and “we deal in many respects with visions and visionaries” (Georgi and Seberich, 2004; 12). Flowers does not refer to Douzinas, but takes up these concepts:

“How do you educate for a vision? Neither law nor social justice nor ethics will suffice. Human rights education must address the moral imagination, that skill that enables one human being to recognize and respect another as essentially like oneself” (Flowers, 2004; 124).

This is a general invitation to imagination and the development of a vision for human rights. Yet there is a significant difference in the use of imagination between Flowers and Douzinas, because Flowers does not take suffering or victims as her starting point. She is committed to a general human rights imagination and vision: her vision is to stimulate solidarity. Flowers also calls for empathy with the other “as essentially like oneself”. Douzinas and in particular Levinas have another understanding of this, i.e. that the other is different from oneself. From Levinas’ point of view, to see the other “as essentially like

oneself” is a reduction of the other, it is a way to force her into something she is not, since she is not like oneself. For Levinas (1993/2008), human rights are rights which the other needs in order that they may protect her in her difference. Human rights are relevant because they protect the other.

This is a fundamental issue. Are human rights important because we are the same, or are they important because we are different? In HRE, the majority seem to share Flowers’ understanding, and they mostly do not comment or reflect on the positions expressed by Levinas and Douzinas (and there are significant differences between these two thinkers). To ignore this issue is to ignore possible human rights imperialism. As I see it, if there is no critique of the logic of “the other as the same,” there is a danger that these rights may be employed as instruments against difference and diversity. Human rights are “not only the rights of each and every one of us, but also and above all, the rights of others” (Leuprecht, 2006; 52).

Barreto takes on this issue in terms of empathy in relation to HRE, when he discusses *inter alia* Rorty, who wrote a famous article on the issue (Rorty, 1993). These thinkers undertake a comprehensive critique of the rational foundation of ethics, and this leads them to prefer to take emotions, and in particular sympathy and compassion, as the basis for ethics. “At the centre of this ethics is the moral sentiment of compassion or sympathy that aims, first of all, at the alleviation of suffering and turns into solidarity” (Barreto, 2006; 96). This is a moral programme in reaction to suffering. Education for human rights should develop and cultivate this sentiment of compassion:

“A sentimental education would point to make us more able to put ourselves in the place of those strange people who are the object of cruelty or destitution, who are in need or in pain, of those who have been victims of human rights violations” (Barreto, 2006; 104).

Sensitivity towards suffering is a goal here, and this should also be the heart of HRE. These sympathies are meant to influence politics and make a difference for the victims.

The understanding of HRE which Barreto proposes is not the same as Flowers' position, although they both talk about empathy. For Flowers and others, empathy is one expression and dimension in a holistic understanding of HRE, where empathy does have a place. Barreto and Rorty represent a more radical view, where empathy becomes the core element in HRE as a way to transform societies and to put forward the view of those who suffer – a protest-school position.

4.4. Protest school and diversity

As we have seen this school has a focus on victims. The commitment in the protest school is to the victims, to the oppressed, to those who are in need of human rights. There is a focus on marginalized and excluded people. Groups of people who struggle to get their rights are to be empowered.

The empowered may be groups of different types, but they must be victims – the central point is not diversity *per se*, except for Douzinas. In one way, empowerment means inviting the oppressed to claim their rights and to get their place in society. As such, empowerment empowers all kinds of groups. The empowerment project means involving the victims' own experiences and to take this as the starting point for changing societies. The protest school is in this way concerned with diverse groups and interests, with diversity. Empowerment, as a bottom-up process, means diversity, also with regard both to the people who make use of human rights and to how they will use them.

Mihr and others in this school express a will to incorporate groups who are suppressed. HRE should be:

“aimed at better integrating marginalized groups and allows individual to define for themselves what their need are and how human rights ideas can contribute to their well-being” (Mihr and Schmitz, 2007; 993).

Tibbitts formulates it as follows:

“The human rights-based approach calls us to a particular kind of inclusiveness – that of groups that are most likely to be excluded from the consultative process ... When we think of including the target group, or beneficiaries, we need to look further into the power dynamics within these groups and create avenues for participation as necessary” (Tibbitts, 2007; 4).

Some protest scholars in HRE also show an interest in local adaptation, making use of a local culture’s normative traditions in HRE (Marks, 1997, Quezada-Reyes, 2004): “it is important to take the cultural backgrounds, social circumstances and developing phases into consideration” (Mihr, 2004; 11).

Diversity is not a key topic, as it was in the deliberative school. The protest school sees human rights as a vision of a future where people have their rights and the different groups and cultures live side by side in respect of such rights. In this vision there is diversity. For writers such as Douzinas diversity in the sense of individuality, with rights allowing each human to be the individual she is.

It is Baxi however who stands out in this school as making significant comments on diversity in relation to human rights and HRE. He addresses a broader set of issues in relation to diversity. He is worried that human rights language takes over as the moral

language and replaces other moral narratives and languages. Normative challenges will be interpreted only in terms of human rights. Baxi warns HRE about this, because other normative traditions have much to offer in the way of guidelines for how to live.

“HRE needs to fully understand the contention that values and belief systems other than those crystallized in human rights norms and standards also define, and often more satisfactorily, ways of being, and remaining, human” (Baxi, 2006a; 23)

Baxi takes up the critique of human rights as one-dimensional and destructive of multiculturalism. He sees this danger in particular in relation to the combination between human rights and capitalism or consumerism:

“From the perspective of diversity and multiculturalism, many suggest that the definition of universal human rights reduces human diversity to a common essence. They suggest that universal constructs of being and remaining human might diminish cultural diversity, abate authentic human agency, and create the ‘End of History,’ at least in so far as human beings everywhere could become schooled as avid consumers of the processes and products of global capitalism. From this perspective, human rights theorists, practitioners and educators need to translate the ‘to be and to remain human’ as a human ‘right to be different’” (Baxi, 2006a; 22).

He defends the right to be different as a goal for HRE. Educationalists in HRE should be able to deal with diversity in the way they approach and understand human rights. Baxi sees human rights in many and conflicting narratives which stand in different contexts and worldviews, and which influence how human rights are approached.

“‘Human rights’ is one phrase, but it encompasses diverse realities and these invite many conflicted narratives. HRE must fully acknowledge and understand the many worlds of meaning in the practice of human rights” (Baxi, 2006a; 17).

This diversity comes from the different communities in the struggle for their rights, but also from different cultures. Baxi is clear on the issue of diversity in relation to human rights:

“HRE is thus irredeemably pluralist, multicultural, and even multi-civilizational” (Baxi, 2006c; 120). The diversity is related to geographical different areas, but also to multicultural and plural societies.

We saw that Baxi is supportive of diversity, of cultural and religious traditions, but at the same time he is very critical of the violations of human rights which come from the same cultures, traditions and religions. Often, oppressive structures are upheld in religious and cultural traditions; in that case, he states clearly that:

“HRE as politics for human rights combats the reproduction of rightlessness represented as a ‘natural’ human condition” (Baxi, 2006c; 119).

“HRE is always a process of learning and unlearning ways of producing truths about the human condition and a future where each and every human being marshals a power of voice” (Baxi, 2006c; 120).

Any oppressive structure has to be transformed in the name of human rights. Unlike the others in this school, Baxi brings diversity into HRE in terms of multicultural foundations and different groups or victims involved in the struggle.

4.5. Comments

Before I finish this chapter I will present some reflections on this school. As the educationalists in this school understands HRE, human rights are taken for granted or at least as an act of faith: “human rights education rests on a logically fallible basis of faith, requiring that we accept its value as self-evident” (Flowers, 2004; 106). Educationalists in this school seem to rely on human rights as self-evident, and have little concern or focus on foundations

or underpinning of the norms. I do not think human rights are self-evident, if they are so self-evident one should have expected them to arrive far earlier in the history and why is it so difficult to get recognition of several of the norms like the social, economical and cultural rights. I find human rights more complex and even controversial; they have to be argued for and given grounding, also in HRE.

For this school, the contexts for human rights are societies with a high level of suffering or clear victims. The people they focus on are victims who need to be empowered and the societies are in need of a deep structural transformation. Both those who are victims and those who are not victims must be made activists for human rights in solidarity with the victims, for whom they take responsibility. Their analysis of societies and contexts is relevant to many people and societies on the planet. This school has an appropriate approach for victims who experience most of their human rights as violated. And the model is relevant to people in societies with a general respect for human rights, but who suffer and need to have their rights realised. Human rights are about change and making human rights real for those who do not have them. (In relation the previous section their understanding of the human rights status in societies is hard to combine with seeing human rights as self-evident.) Yet for many others, such as people living in well functioning welfare states, this is too narrow. For people who may have some rights to struggle for, but have most of their rights respected, the framework becomes disproportionate. The reality of a non-suffering partial “victim” is not within the framework of this school. A similar bias is found in the affirmation by Baxi and Douzinas that human rights emerge from, are upheld in, and fought for in the local communities. They have a point, but it seems too one-sided, and this I find problematic with this school.

This links up to the issue of diversity, and we note two aspects. The first is the diversity or homogeneity among students. In my view, to see the goal for HRE as turning all the students into human rights activists goes too far. When this goal to change the students is so clearly expressed one should have expected that it was followed up with a critical reflection that this change may mean different things for different students, but there is too little reflection on the diversity among students and their visions. In this way, the perspectives and the HRE of this school are close to what Baxi called “evangelist”. Other normative traditions, cultures and philosophies are not thematised. While there is talk of student-centredness, and students’ life experiences, the students seem all to be the same in the sense of their response to rights, and all will take human rights to their hearts in the same way. It is may be for the same reason that this school does not stress a need for deliberative dialogues about entitlements and the development of common ground.

A different aspect of diversity is addressed, in the sense of the difference between minorities and majorities, or victims and non-victims. To be fair, the empowerment in the protest schools is aimed also at groups, so that these can have influence and a voice in society. This empowerment is for groups in need of support, and in this way diversity is included in the HRE aims of this school. However, the same type of empowerment programme prevails, irrespective of whether the groups are cultural minorities or any other sort of group. This commitment to diversity is indirect.

I think the question of diversity represents more challenges and has a greater potential impact on HRE than is reflected in the majority of writers in this school. Baxi had a complex understanding of diversity, but he was clear that human rights had multicultural roots and that this should also be a dimension of HRE. The task is to relate human rights to different normative traditions, traditions which Baxi argues can also be helpful for people in

their lives. This does not prevent him from also providing a critique of the traditions when they conflict with human rights.

Besides this, Baxi also holds that diversity is relevant with regard to the other source of human rights, the local communities in their struggles, where there are multiple narratives and perspectives which also conflict with each other. The narratives of the various groups will be different, because of their different contexts and their different wishes and concrete struggles. Dias mentioned a conflict between those “haves” and the “have nots”. But I assume that there can also be conflicts and different interests even among the “have nots” regarding what human rights ought to achieve for them. I believe that Baxi is correct to see these groups too, which do not map necessarily onto cultural groups, as elements of diversity. With Baxi, the homogenous human rights culture, which I think is common in the HRE of this school, has become multiple, diverse and full of contradictions; it is far more complex. I agree with Baxi that diversity involves the foundations and diverse understandings of human rights, as well as different narratives of struggle on the part of cultural and other types of groups, and that these are issues relevant and important to integrate in HRE.

Otherness and the suffering of others are core issues in Levinas’ philosophy. To him, it is necessary to see the other and respond to the claims made by the others’ pains. I find empathy and otherness significant. This means taking seriously the other and also taking responsibility. There is a risk of ending up in sentimentality, but for Levinas that is not the case. I prefer to approach this aspect from Levinas rather than from Barreto and Rorty, because they focus on sympathy, which easily becomes sentimental. Douzinas’ reflections on individuals as unique belong to a similar line of thought. This aspect makes hardly any impact on HRE in this school, but I think it ought to have made an impact. The tension

between rights as universal and common to all, and yet played out in very different individual circumstances, can be a point of discussion in the multicultural classroom.

The questions of suffering and diversity lead to another concern, the pedagogical bases for action, and who decides this. The revolutionary program in this school appeals to some, but as I have argued, it will not work everywhere. Victim, suffering and struggle are a triangle which reappears often in this school. Baxi introduced an interesting perspective on suffering. Suffering is a strong word, and HRE should also include reflections on what suffering means, the causes of suffering, as well as what it means not to suffer and how to get people out of suffering. These reflections should also include discussions of unnecessary and necessary suffering, and should not overlook the possibility that human rights themselves may sometimes cause suffering for some persons.

Yet to introduce such a topic in HRE is also to raise awareness and to search for a response to suffering. This relates to the “top-down” and “bottom-up” concepts in this school. It is the teacher who introduces and opens up concerns for reflection; my point is to question the role of the teacher in these processes. The teacher chooses what to address and knows human rights: the teacher has the know-how in the field.

From a bottom-up perspective, however, it is the students’ own response on suffering and their own life experiences that should be activated. The teacher is not in control of these internal processes in the students, nor of what the students make of it. The way they relate their experiences to human rights can probably be actualised in many ways, in relation to different human rights. In this view, what the student does and how she decides to take action is up to the student.

Helping others must be combined with a will to relate to the otherness of the other and be open to her solutions and issues. A HRE which is based on a general assumption that

all are the same can easily be wrong, because “victims” too may want different things. A gay Christian may need help and support to stand up for his sexuality against his church, but the strange phenomenon is that often the same person wants to be a member of the church which violates him, while others want support to leave the church. To be able to support the other, one has to be cautious and try to find out what is in the interests of the other. This can be a challenge, when the answers are different from what the helper finds good and right. A HRE from an empowerment perspective also needs the view of the other – or multiple others - since this may be different and may take human rights in another direction.

A potential programme of empowerment combining bottom-up and top-down becomes a top-down programme when diversity and reflection on the possible different responses and challenges from the students are ignored. The discussion in this chapter shows that the HRE in this school appears close to such a top-down understanding. The framework and guiding concepts give a strict direction and design, defining HRE from the top. I miss a discussion of the possible variety of reactions from the students. Students may become activists and take part in human rights struggles, and they may do this in a different way from that which the teacher finds best. Again, I come back to the goal of making students into activists. What about the students’ own wishes and perspectives? Do they not have the right to remain silent, to be passive? .

But before I leave the issue of control, I should like to state however that I find Ely-Yamin’s argument for the formal teaching of human rights convincing. It is necessary to provide knowledge and stimulate understanding of the norms and of the project of human rights, which in this case is political, moral and legal. This knowledge does come mainly from the top. I have tried to problematise empowerment, and stress that the role of the teacher is complex here. But I think that HRE, by providing an understanding of the

principles and the systems around them, may in itself work as empowerment. The simple knowledge of what one's rights are, and others' rights, without necessarily stressing activism, may generate the desire to struggle.

The last area of significance in the protest school is the treatment of discourse and the link – or tension – between discourse and “reality”. I find Baxi's and Douzinas' understanding of human rights discourse interesting. Both of them are critical of the influential use of discourse, in the sense that the misuse of human rights discourse poses a threat to the human rights mission. They find this threat inside the human rights discourse, identifying its presence it in the courts and diplomacy, and in the agendas of various NGO's. Douzinas criticises bureaucratization, trivialisation and liberal distribution, while Baxi is concerned about rights becoming “modern” rights, which for him means imperialist rights. He criticised NGO's for their romanticism and evangelism, for serving market interests and (in agreement with Douzinas) for bureaucratization. Their critiques are interesting. In particular, Baxi delivers a critique from within human rights. This focus on the power and use of language should also be relevant to HRE at one level, but I did not find much critical reflection on human rights discourse in HRE.

Discourse theories are language theories, and human rights can be seen as languages in different formations, within borders, with different participants who have various status and so on. But discourse theories see everything as language, operating within structures and with differences in language games. Against this, Baxi finds it necessary to claim that human suffering is real, that it takes place outside of language. Suffering is not primarily a word, it

is not something that first of all emerges in a language game: it is real, before it gets into language. Baxi has a telling comment on this:

“It is curious but true that while ‘ordinary’ people living under conditions of material and political deprivation understand this with overwhelmingly clarity, the ‘experts’ constantly worry about the real meaning of the words and phrases we invoke” (Baxi, 2006a; 19)

Yet language or discourse are also real in their effects: they may prevent one from seeing suffering, from seeing the other as another human being. Discourse can blind one. Baxi argues that the ‘modern’ human rights discourse dehumanised and made white men ignorant of others’ humanity, and that this is an example of how discourse may work. I follow Baxi’s critique of discourse theories, when he underlines that suffering is real and not a question of words. But I also follow him when he presents discourses as real and powerful. We are caught up in discourses, and they need to be deconstructed; it is very hard to break up established discourses, including human rights discourses.

With a different use of discourse, Douzinas sees human rights as “imagination” and “visions” which are born of the reality of a lack of human rights. It is a refreshing and different view from the other schools. For Douzinas, this is a way to avoid the notion of a “foundation” of human rights, placing them in the imagination and letting them remain as ideals which permit the criticism of societies. Imagination and ideals or visions may have a role to play, but not every imagination or vision is good; so we are left with the question why human rights are “good” visions. They must have better foundations than a mere reference to imagination. Dictators and imperialist countries have had imaginations about rights on the basis of their visions of the right to land or territory. It surprised me that there was so much reference to the vision in HRE in this school, because it is at the margin of human rights

theoretical discourse. Again, there are writers within this school who seem to think that visions and imaginations are simple and harmonious. I know that I repeat myself, but I think we will have to live with several visions and imaginations also in relation to human rights.

The main concepts in this school – victim, suffering, empowerment, struggle, change, top-down/bottom-up, power and vision – all concepts contribute to an understanding of human rights and HRE. But they should have a broader and more differentiated space and a less strict or oppositional framework from that which the school contributes. All these concepts belong within human rights discourse and HRE. In the next chapter we will see more analysis of human rights discourse from a school which centres around this mode.

Chapter 5: The discourse school

This chapter looks at what Dembour calls the discourse school on human rights. Like previous chapters I will present and discuss this school in order to show its understanding of human rights, and the relation to diversity. I will conclude by reflecting on what these perspectives may mean for education in human rights.

This is probably the most controversial of the schools presented in this project, and some may even see it as a threat to human rights. It is on the margins of the overall human rights discourse, but there are several spokespersons from different fields of knowledge who take these theoretical positions. We find them in postcolonial, anthropological, Marxist, feminist, critical whiteness and postmodern theories. They have different horizons and agendas.

The theories presented here share a critical attitude to human rights discourse. Yet the writers are not against human rights as are Deluze (2004), Badiou (2002) or Alastair MacIntyre, who famously said: “for the truth is plain, there are no such rights, and belief in them is one with belief in witches and in unicorns” (MacIntyre, 1985; 69).

This school is interested in the implications of human rights: what do human rights do? Whereas the first schools focused from within human rights, how to ground them, and how to realize them, now the focus is on how human rights are used and what the consequence of human rights are – what do they imply? The concept of ‘discourse’ in this school is different from Habermas’ use of the same concept: where for Habermas it means the normative dialogue, here it is the whole use of human rights that is the discourse. Some will call this a postmodern way of using the concept.

One of the issues on which this approach differs from the previous schools is in relation to foundations of human rights: “to find a firm foundation for individual rights is much more difficult than to claim that we have human rights” (Arslan, 1999; 200). There is little about foundation in this chapter; Derrida comes closest, but I think he would not accept it as foundation. He locates humans in an ethical normative field where human rights make sense; I will come back to this.

A topic in this thesis is human rights in relation to diversity. In this school, otherness, difference and diversity are central issues. Respect for difference and diversity plays a central role: we find critique of different types of discourses and how they may reduce or oppress those who are different.

In the presentations of the other schools, I have not necessarily followed Dembour’s list of contributors under the different schools, although I have stuck fairly closely to it. When I came to this fourth school, I decided to follow Dembour’s examples. I could have dealt with others like Rolando Gaete (1993) or Sonia Tascon (2008), but I decided to rely on Dembour’s list of contributors. First, I will present theories with an anthropological and postcolonial base: Talal Asad and Makau Mutua. A Marxist-influenced theory will be the next: Wendy Brown is also a feminist and a postmodernist. Thereafter I will present Dembour and her own understanding of human rights, which is rooted in anthropology. These four show different perspectives and give a good picture of what this approach represent.

I will further present Derrida. In Dembour’s book, he is mentioned as an inspirational figure for this school. Human rights are not a dominant topic in his writings, but he does discuss several topics relevant to this thesis. He delivers theoretical material which gives a

platform for HRE, more than the other presented in this school. I will introduce a few of his concepts which offer perspectives on what this school may mean for HRE.

After the presentations I will give some comments before concluding with a discussion of what this school mean for HRE pedagogy. As far as I can see, there are few educationalists in HRE who have adopted the perspectives from this school. I will draw on the presentations, and in particular on Derrida to develop some perspectives for HRE in this school.

5.1. Talal Asad

Talal Asad is an anthropologist with an interest in human rights and the implications of human rights from a postcolonial and anthropological perspective. Asad has a critical focus on the human rights discourse. He has an interest in understanding where human rights come from, but he is not only interested in a historical genealogy: he also focuses strongly on the consequences of human rights at the present time.

His historical genealogy is limited, but he argues that they have “Christian roots” (Asad, 2000; section 4). They came out of a Christian Aristotelian philosophy with roots in the Middle Ages, but became secular and then suitable for the French revolution and the American Bill of Rights. His point is to show the local historical roots of rights and how they have become secular and universal.

This “Christian” argument is in the forefront when he analyses Malcolm X and Martin Luther King’s rhetoric on human rights. The former took up human rights as universal and appealed to a universal solidarity to change the USA. But Malcolm X did not succeed in getting people in the USA involved in a human rights movement. On the other

hand, Martin Luther King did succeed in that, and the reason, according to Asad, was that he managed to communicate within the American “mythology”, which is a prophetic language. He took up the language of redemption: the time had come for USA to live up to democracy and redeem the people and give those without full citizens’ rights their full rights. The USA is the country which in its roots had redeemed its people and given them freedom – this is a deep American mythology, according to Asad. This story is based on the history that USA gave freedom to the people who came over from Europe, suffering from religious oppression. The story provides the USA with the vocation to be the voice of freedom and democracy in the world. Martin Luther King was able to enlist people in rights because used the American mythology and the local foundational story of the USA. The vision is universal and its mission is global, but its motivation and grounding are local: they are the “chosen” people with a universal mission. For Asad, human rights have Christian roots, and, as I understand him, human rights are still Christian but in a secular shape. “The American secular language of redemption, for all its particularity, now works as a force in the field of foreign relations to globalize human rights” (Asad, 2003; 147).

Another aspect of human rights history is related to political processes. Human rights became linked to nation states; the state was and is the guarantor of rights. So the development of the modern nation-state was a condition for human rights to become so influential, and this in turn was related to the development of capitalism and private property and ownership.

“The difficulty with secularism as a doctrine of war and peace in the world is not that it is European but that it is closely connected with the rise of the system of capitalist states – mutually suspicious and grossly unequal in power and prosperity, each possessing a collective personality that is differently mediated and therefore differently guaranteed and threatened” (Asad, 2003; 7).

Asad claims that human rights have not made a difference to the power relations between countries and within the countries. The powerful have kept their power; the universal human rights have not changed this.

Asad also takes up an argument by Foucault. Human rights are rights at a state level: it is the state that has the duty to provide its citizens with their rights, and this also gives the state a power to regulate and discipline its own people. As the only actor with the legitimate power to punish, the state will use that power to control its own people, and as a way to stay in power. As such, human rights are not only given to the individual; perhaps even more so, they are tools for the authorities in a democratic state to regulate and control their own people. To live up to human rights, the people have to be disciplined so that they will live by human rights norms. And these regulations will help those in power to stay in power.

“This requires us to analyze human rights law as a mode of converting and regulating people, making them at once happier and more governable. As such we should not be surprised to find that human rights are used both as a justification for intervening against the perpetration of cruelty, but also for justifying international action that is itself cruel even though it aims at a more peaceful, civilized, and empowered world” (Asad, 2000; section55).

In this passage, Asad takes the argument a step further. In the previous section, the point was that human rights could be used to rule and dominate its own people. Here, human rights can also be used as justification for intervention, giving legitimation to actions which can inflict damage on those affected by these actions. Human rights can be violated in the very name of human rights. Asad is referring here to military interventions or economic boycotts such as the actions against Iraq under Saddam Hussein.

Human rights are not primarily exported by means of violence. There is a much more sophisticated way: “Those who formulate and implement Western policies often assume that there is a natural fit between the legal culture of ‘human rights’ and a wider culture of

‘Western norms’” (Asad, 2003; 148). The West – and Asad has a special focus on the USA – delivers the premises. He gives as an example how an American economist thinks in relation to China: the more like “us” they become, the more democracy they will get. The more a culture takes over the American lifestyles of consumerism and values, the easier will the condition of human rights in that country be. Asad sees USA as the main distributor of culture in the world. They export films, news, research and commerce, ideals and culture, but they do so in ways that make the people around the world want the same. This imperialism is not carried on with military force, but with cultural forces that make people want the Western, American lifestyle and values – with human rights in their train. “Human rights discourse is also about undermining styles of life by means of law as well as by means of a wider culture that sustains and motivates the law” (Asad, 2000; section 49). The westernisation is a way to transform local cultural traditions, and human rights are a key element in that process. He says that the traditional cultures which are now changing do not do so freely. They are under pressure from the powerful influence of Western culture, business and human rights, “People are pushed, seduced, coerced or persuaded into trying to change themselves into something else ... the exercise of political power that often presents itself as a force for redeeming ‘humanity’ from ‘traditional culture’” (Asad, 2003; 154).

Asad also questions the western understanding of punishment and suffering (Asad, 1997). Furthermore, he raises questions about the “human” of human rights. In particular, he addresses Nussbaum and her capabilities approach and claims that “humans will have to be taught what good capabilities are and how to exercise them” (Asad, 2003)

Asad uses postmodern approaches in order to understand human rights as a discourse, how they work and how they are given meaning in and by the West, and in particular by the USA. He sets out the mechanisms and power games in the human rights discourse. One may

wonder if he is actually arguing against them. But he claims that he is not: his concern is how they work and transform cultures.

“My conclusion should not be confused with the view of those who would attack human rights on the grounds that each culture has the god-given right to remain immune from criticism and change – that demands in the name of the human must always be rejected in favour of cultural difference. On the contrary. The world we live in requires us to recognize our interdependence – and hopefully to honour it. But it is not at all clear that this is done best through the system of nation states with their clear-cut boundaries and their gross inequalities in power and wealth, the system on which human rights law now depends for its interpretation as well as its application. Nor is it evident that human rights must be both cause and consequence of universal redemption” (Asad, 2000; section 50).

And:

“what may appear to be a criticism of the very idea of universal values is not so at all but simply an attempt to describe something of what it means to apply universal values in the world today” (Asad, 2000; section 4).

Asad thus concludes that human rights discourse is a key element in the westernisation of the world; as such, human rights can be seen as imperialistic tools. The way they function and transform societies needs to be discussed and criticised. He is supportive of human rights, but he is at the same time very much aware of their manifold and complicated implications. He is emphasising the need to have different perspectives heard, and in particular non-western views.

Yet although human rights are western and can be imperialistic, they can nevertheless also bring an increase in freedom, according to Asad. Their western origin and local genealogy should be recognised in the encounter with other roots and narratives, which will have an influence on the understanding of human rights.

5.2. Makau Mutau

Mutau is another writer who refers to Africa. His field is Law and he is a professor at University of Buffalo Law School, New York. He is critical of various aspects of the human rights discourse. He addresses the movements, the NGOs, and the theoretical and the political levels of human rights. Mutau argues that African traditions should have an influence on human rights. As he sees it, the human rights discourse follows the old pattern of colonialist language and thinking. It is “a grand narrative hidden in the seemingly neutral and universal language (of human rights)” (Mutau, 2002; 12). The narrative is constructed around “the metaphor of human rights” (Mutau, 2002; 3), i.e. savage, victim and saviour.

The savage is brutal and primitive, and violates human rights; he is a kind of barbarian. As a committed human rights activist and participant in many NGO meetings, Mutau uses reports from NGOs as a material for his critique. In these reports, he finds “several images of the savage, including the Third World state, the quintessential savage” (Mutau, 2002; 26). He argues that the savage is not the Third World as a whole, but “the black, dark or non-western race” (Mutau, 2002; 26). He sees the image of the savage as a conflict between western culture and non-western cultures, where the former possesses the language of human rights and uses it to define the “enemy”, the savage, who in Mutau’s analysis is in particular the Africans. It is their culture that is actually the savage.

The savage is violent and creates victims, the second part of the human rights metaphor. The victim “is usually presented as a helpless innocent who has been abused directly by the state” (Mutau, 2002; 28). The victims are the victims of the savages, and these victims are non-white: “the most enduring faces of human rights victims have been black, brown, or yellow” (Mutau, 2002; 30).

The NGOs, whose reports he uses as his sources, are organisations based in the West, especially in the USA, as well as Amnesty International in London. They write reports about Third World countries, and because they focus mainly on political and civil rights rather than on social or economic rights, the victims are rarely white. For Mutau, it is once again the West, as in colonial times, that defines the savage and the victims. And like then, the West has the solutions and is the saviour, the third element in his metaphor. Mutau links this saviour to the “Enlightenment’s universalist pretensions, which constructed Europe as superior and as centre of the universe” (Mutau, 2002; 31). Those with the knowledge, skills and solutions are the white men who know how to rescue the victims and give them human rights. This help is claimed to be universal, objective and neutral, but Mutau does not accept this.

His human rights metaphor is related to colonialism, and he comments on the relationship between colonialism and human rights;

“While it is incorrect to equate colonialism with the human rights movement, at least in terms of the methods of the two phenomena, it is not unreasonable to draw the parallels between them with respect to some of their motivations and purposes. Colonialism was driven by ignoble motives while the human rights movement was inspired by the noblest of human ideals. However, both streams of historical moment are part of the Western push to transform non-European peoples” (Mutau, 2002; 33).

His sharpest criticism concerns the political implications of human rights. He criticises the movements, the NGOs and the academics who give human rights legitimation and a philosophical foundation. He also criticises politicians and the role taken by the USA in human rights issues after President Jimmy Carter. He sees the agents of human rights operating in a neutral and universal language that claims to be outside politics, but his

finding is that human rights serve an ideology of liberalism with a strong focus on political and civil rights.

“... the postwar elaboration and codification of human rights norms has been the process of the universalization of liberalism and its outgrowth, Western political democracy. Seen in this light, the human rights movement is a proxy for political ideology, a fact that would shear it of the pretense of non-partisanship. Although the movement’s authors present it as nonideological, and as universal and noncontentious, the human rights regime does not transcend or stand removed from politics. The human rights movement is not post-ideological, although its mantra of universal morality and timeless righteousness attempts to mask its deeply political character” (Mutau, 2002; 47).

Mutau refuses to accept the neutrality and objectivity of human rights. He criticises what he sees as hidden agendas and biases: “... there is a need to openly discuss the political agenda of the human rights movement. The movement’s apoliticization obscures its true character and the cultural identity of the norms it seeks to universalize” (Mutau, 2002; 1).

He also comments on the strategies used against those who criticise human rights and their agents. That strategy is to label people and to ascribe to them opinions which they do not have.

“Defining those who seek to reopen or continue the debate about cultural nature and the raw political purposes of the human rights regime as ‘outsiders’ or even as ‘enemies’ of the movement is the greatest obstacle to the movement to bring about true universalization” (Mutau, 2002; 3).

His project is to reopen human rights, to make them more universal. His project is not to protect violent rulers who hide behind a critique of human rights; he says that he has a positive mission with regard to human rights. He wants a process with a common goal, that is, to put an end to human suffering;

“... the imagination of norms and political models whose experimental purpose is the reduction if not the elimination of conditions that foster human indignity, violence, poverty, and powerlessness ought to be the overriding objective of actors in this discourse” (Mutau, 2002; 5).

On the other hand, he also expresses relativistic ideas like: “The validity of a cultural norm is a local truth, and judgment or evaluation of that truth by a norm from external culture is extremely problematic, if not altogether an invalid exercise” (Mutau, 2002; 22). Here, he formulates a traditional relativist view of morality; no one can judge people from external norms.

Although he claims not to be a relativist in the sense of defending absolutely anything, he is relative in the sense that no culture has a monopoly on human dignity and human rights. He wants to see human rights as a continual dynamic process. He wants to participate in a human rights dialogue from his cultural position. Those who have already participated have come from their background: he thinks that the western influence is from their local culture, which is a relative position. His argument is that all participants are local, but some pretend to be universal.

In his work on the African Charter, he gives more substance to what he thinks can be an African contribution to human rights. The main target of his critique is liberalism, with its understanding of the state and the atomistic individual. For Africa, the states are artificial constructions and are mostly weak. Africans cannot rely on the state for necessary support. They have to rely on local communities; people live in groups and depend on the group. From this perspective, Mutau is critical of an understanding of human rights which gives priority to the individual as independent or autonomous. The African subject has no state to claim her rights from, since the state is too weak; and one does not claim human rights from a group of family members, not even in an extended family. Mutau writes that an African is both a member of a group and an individual, but always an individual as a member of the

group; and as member of the group, one has rights correlated with duties. These communitarian values are vital principles for Africa, and the survival of Africa depends on them. In this way, he defends the African Charter in its integration of duties. For Mutau, the human in Africa has a different meaning from the liberal view. Against this background, he criticises human rights as instruments of liberalism. They are too much influenced by liberal ideology to be universal. Mutau wants to reopen and change human rights to make them more multicultural and universal, and to let Africans also have an influence on human rights norms.

“At the heart of this continuum is a seemingly incurable virus: the impulse to universalize Eurocentric norms and values by repudiating, demonizing, and ‘othering’ that which is different and non-European. ... I do not mean to suggest that human rights are bad per se or that the human rights corpus is irredeemable. Rather, I suggest that the globalization of human rights fits a historical pattern in which all high morality comes from the West as a civilizing force against lower forms of civilization in the rest of the world” (Mutau, 2002; 15).

His analysis of human rights discourse is critical, but his aim is not to abolish human rights, but rather to redeem them from western supposed universalism – and make them more inclusive:

“Attempts to construct universalist creeds and doctrines – or to present a particular creed or doctrine as universal – run the risk of destroying or decimating universes. The claim of a universalist warrant is an extremely tricky proposition, if not altogether impossible. That is why attempts at creating an international consensus on what constitutes human dignity must be approached with nuance, open-mindedness, and the complexity it deserves ... I believe that the human rights corpus should be treated as an experimental paradigm, a work in progress, and not a final inflexible truth” (Mutau, 2002; ix) .

Mutau claims that in all cultures there is a concept and an understanding of human dignity and respect for life, and that these principles have also been violated in all these cultures.

From his point of view, the human rights understanding of human dignity does not cover these diverse cultural perspectives.

Mutau and Asad present a mixture of postmodern and postcolonial theories; at the same time, they are also communitarians. They uncover power games and the domination of the human rights discourse by liberal ideology. Asad focuses on the transformations that this discourse forces upon people, and argues for the inclusion of diverse ethnographical perspectives. The societies which Mutau regards as victims of colonial forces are themselves based on communities where the individual is seen as part of the group, where the “we” takes precedence over the “I”, and this also explains why the liberal state does not work in Africa, according to Mutau. On the other hand, neither Asad nor Mutau deconstructs the cultures or discourses of these communities, or criticises them for power interests and domination.

So far, we have seen criticism of human rights as imperialistic and colonialist tools for liberalism and of the lack of influence of diverse cultures on human rights. Neither Mutua nor Asad adopts a Marxist perspective in their critique, but that is what we see in our next contributor.

5.3. Wendy Brown

Wendy Brown, a professor of political science at the University of California, Berkeley, is interested in analysing the human rights discourse in terms of political instruments, to see where they come from. She is influenced by feminism and Marxism, and

she integrates perspectives from postmodern theory, in particular from Foucault. I will mainly focus on the last two points.

Like the other thinkers presented in this chapter has Brown a critical but also supportive relation to human rights. However, her main focus is critical. The supportive side is expressed in double negatives – human rights are something you do not not want.

Whereas the first schools are concerned with foundation, consensus or transformation, Brown has a primarily political view of human rights. She examines how they are produced in a special political atmosphere and how they work as political norms. Linked to her interest in the political is her focus on the power which is at work in the production of human rights, but also in the way they work, in what they do. She is also interested in what kind of subject produced human rights, but also what kind of subject is produced by human rights.

Brown's approach to human rights starts from an analysis of Marx's famous text on rights, "On the Jewish Question" (Marx, 1987). Marx read rights as produced in dialectical historical processes. They are created by bourgeois society. The economic and political forces which develop bourgeois society also produce the rights:

"... the kind of liberty that bourgeois rights discourse casts as natural is actually the effect of the historically specific elements constitutive of life in civil society. Through rights discourse, bourgeois social relations are reified as bourgeois man, and the rights required by this 'frenzied' social order are misapprehended as required by and confirming the naturalness of the man it produces" (Brown, 1995; 113).

The rights are born out of a society, and the citizens claim them as rights. The citizens are shaped by the society, which confirms itself when the citizens claim their rights. The society produces a need for rights, the rights meet that need, and the claiming immediately confirms the society that created the desire. Rights are a result of historical progress which has shaped

the person who claimed the rights. Rights are merely iterations of the same historical forces that produced them in the first place.

“In sum, even as they emancipate certain groups and certain energies from historical suppression, bourgeois rights codify the social needs generated by historical specific, traumatic social powers as natural, unhistorical and permanent” (Brown, 1995; 114).

The society and political ideology surrounding human rights are liberal. And an element of the ideology of liberalism is to naturalise and present itself as ahistorical, as universal. But Brown contests this neutrality: “Liberalism is no more above or outside culture than is any other political form, and culture is not always elsewhere from liberalism” (Brown, 2006; 23).

The language of neutrality has a depoliticising effect. When historically developed principles are labelled universal, they conceal their historical rootedness and context. Instead of debating the historical and political background and real forces, the rights discourse turns out to be depoliticising in its focus on abstract and universal human rights. The historically produced discourse is itself involved in an ahistorical programme, and does not include history or politics. The main human rights discourse shields itself and insists all the time that it is apolitical. This prevents people from becoming aware of the forces that produced the *conditions* for human rights.

“The necessarily abstract and ahistoricizing discourse of rights mystifies the conditions and power that delimit the possibility of achieving personhood, while its decontextualizing force deprives political consciousness of recognition of the histories, relations, and modalities of power that produce and situate us as human” (Brown, 1995; 127).

A core principle in human rights is the claim that all human beings are equal. For Marx and Brown, this is an illusion. The politics which developed the rights was that of a

society based on inequality, with some owning much and others owning little or nothing, some with much influence and others with no influence on politics. Human rights do not change the inequality, they construct principles that pretend to be equal, but in fact conceal and confirm the unequal possibilities, influence and power. “They construct an illusory politics of equality, liberty, and community in the domain of the state, a politics that is contradicted by the unequal, unfree, and individualistic domain of civil society” (Brown, 1995; 114).

This double effect of human rights can be seen in the question of private property. Everybody has a right to property. In the reality of politics, this means that some get rich and wealthy, and this accumulation of wealth happens to the disadvantage of those who do not have the same opportunities and resources to play the game. In this way, by accepting private ownership, human rights can become the principles that enshrine the exploitation of workers and poor people. Those already rich make a profit out of human rights; indeed, these very same interests were one factor involved in the invention of human rights in the first place, and they naturally have an interest in prolonging the influence of human rights.

“To the extent that rights such as private property rights are exercised not only against the state but against one another in economic arrangements in which some gain at the expense of others, universally distributed rights function not only as power but as deprivation: the right to private property is a vehicle for the accumulation of wealth through the production of another’s poverty” (Brown, 2002; 423).

For Brown and Marx, the rights reflect power relations in society, and confirm these relations without really transforming society so that it becomes more just.

Brown discusses the use of human rights specifically in relation to special rights like women’s rights. She is interested in how these special rights work as transformations of the law. Her view is that the rights regime reflects male dominance. By giving women special

women's rights or by transforming their rights, women will merely be held fast in their subordinate position. To translate women's rights into male language will not improve the situation for women, because even as special rights they merely confirm women's subordinate role. Once again, the rights confirm the power that created them: "rights that are neutral and universal potentially entrench the subordinated status of women by augmenting the power of the already powerful" (Brown, 2002; 423).

Brown does not stay within a Marxist philosophy; she supplements it with perspectives from Foucault. The Marxist theory of history has a direction and an end: history has moved in stages, and moves toward the genuinely free and equal society. For Foucault, this historiography is meaningless. There is no progress, but only changes, and we can analyse how the various forces take control over language and production, politics and sciences. Those in control will manage to make their own positions "natural". The first aspect of Foucault's theory which Brown integrates is the historical process as a battle between different discourses, where progress is reduced to the question of who takes control.

The second aspect is the way in which governments and authorities use the law to regulate and to control and discipline their people. The law is not only a product of historical productive forces. It also concerns identities and the control of identities. The authorities shape and discipline their people through law, and other media such as education. Brown sums this up:

"the collapse of a progressivist historiography becomes more serious given the extent to which contemporary discourses of rights converge with the disciplinary production of identities seeking them, given the extent to which contemporary discourses of political emancipation may be products not simply of stratified and egoistic society, but of disciplinary modalities of power producing the very subjects whose rights become a method of administering them" (Brown, 1995; 118).

Read in this way, human rights are a way to supply the people with a need, i.e. a desire for human rights, and it is in this circular movement that the individuals are shaped and their identities are developed. Those in power both generate the desire and meet the desire, so that the people are held captive in the play of those in power. People start acting as possessors of rights. When they enter into this process they are transformed as humans, becoming “the human of rights”. This analysis of the production of identity goes deeper than in Marxist theory. Here, it shapes identities: human rights are a tool, an instrument which the government employs to discipline of its people, on which it depends for re-election. “As such they (human rights) are not simply rules and defences against power, but can themselves be tactics and vehicles of governance and domination” (Brown, 2004; 459).

Up to this point, I have mainly focused on her critique of human rights; once again, she follows Marx in the way she supports human rights. In Marx’s framework, they represent a historical progress, but not the end of history, because this progress is grounded on the egoistic human being. It is indeed better and is a step towards freedom, but a limited freedom: “Political emancipation in the form of civil and political rights can be embraced precisely because it represents a ‘stage’ of emancipation” (Brown, 1995; 114).

In a sharp critique of Ignatieff and his famous lectures on human rights (Ignatieff, 2001b), she takes him to task for his minimalist understanding of human rights. In liberal philosophy and politics, human rights are seen as minimalist end products. Contrary to this minimalist approach, where social and economic rights are marginalised, Brown wants a stronger focus on these rights, seeing both social and economic rights as basic and vital. And she will use human rights as a starting point that can “inaugurate a different distribution of

power and order of justice in nonliberal societies ... the place from which democracy starts rather than ends” (Brown, 2004; 459).

She thinks that human rights will serve best in their abstract and universal form: “... in their abstraction from the particulars of our lives – and in their figuration of an egalitarian political community – that they may be most valuable in the democratic transformation of these particulars” (Brown, 1995; 134). This reminds me of what I spoke of in the previous chapter as the vision of human rights, the vision for a critique and a transformation of societies.

5.4. Marie-Bénédicte Dembour

Dembour’s approach is both practical and theoretical. She comes from an anthropological background. Dembour has carried out a very interesting study of how human rights laws are interpreted in the European Court for Human Rights in Strasbourg. She explores how the court interprets human rights in concrete cases, in the tension between universal human rights and particularism. She looks at the verdicts in concrete cases. On one level, she is interested in how the court works with human rights law, but she also has a theoretical interest. My focus here will be on her theoretical understanding of human rights.

In the human rights discourse, the idea that these principles are universal is basic, and relativism is seen as an impossible position. However, Dembour takes a different approach to relativism. She adopts the nuanced understanding of relativism by the anthropologist Elvin Hatch, who argues that relativism has both a bad and a good side. The negative side of

relativism is that it can lead to indifference. If one does not judge other cultural practices from the outside, this may imply that one tolerates severe violence. Hatch says:

“for it may lead to moral neutrality and inaction in situations that are intolerable. Ethical relativism is mistaken when it calls for us to be nonjudgemental in relation to such issues as political executions, genocide, genital mutilations, honour killings, and the like” (Hatch, 1997; 372).

A relativism that abstains from external judgments will often rely on the idea that cultures are homogenous and closed, with long-lasting continuities. These ideas are now strongly contested. Cultures are not homogenous: they are now seen to be influenced by other cultures, and they are more dynamic and transformative than anthropologists used to think. Dembour is also clear about the negative and unacceptable side of relativism, which can result in indifference.

Normally, this verdict writes off relativism in the eyes of most scholars, but not in the eyes of Hatch and Dembour.

“Even though cultural relativism seems to lead to the intolerable being tolerated, one should be wary of condemning the doctrine at a stroke. This is because it has a good side, namely, the fact that it counteracts universalism, holding at bay its tendency towards arrogance. Instead of saying ‘we know best’ or ‘we know’, relativism poses the ‘what do we know?’ Universalists too often assume that they are on firm ground in making judgments about others. They can easily end up imposing their ways on others for no other reason than sheer dominant position, without even realizing this, so full are they of their good intentions” (Dembour, 2006; 165).

Relativism then is a necessary critical perspective which interrogates universalism, to see if it is universal or in reality particular. They want to prevent too hasty conclusions about universal truths. “Too often ... a universal position is, at bottom, a cultural position in disguise – the strength of cultural relativism is precisely to teach us this” (Dembour, 2006; 171). The positive side of relativism, or what Dembour prefers to call particularism, is that it

is on guard against being made a tool of dominant and hegemonic power structures which succeed in defining their own values as universals.

“The doctrine of cultural relativism is mistrusted. In these circumstances, talking of ‘particularism’ rather than ‘cultural relativism’ presents a number of advantages. First, it avoids the unfortunate reifying reference to culture. (It is perfectly possible to substitute ‘social’, ‘socially constructed’ or ‘social construction’ whenever ‘culture’ appears in this chapter.) Secondly, ‘particularism’ does not in itself suggest a tendency to moral insight of so-called cultural relativism, namely, that local circumstances always inform moral decisions and that ‘the universal’ is never completely beyond ‘the local’” (Dembour, 2006; 178).

From her studies of case laws, she presents evidence that the general human rights laws face a complex reality, and that in these encounters the general principles “need to be ‘relativised’ in view of the circumstances of particular cases” (Dembour, 2001; 69).

Particularism is opposed to universality. Although she believes that both are needed, she does not elaborate in any detail the positive sides of universalism as a means to confront the intolerable. She sees particularism and universalism as binary oppositions, as interdependent, in the sense that it is not possible to reflect on the one without implicitly reflecting on the other: each will always challenge the other. Relativism can lead to unacceptable ignorance, but Dembour also claims that the opposite is true: “universalism leads to the exactly contrary problem, it allows intolerance to surface when tolerance is called for” (Dembour, 2006; 180). If relativism is exposed to the danger of being indifferent, universalism is exposed to the danger of “arrogance” (Dembour, 2006; 180).

Dembour uses Pannikar (2000) and his famous article on human rights as a platform for her own position. Pannikar uses the image of looking through a window: what seems universal when seen through one window, may not look universal when seen through another window. Human rights are developed and seen through a western window, but they

have forgotten the window and the fact that the rest of the world sees them through different windows. Pannikar advocates a dialogue and a search for a middle-way solution. Dembour agrees with Pannikar about the need for the different views to communicate with one another, but for her, the middle way is no solution. She concludes that it is the “in between” position that will last. This is not a harmonious, settled middle way, but a position which is in tension and will remain in tension. The universal can violate the particular, and the particular can violate universals. A universal without a critique from the particular will be arrogant, and a particular without a critique from the universal will be ignorant and will tolerate the intolerable. The bipolarity will always play each against the other in a never-settling peace. Both positions are at once impossible and necessary.

Dembour refuses to accept the various theories for human rights presented by the natural-law, the deliberative, and the protest schools. “Natural law is a problematic idea ... in that it assumes that everyone will arrive at the same conclusion as to what is natural/natural law through an adequate exercise of reason” (Dembour, 2001; 57). Human rights do not exist in themselves, and they are not to be found somewhere in reason or nature. Dembour claims: “Human rights is an article of faith” (Dembour, 2006; 2). She sees that although there are different ways of believing, the basic question remains: to believe or not to believe. Dembour does not believe in human rights as objective and real. For her, human rights exist because they are talked about. They are language constructions which become natural or real in the discourse. They are a doctrine.

“It is crucial, however, to recognize that holding that rights are universal is a doctrine, even if universalism is so common that its doctrinal status is generally overlooked, in the light of the created impression that universality of human rights is a fact” (Dembour, 2006; 178).

Dembour finds incredible the idea that human rights exist across time and place. What becomes “natural” has a tendency to be the “mainstream” way of thinking.

Human rights are based on “social recognition”. They came into being in a particular historical context in West, which invented human rights as universal. They “are the result of a particular political evolution” (Dembour, 1998; 154), and to ignore this is arrogance in Dembour’s terminology.

Kirsten Hastrup, another anthropologist, expresses a similar view to Dembour: it is in language that human rights operate: “the important point is that any discourse, including the legal discourse, is a creative speech which may bring into being that of which it speaks” (Hastrup, 2001; 16). Dembour recalls Douzinas when she claims: “Human rights talk is an utopia” (Dembour, 1998; 171), and cannot bring the good that it talks about, since they will never actually be realized. Human rights are good, but not exclusively so. They are not *per se* a guarantee of the good. They must be continually evaluated and criticised. But Dembour holds that they serve the good. “Far from leading to inaction, it allows for better action” (Dembour, 1998).

Yet she claims elsewhere that she does not believe in human rights, and calls herself a nihilist: “My view is that human rights nihilism is healthy and necessary” (Dembour, 2006; 275). Like most of those who comment on human rights she supports dialogue, but she believes that the dominant discourse on human rights dialogues does not aim at real dialogue, because the answers are already given. The role of dialogue is mainly reduced to convincing those not yet convinced; the answers are concluded in advance. This is the result of arrogance in the human rights discourse. “(W)e need to engage in a dialogue with the other – without knowing where this dialogue will lead us, otherwise we are only engaged in rhetorical persuasion” (Dembour, 1998; 171).

5.5. Jacques Derrida

Everyone who has read Derrida knows that his style of writing is complex. He developed his thinking in untraditional ways. He did not go straight to a topic, but took several detours in his approaches. His background was in the theory of literature, and he worked with intertextuality. It is not possible in a few pages to present his philosophy, but nevertheless I will present one small portion of his work which is relevant to this thesis, drawing in particular on his later texts, which dealt with issues of norms and law.

Derrida's most famous concept is deconstruction. He deconstructs the topics he discusses, which means that a concept or idea like justice, rights, hospitality, forgiving, or the human subject, has a history through which it has acquired its meaning. The first step of deconstruction is to analyse this genealogy, to see where the concepts come from. The idea of the human subject, which is a key concept in human rights, has a long history, and to understand it one has to go back and find its roots in philosophy, literature, religion, culture and politics. It is necessary not only to deconstruct the ideas or texts, but also to take into account the institutions, contexts, interests, political and other forces which have made their contributions at various periods in this history. For instance, it can be of interest that the free men in ancient Greece had slaves, while at the same time singing the praises of democracy – what kind of democracy is that? This is the genealogical part of deconstruction.

The second level is related to the logic of the texts studied. Deconstruction will look above all for contradictions, paradoxes and aporias, to show gaps in the constructions. With his focus on the gaps, he wishes to show the choices that are made. Derrida breaks up what are presented as logical chains of arguments, to show that at several crossroads, decisions have been taken where other options were also possible. He looks in particular for the places

where logic has not done the job alone. The texts very often hide these elements and pretend that they are based on logic and necessity, where they may have been influenced by other forces and decisions.

Deconstruction is critical, but “you do simply not destroy, or dissolve or cancel the legitimacy of what you are deconstructing” (Derrida, 2001b; 177). Rather, this project of destabilisation aims to open up and see things in a new light, bringing forward new possibilities. Following established categories and theories often leads to a settled fixture and repetitions. Theories are not natural: they create order where there is chaos. In deconstruction, these theories are destabilised, in order to see things and theories in new lights. To destabilise is to go into the chaos but not to stay there. Instead, new perspectives or theories are opened up. Deconstruction operates in a binary relation between disorder and order.

“All that a deconstruction point of view tries to show, is that since convention, institutions and consensus are stabilizations, this means that they are stabilizations of something essentially unstable and chaotic. Thus, it becomes necessary to stabilize precisely because stability is not natural, it is because there is instability that stabilization becomes necessary, it is because there is chaos that there is need for stability. Now, this chaos and instability, which is fundamental, founding and irreducible, is at once naturally the worst against which we struggle with laws, rules, conventions, politics and provisional hegemony, but at the same time it is a chance, a chance to change, to destabilize. If there were continual stability, there would be no need for politics, and it is to the extent that stability is not natural, essential or substantial, that politics exists and ethics is possible” (Derrida, 1996; 83).

In this text, we can also recognise Dembour’s argument about the “in between” position, where to come down on either side is seen as an impossible end station, one has to be (to use a concept of Derrida) vigilant.

The binarity causes an aporia, a situation where you have to decide, and this, according to Derrida, is an act of madness. These impossible aporias recur in several

contexts in Derrida's work, e.g. in his analysis of hospitality, which is driven on one hand by an unconditional hospitality, a hospitality without any reservations, while on the other hand hospitality has to be realistic – it cannot be allowed to destroy us (Derrida, 2000). A similar structure exists between forgiving the unforgivable and forgiving the forgivable (Derrida, 2001a). These tensions can be felt as threats, but they are sources in Derrida's philosophy. In Caputo's words: "He is arguing not that our discourse has no meaning or that anything goes, but on the contrary, that it has too many meanings so that we can fix meaning only tentatively and only so far" (Caputo, 1997; 59).

Unlike Derrida, I go directly to the issues which interest me in this thesis. I now turn to Derrida's comments on human rights. Human rights are not a main topic for him, but he does comment on them on several occasions. One example of his support for human rights is found in an interview on terrorism after the 9/11 attacks.

"We must more than ever stand on the side of human rights. *We need human rights*. We are in need of them and they are in need, for there is always a lack, a shortfall, a falling short, an insufficiency; human rights are never sufficient. Which alone suffices to remind us that they are not natural. They have a history – one that is recent, complex, and unfinished ... human rights has been continually enriched, refined, clarified and defined ... " (Derrida, 2003; 132).

I will come back to some of the ideas in this quotation later.

In another paper, he comes very close to the Marxist understanding of human rights: they risk being only formal, and tools for manipulation by the rich and powerful;

"human rights ... will give rise only to formal, right-thinking, and hypocritical alibis as long as the 'foreign Debt' has not been treated head-on ... we are pointing to the interest of capital in general ... namely the worldwide market, holds a mass of humanity under its yoke and in new form of slavery" (Derrida, 2001c; 266).

In this context, human rights are seen as tools for the interests of capital.

Derrida discusses rights more comprehensively in a context of education as a right to philosophy (Derrida, 2002a, 2002b), and one of his most famous works provides a wider background to his thinking on law, justice and responsibility: “Force of Law: The “Mystical Foundation of Authority” (Derrida, 1990).

Derrida sees human rights as a project in development and progress. The history of rights has a kind of beginning in the French declaration of 1789. From the outset, the declaration should be made in a language that people could understand and support, so that they could learn how to resist despotism. Human rights “should be accessible, understandable to everyone, whatever language they understand or they speak” (Derrida, 2001b; 178). The rights are given in a language, and people have to understand the meaning of that language. This poses a challenge to the human rights project: if people do not understand the texts, do they then have these rights?

For Derrida, however, to understand a language means more than understanding the words. The language of rights is filled with philosophical assumptions, and has a long history. To understand is also to understand the idiom of a language, to know the meaning it has gained, the content it has acquired in the course of history – in short, everything that gives the concept its current meaning. Those who are not familiar with the idioms have problem with understanding the meaning of concepts like rights. The concept of human rights has a European history, and people with different idiomatic histories may have difficulties with the European idiomatics. They have concepts to which different histories, cultures, philosophies, religions and politics have given meaning. And the word “rights” may not exist in their language, or else it may have a short and limited history. These

circumstances will influence people's access to, and understanding or lack of understanding of, human rights.

The students have to learn what they are 'by nature'. They have to learn that they have these rights in virtue of being human. This is a typical Derrida irony, which shows that human rights are not natural. They have to be learned, because they are constructed. They are constructed in a context, and this should not be ignored.

Since human rights mainly have a philosophical origin, they represent for Derrida a right to philosophy. Philosophy is linked to deconstruction. That means that one should learn and study the genealogy of human rights, the philosophies, the situations, the institutions and forces that have been part of the concept and their development. To learn the history and philosophy that gave us human rights can however easily end up as a static and reproductive learning, which can become dogmatic. In this way, the state can control human rights and HRE, and the theories which fit the political interests will be given priority. Human rights will be related to special philosophical theories, and these theories become part of human rights. This is a way to naturalise human rights, which are embedded in a "proper" set of philosophies. Derrida is very critical of this understanding of philosophy and philosophical education. He refuses to call it philosophy, and accuses it of being repetitious or dogmatic.

"The logic of what we call, in short, Declaration therefore involves making effective the right to a philosophy, its own, but it tends to make minor, to marginalize, to censor other philosophical discourses or other discourses *on the subject of* philosophy, in particular when their questioning exceeds the philosophico-juridico-political machinery that support the state, the nation, and its pedagogical institutions" (Derrida, 2002a; 41).

HRE can thus be reduced to dogma. For instance, the theories of Kant and his successors, who dominate human rights discourse, can be so closely intertwined with human rights that the rights themselves call forth this type of philosophy, and it will be difficult to separate

them. This will exclude other ways of approaching them, thus imposing limitations on human rights.

Derrida operates with two concepts, philosophy and thinking. Thinking comes before philosophy. It exists before it becomes philosophy, but thinking offers philosophy many ways to take. Thinking allows new questions and a questioning of philosophy. If philosophy is reduced to its history, it becomes repetitious; but philosophy is again and again turned back to its thinking, which opens new perspectives. In thinking, there is no horizon; but philosophy is always within a horizon.

The right to philosophy for Derrida means having the right to ask critical questions and see weaknesses and holes in the previous projects of philosophy, to think new thoughts from new horizons. HRE should then be a critical philosophy of human rights, where the concepts themselves and their institutions can be analysed. Derrida is in favour of learning about the philosophical tradition of human rights, but he argues that one must also be critical of this very history.

Deconstruction is required, not only in the sense of taking a critical view, but also in the sense of being constructive and improving the rights. As we saw in an earlier quotation, human rights have been improved in the past, and this must continue in the future. Human rights are universal, but in Derrida's language they are a universal to come, always in "need" of improvements and refining.

"Human rights are perfectible; they are ceaselessly transformed. So it is better to define these rights by pulling them out of their limits to recognize the rights of women, the right to work, the rights of children, etc. But this gesture must be carried out in the name of an idea of right already present in the project of the Universal Declaration of Human Rights, itself based on the declaration of 1789" (Derrida, 2004; 19).

Even though he argues for a critical philosophy of human rights, he surprisingly claims that the improvements and progress should follow the idea from its origin. “Reflection (of what I would call a ‘deconstructive’ type) should thus, it seems to me, without destroying these axioms and principles, question and refound them, endlessly refine and universalise them ...” (Derrida, 2003; 114). The axioms and the direction from the formulation of rights back in the Enlightenment period should be respected and followed up, loyal to its intentions and direction. This action should be critical, and improve the original mission.

In that human rights are philosophical, they should be taught as such in education, and they are related to ethics. In Derrida’s philosophy, the key ethical concept is responsibility. It has two strong and equal obligations. It is:

“the oscillation between two significations or two contradictory and very determinate rules, each equally imperative (for example respect for equity and universal right, but also for the always heterogenous and unique singularity of the unsubsumable example)” (Derrida, 1990; 963).

The heterogeneity is related to the other, the other as different and singular. Each human is unique, and should be respected in her singularity, as Douzinas too demands. There is heterogeneity, because the other is always an irreducible and not controllable other, one who is different. She is different and will not be subsumed into a general. One aspect of responsibility is due to the difference of the other.

But Derrida also operates with the second type of responsibility and calls for universal norms and rights. Postmodernists have been criticised for leading into a complete relativism, where they seem to argue only for the first type of respect and only celebrate differences. Derrida faces this and is also afraid of a society without common rules and laws.

These laws have to be equal for all, and they have to be general and universal. The law belongs to what Derrida calls a domain of calculation. He thinks that science, research and knowledge should contribute to calculations of general laws, so that these can become as good as possible. If we have a responsibility for the singular, we have an equal responsibility for a general law.

“Once again, the dilemma, as Derrida points out, is that while it is necessary to respect minorities, differences, singularities, idioms and languages, it is at the same time imperative to respect also ‘the universality of formal law’” (Eg a-Kuehne, 2001; 198).

These two responsibilities make his ethics a double bind. There is a responsibility for the singular, unique individual and at the same time a responsibility for the universal law.

Human rights belong on the side of the general, but in Derrida’s ethics the universal is always a particular that needs to be universalised, to become more universal. Derrida does not see human rights as a fixed and finished universality, and to use only general law is not to take the double responsibility.

I conclude with a short comment on human rights as seen in light of democracy and dialogue from a deconstructionist view. Mouffe, who is influenced by Derrida, claims: “Rights will conflict and no vibrant democratic life can exist without a real democratic confrontation among conflicting rights and without a challenge to existing power relations” (Mouffe, 1996; 8). Dialogue here means different views and confrontations, and critique of authorities and rights. Wang, who comes from a different, postmodern view, has another focus. Both relate to diversity; for Mouffe, this means confrontations, but for Wang it means dialogues across diverse sets of values and living side by side with these:

“the postmodern notion of human rights emphasizes dialogue between different values and ‘tolerance toward the various dimensions of difference and fundamental community sentiments’”(Wang, 2002; 181) Richard Falk).

5.6. Diversity in the discourse school

This school is constructed around an engagement to unfold dominance in discourses, to let the marginalised acquire influence. Asad and Mutua had a main focus on what they find as western domination in the human rights discourse. Both of them, Mutua most explicitly, argued for an African influence on human rights, more multicultural human rights. Brown in a different way addressed human rights as instruments for liberalism and capitalism. These forces are oppressive and serve particular interests, but also her critique is to let marginal people obtain their rights; like Young these groups are not cultural groups, but need social and economic rights to improve their lives. For Brown diversity as such is not an issue, but for Dembour it is. Dembour’s concern is that human rights should not be used as instruments which oppress or transforms cultures, unless they engage in severe violation of rights. Her argument is to let human rights discourse become more humble and sensitive in respect to diverse cultures. For Dembour cultural diversity is important.

Deconstruction is also about diversity in a different way. The deconstruction is engaged in to include the excluded and give them rights, as when women achieved their rights (Scott, 1996). The history of human rights is a story about increasing inclusions and this is a result of deconstructions of apparently universal rights, which were not so universal. Deconstruction is in this way a concern for the different, the excluded, and as such it has a concern for diversity, but in a different way from the deliberative school.

5.7. Comments

The theories presented in this chapter are all critical of practical and theoretical implications of the human rights discourse. The most significant contribution by the discourse school in the human rights framework is that it deals with human rights as a discourse and discusses various implications of this discourse. They are critical of how human rights are used, and of the western impact on human rights. This is a critique of the societies that have produced them and used them in formation of their peoples, as well as of how they are used to support capitalist interests. It is therefore mainly a critique of human rights discourse, not of human rights themselves. They apply several perspectives: anthropological, postcolonial, Marxist, feminist, postmodern. They have different agendas but share and demonstrate a need for critique of the human rights discourse. I find much of their critique relevant and telling; they convince me that such critiques of discourse are important, not to destroy human rights but to correct misuse and hegemonies.

Yet in spite of the relevant critique arising from discourse analysis, theorists were not clear about their own normative platforms. Discourse analyses do not discuss how to reason about basic normative issues. They show how complicated it is to deal with normative matters, since a number of forces make an impact on normative constructions. Still, as I see it, we need discussions of fundamental normative issues, even if we cannot find a point zero, a neutral position or procedure from where we can develop and find the objective and final answers on matters of right and wrong. There is further little differentiation in discourse theories about the fact that some solutions are better than others; there is too little room for nuances. Dembour tries to do that but takes an extreme stand on other issues. Any form of normative constructions – e.g., the natural-law, deliberative, or protest school – can be

deconstructed as formations in language and in historical contexts. Deconstruction is relevant and even necessary, but I miss in the discourse theory discussions and reflections on how to find better norms and what makes them better, some guidelines.

Derrida met these accusations by seeing norms and laws as necessary ways to stabilise societies. The natural situation represented chaos, but that was not a lasting or sustainable place to be: norms and laws were needed for stabilisation and the avoidance of chaos. Chaos lacks any guide to norms. According to Derrida, the stabilising norms are all constructions in languages. But where does the need for stabilising norms come from? Are not the needs for avoidance of chaos also voices in the chaos? And how does one know that a law or norm is good and stabilising? Nature may not give us clear guidelines, but I believe that there are some normative impulses which are not language constructions. Normative constructions are answers and elaborations of these impulses – and, let me add, of experiences – but as discourse theories teach us, normative constructions are also much more than that. Deconstruction and discourse analysis show how complicated it is to construct universal norms, but they have too radically resolved the issue of nature. We may not have direct access to nature, but nature corrects and influences us by our genes, intuitions, chemistry, and ecology, as well as through human relations and historical events.

This issue can also be posed in two other ways. The historian John Tosh reflects on history and the language of history: Does history exist outside the historian's language? He answers: "The verification of historical events and the discipline of historical context mean that historians can distinguish between what happened in history and the discourse in which it is represented" (Tosch, 2006; 204). For Tosh, there is something – history – outside language. Historical writing can be checked against historical facts and possible interpretations of historical events and developments.

Another serious critique comes from Hastrup, who formulates a critique similar to Baxi. Deconstruction is engaged in finding biases and violations in the discourses, which in itself is morally relevant, but it can be quite irrelevant for one who is suffering to be met with a discourse analysis. “In the life-worlds of real people, the ethical is part and parcel of experience and action; it cannot therefore simply be deconstructed at the level of discourse” (Hastrup, 2001; 18). Deconstruction and discourse theories can have an excessive focus on language and too little focus on real suffering. There is a risk that deconstruction can be too academic, or in the words of Eagleton, too “elitist” (Eagleton, 1993).

Postmodern theories are critical of metaphysical theories. But Derrida assumes that the theories he deconstructs also offer material to use for new constructions. Langlois seems for me to have a point in his comment on postmodern theories in relation to human rights: “Human rights, despite the claims of some, are not rights we have simply by virtue of being human. Rather, they are rights, generated by narrative rationalised metaphysical beliefs, beliefs which inform us as to what the metaphysical category ‘human person’ means – always a moot point” (Langlois, 2005; 383). Human rights are developed from metaphysical theories where the human has been given a special meaning, “(H)uman rights are established and regarded from within our philosophical, political and religious traditions” (Langlois, 2005; 383). Postmodern theories deconstruct these theories, but do themselves depend on them. Deconstruction was not possible without them, and new solutions lay within the deconstructed frameworks.

Langlois claims that human rights make sense only within some special philosophical frameworks. I agree up to a point that we may need metaphysical stories to deal with ethics. But at the same time, his position demonstrates the problem. Those who developed these metaphysical theories were searching for truths, and they believed in their theories. We stand

in a situation where lots of people have lost faith in the possibility to come up with ultimate comprehensive theories or normative constructions. I know that this is not the whole picture, because many also find “grand narratives” true, and approach human rights from these positions. But for many others, there is less belief in philosophical truths or narratives. We are still committed to truths, but we have become more cautious, because so many truths have turned out to be small truths, partial truths and not the whole truth – or even not true at all.

Derrida said that the law is the terrain for calculations. As such, human rights should be a result of calculations and evaluations of important dimensions for human lives. These calculations are not done in a vacuum, and they can and should be deconstructed; nevertheless, calculations have to be made. The natural-law school and the other schools have valuable contributions to offer, because they reasoned and calculated in positive terms. Even if we do not believe they are exclusive or ultimate truths, I think they are fruitful and relevant sources.

As we have seen in these presentations, human rights discourse is also criticised for having a western bias. This led Mutau to demand a reopening of human rights documents in order to improve their universality. People like Mutau find it difficult to support human rights because of the lack of an African fingerprint. On the other hand, people like Alves (2000) warn against this reopening, arguing that human rights may well never be closed again. I follow Alves on this point, but there must be room for debate about norms, priorities and interpretations, and about new norms. I do not think it is easy to reopen the basic instruments of human rights, but at the same time the main discourse on human rights is (to

use Dembour's word) too arrogant to see possible critical sides of human rights discourse. The mainstream views should be more humble and open to criticism.

Like the theories they deconstruct, discourse theories themselves can also be hegemonic and dominant. If everyone is obliged to understand himself and others in terms of the views put forward by these theories, discursive theories are exactly like the other theories which they criticise. The views in this school are positive with regard to diversity, but if that means that everyone is obliged to accept the understanding of diversity which is presented in this school, that means a reduction of diversity, which is related *inter alia* to the fact that people have different beliefs and philosophies about what constitutes a good life. To respect diversity is to respect these perspectives, but when a deconstruction deconstructs any view as historical and contingent, then for me, two questions remain: after everything is deconstructed, what or who is it that one respects? And ultimately, for whose benefit is deconstruction carried out?

Dembour develops her nihilism in response to her understanding of discourse and with a wish to avoid being imperialistic, in a kind of radical tolerance. She attempts to be "in between", as a nihilistic position. But her position is an attack on the views and traditions she wants to protect. It is a nihilism that makes the cultural answers irrelevant. I do not find her nihilism a good answer to diversity. I prefer to have a normative position, while however being realistic and critical with regard to its possible limitations. Respect for diversity does not mean moving into nihilism, but taking a stand and being able to live with others' values, while also accepting confrontations when necessary.

In the end, I cannot resist the temptation to put forward a last critical question or reflection: are discourse analysis and deconstructions, which are so critical of capitalism, themselves products of late capitalism's subtle machinery? Their nihilistic view that the forces are free

goes well together with the law of the markets: one's preference for particular views or perspectives is seen as a matter of choice based on convenience, design and taste. Is the real lost with the failure of a too optimistic "modernity" to find the true norms?

I have raised some critical questions about the positions of the discourse school. They are far better at criticising than at paving the way forward. Still am I also impressed by and attracted to the critique I found in this school, even if there is too much one-sidedness or too little on why human rights matter. Their critical perspective and historicization of the human rights discourse belongs to HRE, and I will in the following build on some critical and constructive elements in understanding of HRE from this school.

5.8. Discourse school and HRE

When it comes to education, this school makes scarcely any impact on HRE. Only a few take up the position in HRE. Conversely, education, except from Derrida, was not a subject for the authors who have been presented, even if some of their views, in particular Derrida, can offer perspectives for HRE.

Brown made an analysis of how states discipline their citizens and how human rights may be a part of such processes. The disciplinization takes place in part through the education system. HRE is or can be a component in that project. In this perspective, to learn about human rights is the same as learning how to see oneself as a human being, as one who possesses rights, and how to act as such. It implies learning to live and behave as one who has rights. The discourse approach had a general concern for human rights as tools for liberalism, capitalism and patriarchy. They made us aware of a relationship and a mechanism

that should alert us and raise critical questions: what is HRE actually about, who is it for and how does it work? Dembour has a short and critical comment on HRE:

“Education is often presented as the most effective way of implementing human rights. The idea seems to be: if only one could get the message right to youngsters, the world would vastly improve by the time the young generation become adults. This perspective assumes that human rights is an unproblematic topic/concept. But the fact is that human rights are highly problematic ...” (Dembour, 1998; 156).

As this thesis has shown, there are several ways to understand human rights, and several possible identities to develop in HRE. In Dembour’s view, HRE does not reflect the complexity that she finds in human rights discourse, and I follow her on that. If its complexity is not addressed, HRE will be simplified, and human rights may become instruments for dominant forces.

One of the main reasons for presenting Derrida was that he introduced ideas about education into this horizon. Although only a few of those who are directly involved in HRE are inspired by this school, there are quite a few who apply Derrida as a guide to pedagogy and in particular in relation to ethics and the relation to the other (Trifonas and Peters, 2004, Egéa-Kuehne, 2004, Biesta, 2001, Trifonas, 2000) and also to philosophy of education (Feinberg, 1995).

To me, the most important concept in Derrida’s theory is his concept of responsibility. As we have seen, responsibility has two sides for Derrida, one being the responsibility for the general law (the Kantian one) and the other the responsibility for the singular or the other. His concept of responsibility is ethical. It presents the ethical imperative as a double bind, where both sides are equally important. This can also be a framework for HRE.

The moral imperative is usually related in normative theories to one of the two sides, viz. to universal norms. The previous schools mainly follow that tradition, with an almost exclusive focus on the universal. Derrida's concept of responsibility does also address the universal. Common and general laws, equal for all, are needed for stability and protection and we have a responsibility for these laws. Here, he shows the influence of Kant. Responsibility for the law is a responsibility to follow the law, and to construct it. For HRE, this means calculating and reasoning about constructions of human rights, but as we saw for Derrida constructions take the detour of deconstruction.

Derrida's concept of deconstruction is both critical and constructive. For HRE, deconstruction means several things. It means, as we have seen in this chapter to be critical with regard to the history and politics of human rights as well as the institutions that have developed and applied, and currently apply the norms. This means looking for the interests and hegemonies that may hide behind a universal.

The understanding of universality is historical. Universal human rights are seen as contingent, which means they are situated in history. They are the outcome of philosophical and political processes and decisions. It is a universalism with historical limitations. In a deconstructive perspective, it is impossible for someone at a given time and place in history to construct a pure universal, since one will always be influenced by the particular or the context. One deconstructs in order to reduce the particularities and to move towards greater universality, but this is a never-ending project. The deconstruction can positively be read as the protection and pursuit of the universal. In this connection, HRE must be seen as part of this effort to protect and to improve human rights.

For the topic HRE and diversity, the deconstructionist approach offers new perspectives. Deconstruction is in many ways a philosophy about the other, the different or

the marginalised. Laws are enforced mainly by the powerful and by majorities, while those marginalised and overrun by laws will mainly be minorities or weak groups. Deconstruction is an inclusive project, working via the improvement of laws, including human rights laws, to give room for the marginalised, the other. It offers a way to be more inclusive and become more universal.

There are two movements: first, to be critical, and then to be constructive, reconstructing what is deconstructed, but reconstructing in a different way, in order to correct the previous 'universal'. I see both sides of deconstructions as relevant to HRE. This is a challenging and complicated approach and no place for beginners, but it should have its place on higher levels in the education systems.

Further deconstruction, as responsibility for the universal norms, means in relation to HRE a right to philosophy. Derrida himself combined the teaching of rights with a right to philosophy. That meant that the philosophy and the philosophical roots or traditions of human rights should be taught. But it should not stop at learning of the 'masters' in philosophy, for that would mean missing the Socratic element of critical enquiry and questioning. HRE and philosophy must allow creativity, so that students learn to criticise the masters and to see what is lacking in their projects. It must be open to new questions and new thinking, according to Derrida. This includes critiquing the 'masters' in human rights as well as 'masters' in philosophy. If HRE means learning and parroting the established theories and understandings of human rights, it becomes a dead end, seen from a deconstructionist position.

Derrida often mentions language and idiomatic challenges. To present oneself or to be informed in a foreign language can and will most often be a handicap. Cultural minorities will often have difficulties with access to, and real understanding of, a main language.

Derrida himself mentioned the human subject of human rights as an example of an idiomatic concept. The majority in western democracies are familiar with the concept, which means that they have access to and understand the status of the human in human rights in a western context; whether they know the history of the concept or not, they will have a general idea of its meaning. Other languages and cultures will also have their own idiomatic on human subjects, but they will think of humans in other terms and values based on the different cultural, religious and language histories. This is a point that came up in chapter 3 where we saw that Buddhist and Confucians did not have a concept like the western “self”, and it arose in a different way also from Asad and Mutua in this chapter. These differences represent a challenge, and in this context a challenge for HRE in multicultural and diversified classrooms. Students with different idiomatic backgrounds will understand human rights through their own idioms and be influenced from their background. This is both a language and a hermeneutical issue, quite similar to An-Na'im's arguments. To communicate human rights across language and idiomatic differences are a challenge, where different cultural and experiential backgrounds will make an impact on the perception as well as on the priorities of human rights. Human rights are not self-evident. Attention should be paid to the teaching of human rights from different normative traditions. This topic has mostly been ignored in HRE.

Responsibility for the law means also to address this difference which means diversity within HRE. It means, as I understand it, inclusion of diverse perspectives and normative traditions in HRE.

The other side of the double responsibility is just as important as the first. It is the responsibility for the singular, the other in her singularity. As we have seen, the singular is

unique, and general norms cannot fully match the individual as unique. Both Derrida and Levinas see this responsibility as a responsibility for the unique other. For Levinas, this means that we will always be judged by the other, the other keeps you responsible. As such, the responsibility is heteronomous', because the other commands you and judges you. One is responsible with regard to an external authority, which is the other. This is in opposition to 'autonomy' ethics which we have seen most of in this thesis. Autonomy means, for instance in the deliberative school, that we construct our norms which we are responsible for, we give the norms authority and seek to obey our own norms. Derrida does not use the language of judgment, but he too saw the relation to the other, in his language the singular as a heteronomous normative relation. There is a need to be open and respect the other's otherness: for Derrida, this is the second responsibility. For HRE this means to be aware of differences and at times see these as a correction and critique of the universal norms if the singulars are not protected in the laws. It is to be aware of the limits of a universal norm and take a different look at the other. This we did also see in Ingram's use of Lyotard's concept 'the differend'.

One needs to respect the universal, and also at the same time the different in her difference. For Derrida a universal stands in relation to its opposite, a particular. Both ends of these poles will have an impact on the meaning of the other side, but to find a harmony or balance between the two is impossible. The dynamic in the two responsibilities is so different that they will never find peace; there will always be a tension between the two. The universal will challenge the singular, and conversely, the singular will challenge the universal. To only follow the logic of what is common may violate the individuality of the singular, but on the other hand the common is necessary to protect singulars against other singulars or other forces. This is the double responsibility, both sides having to operate at the

same time. It is a double bind. For HRE, this introduces a new understanding of responsibility, and with the unsettled tension HRE gets a new challenge. It is to stimulate the alertness or vigilance for these two sides of the responsibility.

Dembour's concept of "in between" acquires a new meaning when it is moved into this context. It is no longer nihilistic. To be "in between" is now to be under the two responsibilities. It means being vigilant and facing situations with an open mind under the two responsibilities.

Todd is a solitary voice in HRE, who can be seen in the context of this school. One of his concerns is how to do HRE in relation to the dilemmas and the ambivalences that a diverse society entails. He does see human rights as responsibility. For teachers, that raises the question of how is it possible to develop responsibility. Todd sees this as a process where the students are exposed to everyday or more complex dilemmas, which compel them to reflect on the need of others and on the impact they themselves will make. He wants to generate and foster ambiguity, not unlike Derrida's vigilance or Dembour's "in between".

"In fact, viewing rights in terms of responsibility rather than entitlement (the latter making up much of the educational literature), suggests a reorientation to the actual teaching of human rights. Moving away from didactic materials that seek only to ensure students have learned what their rights are, a renewed education would need to discover ways of creating a pedagogy of implication. That is, a pedagogy whereby we are continually vigilant in attending to the needs of others in a way that takes responsibility for our own responses. Such vigilance does not come easily, but if human rights education is to have any hope of creating a just education, paying attention to how we judge and why we judge seems to demand such measures" (Todd, 2007; 601).

HRE means letting the students come to grips "with the dilemmas of rights and judgments" (Todd, 2007; 601). The field of human rights is open to conflicts between norms and interpretations as well as about what they mean in practical situations. Students should be put into "in between" situations, and from these situations develop competence to live and

deal with moral responsibility as a continual challenge. They should learn to take decisions in ambivalent situations.

“I conclude that the real potential of human rights education lies in its capacity to provoke insights that help youth live with ambiguity and dilemma, where freedom, justice, and responsibility cannot be dictated to them, but rather involve tough decisions that must be made in everyday life” (Todd, 2007; 592).

Todd does not use the double bind of responsibility which places us in the situation of ambiguity between general law and the response to individuality. Rather, he places the students in tensions where responses are called for, where the students must learn to take decisions; this has similarities to Derrida and Dembour. To be in tension, experience dilemmas, to be vigilant, “in between” – all these terms stress the openness and responsibility of ethical decisions, rather than the learning of solutions and fixed conclusions.

HRE in this school means ambiguity, vigilance, “in between”, facing the challenges posed by a double responsibility for human rights and for the singular. It stresses alertness and decisions rather than the memorising of finished norms. HRE in this school means developing double responsibility. It also means deconstructing, being critical and constructive. It means having sensitivity to different idiomatics. It means seeing human rights as unfinished projects, and in so doing becoming more universal.

Chapter 6. Concluding discussions

In this chapter, I will discuss and sum up the issues I have been dealing with in this thesis. These are, first: to see how human rights are understood in various human rights theories and second, how these might be currently reflected in understandings of HRE. A third issue is: what perspectives we may be able to take from the general human rights theories and discourse into HRE. The last and fourth issue has been: how diversity or pluralism is dealt with in the different approaches both to human rights and HRE.

The thesis has shown that there is no common agreement in human rights discourse about how to understand human rights, but still there is a wide acceptance of the norms. They acquire different meanings from the different frameworks, and my thesis reflects on this in relation to HRE. This type of work, where HRE is related to the general understanding of human rights, has not been done in this way before in relation to HRE. I remind the reader that I am addressing HRE at higher levels of education, like that of teacher education and in the tertiary sector. It is a critical reflection on the understanding or frameworks of human rights and HRE which then would decide how we tackle HRE at the lower levels of the educational system. Even if I have stayed on an abstract and theoretical level, I think that perspectives discussed in this thesis can and should have practical relevance. My purpose is to explore and discuss perspectives and the deeper understanding of human rights, and to relate that to how HRE is and can be understood.

I will sum up, although I realize that there are tensions and contradictory elements in the material and in my understandings. First I will summarise the four schools of thought that have formed the basis of this thesis and how HRE is understood in relation to the schools. In the second section I will sum up how the diversity issue is dealt with through the

schools. In the third section I will give my understanding of HRE based on the perspectives from the schools in the thesis, and at the end I will give a concluding reflective comment on the study as a process.

6.1. The Four Schools and HRE

In what follows, I will give a synthesized overview of the four schools. The intention is to focus on some main features of the different schools, to get a picture of each school and to see more clearly their relation to each other. I focus on common elements in the schools and I simplify what we have seen to be complex situations with different and conflicting positions in one and the same school. I will present some critical comments and a short discussion in which I compare some of the main ideas.

I see the four schools also as possible models for HRE, in that each of the schools, in relation to HRE, implies teaching and learning in accordance with the understanding of human rights in that school. I will also reflect on how these schools are echoed in HRE literature. This study has shown that human rights are not a bounded set of norms: they get meaning from wider frameworks, and are used in different frameworks, whether consciously or not. Dembour's discourse approach to human rights reveals how they are dealt with practically in courts and academically in theories. I have found her typology of four schools to be relevant; the main lines of her classification are confirmed in the theories I have worked with, even if they do not always appear so clearly and distinctly as "schools", and there are some overlaps. Her main view has been confirmed in my material, and this opens the way for a discussion of the frameworks in relation to HRE, which she did not include.

I will first give a short presentation of each school.

6.1.1. Natural law school

In the chapter on the natural-law school, I presented three types of approaches, where the ‘comprehensive’ theories are more typical than the ‘minimalist’. This is a school which is about the foundation of human rights. This is the school which supplied the substantial philosophy about human rights. They wanted to support and convince people about human rights by means of solid argumentation, employing reason, logic, experiences and different types of constructions to make sense of human rights. Applied to HRE, this means focusing on this foundation, in order to make human rights understood and accepted in a substantial way.

Gewirth thought that if human rights are understood with the help of reason and argumentation, this will also supply motivation for and respect for human rights. Motivation is the second key element which must come from convincing arguments. This motivation shall lead to action, so that human rights will be more fully realized.

These theories concentrate directly on something that they identify as common to human beings. Nussbaum sees capabilities as something we as humans have in common, something necessary for a flourishing life: she called herself an essentialist. Gewirth based his theory on what he believed that everybody wants: well-being.

Human dignity and equal dignity among human beings is a bottom line in this approach. Donnelly saw human rights as derivations of human dignity and of what is needed to live a life in dignity. From these platforms, authors were very confident and direct about the use of human rights norms. They had a strong commitment to human rights, with little or no critique of how they are used.

For HRE, this implies paying considerable attention to these keywords, such as dignity, commonalities and capabilities, to give a foundation and to provide motivation by means of convincing and practical argumentations. The aim is to anchor human rights by means of reason, experiences and reflections, to develop an understanding of the rights and why they are important to everyone. This will lead to a respect for the norms and to action for the norms.

Among educationalists, however, this was not a popular model. Few, with the exception of Spring, took this as their main perspective. Several, like Tibbitts and Tarrow used a model which most resembled the minimalist universalism of Donnelly, who based his understanding on “human dignity” but refused to do more elaborations on the issue. This minimalist view was quite popular also among educationalists who were more at home in other schools. The educationalists did not explain why they used this minimalist version rather than the more substantial ones, which in different ways define what is common for human nature or formally necessary norms.

One of the problems with this natural-law model is that each of the theories within it claims to have the ‘truth’ about foundation although they are quite different. This prompts the question which one should choose. I also think that Spring shows some of the problems with this approach in the way he uses Gewirth’s philosophy. For Spring, it is through Gewirth’s philosophy of the imperative of well-being that human rights shall be installed in the students “like wheels in the head”. This sounds quite dogmatic, and it is problematic in HRE, as I see it. When only one theory is used, this is a difficulty, because it entails learning to see the world in only one way. And this is likely to be contested in a pluralist society, because there is more than just one perspective.

On the other hand, to use several philosophies may imply that there are several relevant approaches, and this can be perceived as undermining each of the separate theories which lay claim to the truth and claim to be the true philosophy of human rights. I support Spring, because he goes into such substantial human rights issues and argues that this should be done in HRE. He is one of the few who do that. However, I disagree about the way to do it. He committed himself in the end to one perspective, but I think we should continue to be open to different theories and see the various theories as sources vis-à-vis the other theories; they can complement each other and bring better understanding of what human rights is about. It can in itself also be stimulating and motivating to see different approaches to human rights. In this way, HRE is also able to better communicate with the diversity of students.

6.1.2. Deliberative school

In the chapter on the deliberative school, I discussed Habermas and Rawls, the two most prominent exponents of this type of liberal philosophy. Further I took four of the critics and commentators on Habermas and Rawls and combined them in an attempt to develop a more inclusive and grounded discussion.

One main concept here is dialogue, which I prefer to call normative dialogue; Habermas called it discourse, and Rawls public reasoning. Instead of arguing in terms of one argumentative structure or grounding, like the previous school, here dialogue replaces those theories, and the norms are generated in dialogues. In Rawls it is not that straightforward, because of the role of the ‘original position’ (operating as if behind the veil of ignorance) in his theory, and the role of the leaders in democratic and legal institutions. But for Habermas, dialogue is the way. It is a normative dialogue because it is about basic normative issues for

society, with the purpose to identify and defend common norms in a society. This is a way to establish a common ground, to legitimate; and Habermas would also say, to give foundation to norms and constitutional rights.

For these theorists, the rules and principles for the dialogues become important issues. Participation is a key word. All those affected by the decisions of the dialogue should be part of the dialogue, and have an influence. The formal demands for argumentation become another key field. The dialogues are to be based on rational and formal argumentations.

These dialogues shall lead to consensus or overlapping consensus, where the various participants agree. For Habermas, this is a substantial agreement, in submission to one and the same argument, which is the 'best' argument. For Rawls, the agreement is overlapping, because the agreement is based on different argumentations and there probably exist disagreements between the agreeing parties. They agree and disagree, and they agree on a final core set of norms but for very different reasons.

In HRE, this school is influential, but in a different way. Some, like Dorsey and Tarrow are interested in relating HRE to school democracy or intercultural education, while others such as Osler and Starkey take up Habermas' use of argumentation and see human rights as common ground in a pluralist society. But they did not relate HRE to the normative dialogue itself. Human rights were related to democracy, as an underpinning, but not *vice versa*, as a democratic dialogue about basic common norms. Like the previous school, the contributions from Habermas and Rawls offer several concepts and issues which help us to understand the role of dialogue and agreements, and present interesting principles for the dialogue.

One problematic aspect of Habermas and Rawls is that they ignore the role of power and domination, the fact that marginal groups and people can become excluded in terms of

formal rules, style of argumentation, and access or participation. This is the critique by Young and Ingram. Parekh too commented on the rules of the dialogue. He believed that these are controlled by majorities, and he partly accepts this; but he also argues that the rules of the dialogue must be a topic in the dialogues themselves, so that these can be more inclusive of the marginal groups. The dominant majority can use its power precisely *qua* majority to make common what they find common, although this may not be “common” to minorities of various kinds. I find these critiques relevant, but this does not destroy the ideal of a normative dialogue. Rather, it makes it more complex and more inclusive, and more grounded in reality. With these elements included, I would like to see the normative dialogue in HRE as a place where students learn to argue and listen to others’ views and develop understanding and respect for common norms, and where they can learn to argue in ways that are acceptable to others. This is important in a pluralist society. To develop skills in these types of dialogues is highly relevant to HRE. The dialogue should be about human rights themselves, but also about understanding the meaning and principles for normative dialogues and the need for a common ground in our complex societies.

A possible weakness in this approach is that it has focused too strongly on what we have in common, but not so much on what it means to be different, to be other. On the other hand, minorities have opportunities to contribute with their experiences and views. This school too has a strong commitment to human rights, but they see the foundation and use of the norms as more complex or contested than the previous school thought.

6.1.3. Protest school

Again, I focus on some main concepts, in order to capture the characteristics of the school. A key concept is empowerment. People live under conditions where their human rights are violated. In view of this reality empowerment is needed: empowerment of the victims. They must be qualified and educated in order to be able to do something about their situation, to promote a transformation of the society or of the situation that keeps people down. Empowerment then means making people able to claim their human rights and to understand why and how they are violated, as well as to grasp how to change the situation. This is where human rights have their origin. This is where they belong and where they are upheld, according to Douzinas and Baxi. The educationalists of this school did not accept, or more correctly they did not comment on this last point about the place of origin in victimhood.

HRE here has the goal of making students active in struggles for human rights. The students are to be converted from passive bystanders to human rights activists, according to Mihr. A successful HRE manages to activate in them the interest to change society, to develop a human rights culture where human rights are respected. Human rights are the visions for this future, and the tools for change and action.

Baxi and Douzinas stressed suffering and oppression more strongly than the educationalists, but they were all concerned about the destiny of victims and about changing the victims' situation. Like the previous schools, this one too offers a useful vocabulary for HRE, above all the vocabulary they have developed for the battle that they see human rights and HRE as parts of. They have a strong commitment to human rights, but the theorists also saw problematic aspects with the human rights discourse, e.g. in Baxi's warning that human rights can become like "modern rights", that is a throwback to the rights generated in the

interests of the dominators. The educationalists did not discuss the critical aspects of human rights discourse.

It could be argued that the thinking of this school or model for HRE is too much organised around suffering. To make this point differently and more positively, we could say that this approach probably works best with regard to societies where severe suffering and general violations of human rights are part of people's everyday lives. Although human rights are violated in societies like Norway and there are people who suffer and do not have their human rights fully respected, many people and students will not have such a direct experience of serious human rights violations in their own lives. They may see the drive for human rights as applying only to fragile states or developing countries. The understanding of the social situation in this school may be too inflexible. HRE takes place in many different societies, with different challenges both to the societies and to the students. There is a danger that this model becomes too focused on one type of conflict, between the have nots and the haves. With this pattern, it may become a HRE controlled by those who apply the model. Nevertheless, it has its relevance for people and students who need empowerment, who are oppressed or violated.

I think any human rights education is a kind of empowerment, simply by virtue of learning what rights one may claim. This school would supplement this basic element by means of a focus on solidarity with others, helping them to claim their rights. In a global and cosmopolitical perspective, it is highly relevant.

6.1.4. Discourse school

This is the school which has the most distinctive approach to human rights. Whereas the other schools go straight to supporting human rights, this school shows a mixture of scepticism and support, and may start with a critique. Human rights are understood as a discourse, and discourses are always performed by someone at some time, and take place through language. This applies also to claims to universality, e.g. in the case of human rights, which means that they are historical constructions. The universal is influenced by the particular. To avoid or reduce the effects of particularities, one has to deconstruct in order to identify the influence on the universal human rights discourse from the roots and from other forces, so as to eliminate the particular as far as possible, because this deconstruction too is influenced by particularities. For Derrida, this means moving towards the universal, which is coming and never fully present. In spite of the critique, deconstruction becomes a way to protect and develop human rights. In different ways, as we have seen, Mutau and Brown are all critical of human rights discourse, finding several biases in it, but they did not reject human rights. Dembour's "in between" is symptomatic of this school, even though Derrida was unusually clear in his commitment to human rights.

It was not common for the school, but I identified what I found to be a normative platform by Derrida, viz. his double responsibility. We are responsible for the law which is general and common, and we are responsible for what he calls the "singular" or the "other" *qua* other. To be responsible then means being vigilant and responding to both sides, in respect both for the law and for the singular. This last aspect of Derrida is reflected in a similar way among the HRE educationalists by Todd, who demanded ambivalence, affirming that students should learn to deal with ambivalence in moral dilemmas.

I see the deconstruction of discourse as relevant to HRE, but this is an advanced approach, since it starts with critique before support, and deconstruction is a complicated method and theory, which makes it a challenge for HRE. It has been rather useful to approach human rights as a discourse. The critiques of human rights discourse by Baxi, Douzinas, Asad, Mutau, Brown, Dembour and Derrida have shown its relevance. This school and its approach and critique are generally ignored in the HRE sources studied in this thesis. I believe the crucial point is to find the right level and time to carry out the deconstruction or critique of human rights discourse.

As indicated above, I find Derrida's double responsibility, as a platform for normative reasoning, relevant to HRE. One weakness in Derrida is that he does not tell us how to construct the general law. Derrida and the other authors in this school do not take part in the direct construction and argumentation for norms, and I see no substantial contributions here - usually, they are one step behind. Yet what they do by deconstruction is important for human rights too.

Another issue I find problematic is their language-based approach: everything is in language. They make the good point that it is hard to get out of language, but this becomes nearly inhuman when suffering becomes simply a language issue, rather than something real, as Baxi and Hastrup pointed out. Language may also cause suffering. This means that deconstructions are very welcome, but that is because the suffering human is a person both inside and outside language.

6.1.5. HRE and the human rights schools

Each of these four schools has its own profile on HRE. The two first schools, in different ways, are involved in the development or foundation of human rights, with the focus on understanding, leading to motivation and respect for human rights. The first school is based on comprehensive mono-theories, and the second on dialogues and achieving consensus or overlapping consensus. The third school, the protest school, is very strongly focused on bringing about change and transformation. While the first two schools likewise see human rights in relation to change, this is even more in focus in the third school. Empowerment thus becomes important, and human rights are the tools. With the last school, human rights become more historical. They are historical for the second school too, but in the fourth school there is more scepticism about the possibility of constructing of universal norms: more criticism is needed, if they are to become more universal. The last school will be concerned about the human rights discourse and critique of its effects, but there is support for human rights in this school too. There are four different perspectives which will produce a quite different and distinct HRE if each of them is taken as framework for HRE.

When it comes to the research question of how these models match with the understandings of HRE presented in this thesis, we see that it is one of the less influential schools in the general discourse that is dominant in HRE, viz. the protest school. But just as it is quite clear that the majority of writers in HRE have a protest school position, it also becomes clear that many cross the schools; sometimes, people takes up human dignity as a ground, as Donnelly does. And like him, they do not elaborate on how one gets from human dignity to human rights. There is in general little focus on the foundation of human rights in HRE literature. I think that Flowers and Gundara express a common understanding, when they see human

rights as 'self-evident'. The natural-law school is popular in combination with other schools. In the minimalist version, very few used the comprehensive theories in the natural-law school as perspectives in HRE; the exception is Spring. As such, the natural-law school in their more comprehensive versions found little support in HRE.

The deliberative school had an influence in terms of the reference to human rights as common ground in pluralist societies, and several saw this common ground in relation to international agreements on human rights treaties, conventions or covenants etc., based on formal agreements. This is a common approach. But the normative dialogues which were very important for this school were not found to be integrated into HRE. The dialogue, with its exchange of views and experiences, its making sense of norms, and its potential for reflection on agreements or rules for normative dialogues, was not exploited. Most of the perspectives in the deliberative school were not directly discussed in the HRE literature. There would of course be a call for discussion and dialogue in classrooms about rights, using student experiences to decide on priorities in rights, and different types of rights; but these would not take learners back to the underpinnings of rights, or to the issue of a clash of comprehensive views.

The last school, the discourse school, has had hardly any impact on the mainstream educationalists in HRE, even though some philosophical writers such as Feinberg (Feinberg, 1995) will mention rights as they discuss discourse.

Where educationalists and the general theories come closest, where HRE is elaborated to a level similar to that of the general theories, is the protest school. The two fields recognise much of the same structure, but with some differences in the priorities given to particular concepts. For example, HRE did not place so much emphasis on suffering and

struggle as Baxi did. It is interesting that although the educationalists related to this school, such as Tibbitts, referred to transformative pedagogy, we find little or no discussion or references to the philosophical human rights material of the school. The protest school approach is the clearest and most developed model in HRE. The other schools find support, but they do not function as clear and developed “models”.

Nevertheless, I think that these four schools help identify possible HRE models. They clarify frameworks of human rights and where HRE is located. Through these frameworks, it becomes clear what kind of HRE dominates, and what perspectives and elements are used or not used. This can be useful for a debate about how to understand HRE. There is little debate in the HRE literature examined in this thesis about philosophical frameworks for HRE, and this thesis is a contribution to such a debate. I believe that the more reflective human rights discourse could have been analysed and utilised more.

The four models have varying weaknesses and strengths. When they are seen as a range of schools or models, it is easier to see the pluralism in human rights discourse. I see this pluralism as a positive source for human rights. The same should apply to HRE too. “Human rights also argues for a pluralism of provision in education – and against any monopoly of one philosophy of education or of one kind of institution” (Lister, 1991; 253). Lister is interested in pluralism in pedagogy and institutions – and, I should like to add, also in theories or understandings of human rights and HRE. Such pluralism opens up discussions, and paves the way for being pragmatic and eclectic and constructing new models and mixtures. I am eclectic: I find good elements in all the schools, and I find problematic aspects in all the schools.

6.1.6. Some conflicting views and syntheses

The schools represent alternatives. They take different positions which do not necessarily harmonize with the other positions. But read in another way, they can also be supplementary and complementary, with the natural-law school delivering substantial foundations, the deliberative school dialogues, the protest school actions/change and the discourse school critique. I will discuss five issues or intersections which start to juxtapose ideas from the schools.

First, we have the link between the foundation of rights and the deliberation about them. The natural-law school *à la* Nussbaum and Gewirth had closed and comprehensive theories. But I would like to take them out of this exclusiveness and see them as delivering substance for the dialogues and discussions in the deliberative school. The deliberative school is mainly concerned about procedures and the infrastructure of the dialogues, but the natural-law school supplies something that the deliberative school does not have, viz. contents for dialogues. From a Rawlsian viewpoint, these theories in the natural-law school can be different comprehensive views; he argued that they could not function as common ground because of the lack of general support for each of the comprehensive views. But unlike Rawls, I think the different comprehensive views have a role to play in the dialogues. I do not see how public reasoning can be carried out without influence from what he called comprehensive views. As such, therefore, the first school has something to offer the second.

Second, we have the link between construction and deconstruction. Both the deliberative dialogue and the natural-law school describe ways of constructing general laws. Derrida and deconstruction did not contribute much to the construction of norms. Deconstruction is particularly vital for the unmasking of hegemony, because it is a good

instrument to uncover dominance. I see the need for deconstruction, but also for some sort of substantial foundation of human rights. These positions are far from each other as theories, but if it is possible to construct human rights, it must also be possible to argue and give a positive explanation for them: we have to argue and to make sense of norms.

Where the first two schools look for logical and formal argumentations, the deconstruction school takes apart these same argumentative arrangements or constructions. It deals with them as language constructions which have a place in history, a context, and a place of origin. It is interested in who did the argumentation, in political interests and powers, etc. It may deconstruct the foundational theories, but the deconstruction itself is also dependent on these theories. When the foundational theories claim to be independent of history or claim logical objectivity, they are made historical through deconstruction. Human rights are historical constructions and supported by argumentation within history, with historical limitations. The foundation is situated in history, but as I see it, we should still be concerned to make sense of human rights, even granted that these are historical.

Deconstruction depends on the foundational theories of the natural-law school. But deconstruction teaches us that we have to be realistic about argumentation, that our arguments are likely to be influenced by who we are and so on. Derrida holds that deconstruction allows us in fact to move closer to the universal, in its critique of the particular. It is not an either/or but a both/and: we need the argumentative, the dialogues and also the deconstructions as protections and support of human rights – and then also for HRE. They guard and support human rights in different ways, for example by preventing them from being usurped uncritically by dominant or monopoly interests, and consequently preventing these biases from being taken for granted.

As Dembour claims, it is vital that we be concerned about pluralism in the human rights discourse. To eliminate this pluralism is probably possible only with the use of domination and hegemony. Deconstruction is a tool to prevent monopoly, but it is also in need of the contributions from other schools, in order to provide positive alternatives.

Third, we have the link between foundation and empowerment. I believe that the protest school reminds us that human rights are not only about theoretical issues like origins, foundations, deconstruction or dialogues, but also about action, about changing or transforming, and about ending suffering. Human rights matter to real individuals and groups. But I do not share the protest school's apparent lack of interest in the dialogue and in the foundation of human rights, which was most clearly seen in the educationalists in this school, who mainly referred to a minimalist universalism. I see the grounding and the normative dialogues as relevant to motivation and to the development of solidarity. The general theories in the protest school showed interest in the question of the origin and background of human rights as vital for the support of human rights, and they demonstrated even more clearly the usefulness of these aspects for discourse analysis. But the educationalists whom I examined did not specifically discuss these issues, preferring to strengthen their case for teaching for action by presenting rights as not controvertible.

Fourth, we have the relationship between the discourse about rights and the reality of rights violations. I have already commented on the conflict between deconstruction's focus on language and suffering as something experientially real. I recall that suffering can be caused and upheld by the power of discourses, so that the deconstruction is necessary. But when deconstruction theorists do not accept that anything is outside of language, they are

wrong: suffering is real. It occurs before, while, and after it becomes codified by language. Once again, I have to admit that there are good points on both sides, in the protest school's social realism (Baxi) and in the discourse school.

Fifth, we have the debate about the origin of rights conventions, whether this lies in historical cultures and natural laws or in the more recent acknowledgement of suffering. Baxi and Douzinas located the origin of human rights among suffering people. From these experiences come the imagination and vision (Douzinas) of human rights. They are supported by Morsink, who held that the development of The Universal Declaration of Human Rights can be understood against the background of the experiences of the Holocaust and the atrocities during the Second World War. Morsink claims:

“They did not need a philosophical argument in addition to the experiences of the Holocaust. That experience itself gave them the confidence and certainty to believe in the truths they enshrined in the Declaration, namely that ‘all human beings are born free and equal in dignity and rights’” (Morsink, 1993; 358).

I see the point that the experience of suffering is a location for the establishment of human rights, but the people who developed the Declaration were not the victims. I am not so sure that philosophy and cultures are without influence on the constructions of human rights. I agree with Glendon that: “rights emerge from culture, cannot be sustained without cultural underpinnings” (Glendon, 1998; 1175). For Douzinas, human rights emerged in the imagination as a vision on the part of oppressed and suffering people, I accept that to a degree, but we must still ask what it is that makes the imagination and the vision “good”. For me, that is to be found in the normative traditions, in philosophy and cultures: in this way, the first two schools came together again.

As I have said, I am eclectic, and take elements from the different schools. As we have seen, this is not unusual among educationalists, but I have derived other combinations and integrated components which have not been common in HRE. I lay greater stress on substantial human rights theories, and in the same way, I underline the importance of normative dialogues and deconstruction. I combine perspectives, and this changes the initial understanding of the different elements. For example, I see the natural-law school's substantial argumentation for human rights as useful, but I do not take my stance on one theory or see one theory as true. What I personally think is not so important; what is important is that people find different theories right or relevant, and the combination and use of competing theories opens the door to different people. Further the differences in theories probably bring better and deeper understanding of human rights even for those with one favorite way to understand them. Differences are a source.

I find that the four schools can all be seen as possible models of HRE. They make clear the framework in which HRE operates, as well as what HRE has not addressed, thus clarifying HRE frameworks. This also paves the way for a discussion of what HRE should and could focus more strongly on. The protest school has a strong position in HRE, but I would like to see more elements from the three other schools in HRE, with more on substantial foundation, more on normative dialogues, and the introduction of deconstruction.

6.2. Diversity in the human rights theories and in HRE

I will now in the following sum up and discuss how the human rights theories have dealt with the issue of diversity, related to my research question regarding diversity. I started

from a specific interest in cultural diversity, but found I had to broaden out as I read different theorists. The theories have varied from not addressing it as a subject to having it as a core element. I will also make a short comment on how diversity is addressed in HRE.

The meaning of diversity has been found to be varied. It means cultural diversity for authors like Parekh, An Na'im and also Nussbaum, partially also for Baxi. The postcolonial theories from Mutua and Asad had also culture as a main object, similar to Dembour and her anthropological approach. For Rawls it means diversity in 'comprehensive' views, which can originate in cultural differences but do not have to. The comprehensive views can be religious or secular, political or sociological. The need to recognize diversity for Ingram was motivated from different experiences and affiliations, which led to diverse identities and even identity politics. Similarly the empowerment approach was motivated from victims and their experiences and struggles, often relating to economic diversity or inequality or gender relations. Young and Brown had an understanding of diversity related to class, gender or ethnicity. Diversity can thus be related to experiences stemming from different positions in societies and it can be based on cultures or economic inequality as well as on religious or secular views.

The two schools with most focus on diversity are the deliberative school with their focus on dialogue and consensus, and the discourse school, with its post-colonial, deconstruction or anthropological perspectives. It was also a minor issue in the protest school, but with little impact on the general focus of the school, which relates to 'oppressed' groups with little acknowledgement of the diversity and conflicting views *within* oppression. For the natural-law school it was marginal, as the emphasis is on commonalities and common human nature.

This issue was much less directly apparent in the particular HRE sources used in this thesis. There is hardly any discussion of the *meaning* of diversity in relation to HRE, only its implications for access to rights and for responsibility for others. The major acknowledgment would be with regard to minorities. Spring touched on this when he claimed that human rights were protections for cultural minorities. Osler and Starkey refer to diversity and pluralism and they see human rights as common ground in a society divided on normative issues; they would also refer to citizenship rights and language rights in the discussion of multiculturalism. We saw Ray talking of the legitimation of diversity in education, but of minority rights being provided through integration in curriculum and learning, rather than assimilation or segregation.

I will now take seven key concepts that have emerged from this study and investigate how in various ways diversity is present in the material I have worked with in this thesis.

The first concept, the origin of human rights, was especially important for Baxi and the others with post-colonial views. The question is about the geographical place of origin: do human rights have exclusively western roots, or have they also developed under the influence of other cultural and normative traditions? This is also a historical question, and my research does not permit me to draw a conclusion; but I recognize that it is vital for those of a non-western origin that it be accepted that they have had an influence (Baxi), or that they ought to have an influence (Mutua). For Baxi, this means that human rights have multicultural and diverse origins, and he sees this as vital for the future of human rights. (Some feminist thinkers have a parallel concern, such as Brown; for her it is the question of whether rights were male constructions, and whether this made a difference.)

The question of origin was also commented on from writers such as Donnelly, and Douzinas who rooted them in western philosophy and context. But that was not a matter of concern in their understanding of human rights. The strong liberal political and normative tradition in the west, which Gewirth, Nussbaum, Habermas and Donnelly represent, see human rights norms as independent of historical origin. The matter of origin seems to become sensitive when non- westerners or voices from outside the dominant human rights discourse are claiming to be heard and ask for influence.

The question of origin was also related to another kind of thinking, viz. the idea that human rights have their place of origin from and among suffering people, according to Douzinas and Baxi. It is from their experiences of pain that the imaginations, visions and hope for human rights have their origin. Human rights give ammunition and force for the struggle to transform the situation. I have commented on this a couple of times. To me, this seems a partial truth. The evolution of human rights norms will probably have a complex and mixed story, where the origin in suffering and struggle is one dimension.

The diversity aspect of this issue of origin is best represented by Baxi, who sees human rights in the light of multiple struggles and narratives. There are many diverse stories, and these stories are sometimes conflicting. But although the narratives are multiple, conflicting and diverse, they still belong to the human rights discourse and to the understanding of human rights. They have their origin in different or diverse local contexts of sufferings and struggles.

The second concept is the foundation for human rights. Probably the most popular way is Donnelly's approach, where he on purpose avoids the diverse and conflicting foundations for human rights, reducing their rationale to a minimum, viz. human dignity. For Donnelly,

diversity means difficulties in giving foundation to human rights because there is no consensus on controversial issues such as 'human nature'. (Diversity was also present in how rights are implemented, where he shows the relevance of context, but I leave this implementation issue aside).

An Na'im argued for the need for local normative traditions to develop support for human rights, and thus foundations, within their own traditions. This stance affirms that the dominant western traditions, theories or philosophies cannot do the job. He referred specifically to different geographical areas, but his point is probably also relevant to cultural minorities in multicultural societies. These internal processes are not geared towards education, but when they are applied to HRE, this means that students with diverse cultural backgrounds will have different hermeneutical issues and questions and learning processes with regard to human rights. This is similar to Baxi's point on a multicultural platform for human rights.

Derrida, using a different language, made a similar point when he focused on language idiomatics, that concepts have a history which brings meaning to the concepts, and that these are diverse in relation to the different language idioms. The understanding of human rights will then be related to these diverse fields of meaning and histories of concepts. Rawls' concepts of comprehensive views and public reason also refer to the foundation for common norms. To him there is a normative pluralism and diverse ways to give foundation to the norms. He thinks that people are committed to one or another comprehensive view. Foundation comes from such comprehensive views but also from public reasoning. The goal is to achieve overlapping consensus. Rawls is the one who most directly deals with the challenge of normative pluralism or diversity. He constructs his theoretical position around

finding foundations of basic common norms in pluralist societies – such as freedom or participation rights.

Thirdly, in relation to deliberative dialogues and public reasoning, diversity is relevant in several ways, first, in relation to participation in the dialogues. For Habermas, everybody who is affected by the norms should participate, and since we are now talking about universal human rights, that means everybody. As we have seen, the critical response pointed out that such a dialogue may formally be open, but power, positions and the size or type of groups may make such a participation difficult, as Young and Parekh would point out. Accordingly, if everybody is to have access to the dialogue, one needs to be concerned about making it possible for diverse participant groups to have a voice in the dialogues.

The argumentation with regard to the second aspect of this dialogue is similar, but is related to the rules for argumentation. As we have seen, Habermas' theory was based on strict formal and logical demands; his critics will say he favors an elite who can handle his rules for argumentation. With Young and Parekh this was broadened, examining how the form of the argumentations should make it possible for diverse groups and levels of competence to take part. The issue of diversity is vital if inclusive dialogues are to be achieved.

Ingram related these dialogues to the fourth issue of assimilation and segregation. He saw the substantial dialogues from Habermas as leading to assimilation, because all have to take part in and share the same argumentations and reasoning. Ingram's view on Rawls was that he implied segregation because the comprehensive views did not have to explain to each other how they reason and argue in their support of the overlapping consensus. This could lead to the situation that people do not get information about each other views and live in

their separate spheres and comprehensive views. Ingram argued for more transparency and accountability in the dialogue than Rawls, so that people should at least know how different groups reason and think. (There is also the question that individuals within a 'group' may not actually have similar views). He accepted different normative approaches but requested also openness to develop trust. He combined Habermas and Rawls, from Habermas taking accountability and from Rawls diversity. In this thesis Ingram is the one that most clearly expresses what is at stake in the question on how norms are constructed and how normative reasoning is dealt with. It is a question of balance between assimilation and segregation; to accept or use *only* one set of argumentation or reasoning leads to assimilation.

The next and fifth concept is that of the different. Douzinas spoke of the unique individual, Derrida of the singular, and Levinas of the other or the different, Ingram of the differend. This refers to the opposition between the same and the different. Human rights, as a common ground, focuses on what we as human beings have in common, what all of us need: this is the logic of the same. Levinas turns this around and claims that human rights are for the other, because she is different. It is the others' otherness that needs to be protected from what is the same. Human rights then become the protection of the different: it is the different person who is in need of human rights because she is different and not the same as everyone else. This is another way of looking at human rights and individuals.

Sixth, deconstruction and discourse analyses can be seen as ways to protect the different in another way. In language formation, in the logic of the same, this same is most often of a special kind. Brown and Derrida ask who the subject of the human rights is. Brown and Marxian critique say that the subject of human rights are white males, capitalist and bourgeois. That is maybe not that true any longer, but the question of the subject of human rights remains relevant, for example in property rights, and as discussed, in

development rights. The question and the critique disclose what is included in the general and the same, and what is excluded. In this way, deconstruction and discourse analyses are at the service of the different, who has not been given room in the logic of the same, nor has she received her human rights. It is a different way to be concerned about diversity.

I include also empowerment, seventh, although its focus is not directly on diversity or difference, but on oppression, victims and struggles. These victims are the excluded or marginalized people. Empowerment means giving victims power and human rights as tools, so that they can become influential and acquire a voice in society. It gives the marginal the possibility to put forward and struggle for their issues. In this way, empowerment means the recognition of diversity. It opens the door to include the excluded and address their human rights perspectives. This point is close to the above point about the origin of human rights in suffering.

These seven concepts can be grouped into three main platforms about diversity in the theories presented. The first is in relation to inclusion in the constructions and foundations of human rights norms, the question is who participates in this, and in dialogues and public reasoning. It is to be concerned about avoiding assimilation, in recognition of normative diversity. The second is related to various critical concerns of how the human rights discourse then works, about who dominates the discourse and hence implementation of rights. It has a focus on the marginalized and the different, on deconstruction and the unique individual. It is concerned about protection of the different. The third is related to diverse and conflicting human rights struggles, within and across groups.

These breakdowns show that the human rights discourse itself is diverse. It is located in a variety of comprehensive and ontological views or in different experiences. It also relates to different ‘projects’ in human rights analysis – whether to discover origins, locate foundations or assess impact. This diversity is in itself vital for the overall human rights discourse. Dembour has an apt comment on this issue:

“If human rights has become such a potent phrase in contemporary politics, it is probably because it does not mean one thing, but many things; and what we mean by it when we use it is not very clear to us, let alone to others, who can receive what we say in a different way from what we had intended, which moreover changes according to the context. We can therefore all seem to agree, or at least partly agree, when in fact we disagree” (Dembour, 2006; 261).

This important diversity dimension of the human rights discourse opens human rights to many types of approaches and to several backgrounds and experiences. It makes human rights relevant and important to more people, and makes it reach out to diverse contexts and situations.

6.3. HRE related to human rights theories

As this thesis has documented, there is diversity in the human rights discourse and diversity as an issue is present in several ways in these diverse understandings of human rights. The human rights discourse is manifold. The schools are different, and within the schools there are several differences. This complexity has important contributions to the human rights discourse. This human rights variety should as I see it also be a dimension in

HRE. In the HRE sources in this thesis there have been few discussions and applications of the general human rights discourse; one of the contributions of this thesis is to take perspectives from the general human rights discourse to HRE.

I will in the following sum up my understanding of HRE around three main types of understandings. They are in tension, and these tensions are in part related to different agendas, but I find that each of them has in their own way important contributions to HRE. The first is related to foundation and making sense of human rights, the second to empowerment and the third to the double responsibility.

Each of the approaches has concepts and a rationale. I think these should in themselves be discussed in HRE, but each of the approaches does also imply processes. HRE should focus both on understanding and on process. Understanding the frameworks enlightens human rights in different ways, but there is a practical and experience side which is also important.

6.3.1. Normative Dialogue/Overlapping Consensus

The first issue is the question of foundation and interpretations of human rights in HRE. The framework of Rawls with modifications from the critics like Parekh, An Na'im, Ingram and Young, is highly relevant. His theory deals with normative pluralism and common norms in this pluralism. The challenge that Rawls take up seems to me to be a situation for human rights and HRE. Human rights occur in the field of overlapping consensus. There is a broad support for human rights, but for very different reasons and with different priorities at different times, for example whether the concern is with political, economic, social or environmental rights. To me these differences represent a challenge for HRE. The differences are actually people holding the different views – whether politicians, religious leaders or activist groups. For HRE the challenge is to be able to develop

understanding of human rights and do that in relevant ways for students with different normative approaches to human rights. This overlapping consensus platform is not discussed in relation to HRE in the material studied for this thesis, which I find as a serious lack because this is a realistic approach to how human rights achieve their power.

The overlapping consensus is related to norms and the foundation for such norms. Several refer to human dignity, like Tibbitts and Gundara, and others to human rights as self-evident, as for Flowers. These have most similarities to the minimalist universalism, which for strategic reasons avoided the foundational issue because there is no common agreement on this. I disagree with this approach and think we should be concerned about going into the issue of foundation and making sense of human rights. It is a challenge, but human rights are important for a number of varied reasons and that has to be addressed. Human rights are as I see them not obvious, they have to be argued for. This is important both to develop understanding and motivation and an understanding of why people do *not* uphold rights.

These foundations are in Rawls' language called comprehensive views, and we saw that they have conflicting understandings and constructions of human rights, although they can agree on some common norms. Ingram took up the issue of assimilation in this context, in that to base HRE on only one type of normative reasoning may contribute to assimilation, which has to be avoided. HRE should instead be concerned about letting different comprehensive views and reasoning be given voice in HRE. These rationales for rights can be both secular and religious, political and philosophical, but they should all be presented in HRE. If important goals for HRE are to develop respect and understanding for human rights norms, then HRE should be concerned about bridging diverse normative approaches, to make them relevant and appealing to different students and avoid them becoming locked up in one normative rationale. The strength of human rights is that they manage to appeal to so

many different normative systems and comprehensive views. This means from the other way around that HRE can play on this manifold of support, not as assimilation but maintaining the richness of diversity, the different concepts of capability, dignity, well-being, justice, responsibility or duty, like we saw some examples on from the natural law school.

It seems as if the HRE sources used in this thesis took the support of human rights for granted, but that is however not my experience - and, as Rudelius-Palmer commented, human rights may release critical questions and resistance. Even if human rights have support from a number of comprehensive views they are still also controversial. It is important in HRE to face the challenges from the students, recognizing there can also be conflict between human rights norms and their particular comprehensive views. This can be in relation to both secular and religious views. We saw Gewirth argued for positive, economic and social rights, in the face of liberals who mainly supported civil and political rights. An-Na'im pointed to conflicts for Muslims concerning the right to change religion. HRE must both go back to comprehensive views to develop support for human rights but will unavoidably also end up challenging some comprehensive views -or elements within them - as well.

These differences in understanding of human rights makes dialogues necessary, as Parekh commented. I think HRE should be a place for these normative dialogues, where human rights issues can be discussed and analyzed. We saw through the presentation of the deliberative school that dialogues became important in the process of developing common norms and in discussions of interpretations of the norms. It is important that these dialogues are real and inclusive.

To be inclusive means to be concerned about participation, that minorities and marginalized have a voice in the dialogues and it means toleration of many ways to 'argue'.

Storytelling and rhetoric can be more inclusive for example than strictly formal argumentation, and the growth of the internet, social networking and blogging has provided a wealth of new ways to debate. What issues are discussed also relates to inclusion, for example the split between private and public can be used to privatize issues which groups find to be public, and vice versa. Rights to privacy in the family is a classic example here, with questions of domestic violence or child abuse, or even female genital mutilation. As well as questions of cultural rights, freedom of expression can be a public/private issue. These perspectives from the general discussion of dialogues seem to be relevant also for HRE.

Rawls had a concept of public reasoning, which for him in particular meant responsibility for some leading figures in the society, but I see public reasoning more related to dialogues and discussions. The concept surfaces some important aspects which I again find relevant for HRE, that of impartiality and reciprocity. The diversity in society is in itself also a good reason for reciprocity and impartiality, and such concepts may contribute to understandings of why human rights matter. But public reasoning has to do with common reasoning on normative matters, which will take place in dialogues in different arenas like newspapers, social media and educational contexts. Public reasoning will be influenced from the different comprehensive views that are represented in the concrete discussions, and in this process there develop in students ways to reason and argue about normative matters which makes it possible to achieve support across the comprehensive views. The students will learn to argue in ways that can convince and get support from people or students with different comprehensive views. Accountability to each other and trust are important for these dialogues.

Overlapping consensus, normative dialogue and public reasoning and the challenge from diverse comprehensive views are in themselves issues to be discussed in HRE. But more than just learning about these concepts, HRE is also a place to practise the dialogue and experience public reasoning, a place to learn and develop skills in communicating on the norms and on why they matter. This is a way to integrate the diverse understandings and approaches to human rights into HRE and make HRE more inclusive.

6.3.2. Empowerment

Second, HRE is empowerment education. I use HRE as empowerment education in two meanings: one is the original meaning, which was dominant in the protest school represented by Tibbits, Mihr and Flowers. The aim is to qualify victims to take up their fight and enable them to see their suffering as human rights violations with justified claims for change. It will also be to develop skills and ways to make change, to take up struggles for others as well as for oneself.

The second use is that HRE means empowerment education just by being informed about your rights, which raises awareness about possible claims. This is less radical than the former. Which one is the more useful will depend on the context and on the human rights conditions in the societies where the students live, or where they want to take action.

If HRE is not to be empowerment education it means to take away the inherent force of the norms. To give mainly a formal education or introduction to the human rights norms and institutions is possible, but it reduces the potentiality of the teaching. One needs critically to ask who would have an interest of such an HRE.

In both cases we have seen it is an issue about the relation between bottom up and top down, as in the discussion of Ely-Yamin. It concerns how HRE is controlled from the top

and how it invites the students' own life-experiences to be part of the process. In both the moderate and the radical empowerment perspective this is an issue. A key element in HRE as empowerment education is to relate human rights to lived experiences and concrete issues where the student may find and recognize human rights violations or the meaning of the rights in their own lives. If we want human rights to have an influence and make a difference there should be focus on the relation between the principles and real life.

Human rights violations are often related to structural causes and HRE should be concerned about unfolding violating structures and power relations as well as giving support to take action, to see why, what and how things can be changed. The universals are given meaning in particular circumstances, for concrete hopes and changes. Yet it is necessary to look behind the concrete violations to find the deeper causes. According to Baxi, HRE can easily be superficial and address and focus on the norms and ignore the structural causes for human rights violations, although this approach is becoming less obvious as human rights educators draw on materials about structural inequalities across the world. When human rights are implemented, that may cause pain and suffering for people which lose their privileges. This brings in a discussion about necessary and not necessary suffering, an issue also for HRE, but which was not addressed in my sources on HRE.

At the same time I have argued that it is important that HRE does not become "banking" education. To me the HRE discourse, and also the empowerment school, has been too little concerned about its own role and functioning in relation to how it might become "banking". This orientation in the protest school of HRE can be exemplified in the way they have a goal to transform the students from bystanders to human rights activists, for instance in the work of Mihr, which in fact may constitute "banking" or transmission of ideologies.

The empowerment approach in education can be critical of dialogue, as with Baxi; critique of dialogue if it gives too much influence to the violators of human rights. I can see the point in that, but this skepticism about dialogue is not in fact common in the empowerment approach. Inevitably, an empowerment understanding of HRE has not focussed on the normative dialogue, or on or the foundation of human rights – perhaps because this would be seen to dilute the claims and take time from the immediacy of action. Yet to me the approach sidesteps the important questions of the foundation and constructions of the norms by which action is justified.

HRE as empowerment education is inviting the marginal, who may be the other and the different to stand up for themselves; it offers a vision, tools and support to the marginalized. Tibbitts is clear on this, that HRE should give voice to the marginalized, but the interest in diversity seems to stop with that. But I like to think it may also mean empowerment of groups who may make new interpretations of existing norms or claim new rights and an expansion of the existing bills of rights. It is to give diverse groups a voice in the discourse and politics of human rights, as well as in their society. The situation of the ‘receiver’ will relate human rights to new needs. Empowerment gives room for creativity and may lead to new human rights claims, as happened with those with disabilities and their struggle for rights. Empowerment does in this way imply diversity: the claims and struggles can be several and diverse and they can even be conflicting, as we saw with Baxi. This topic of conflict has not been much discussed from those representing this model of HRE.

HRE again faces a challenge to respond to the diversity in claims and struggles. In the HRE literature there is a strong commitment to HRE as empowerment education, but they have little focus on differences in perspective and experiences, which means to be open

for diversity in terms of different struggles and claims. Ely-Yamin has a good discussion of the issue in terms of top down and bottom up, but not with a perspective that bottom up may mean diversity in claims and human rights issues. The protest school is the dominant voice in HRE, but they do not show much interest in the pluralist issues addressed in the previous school or in contested local or cultural struggles.

The empowerment approach is therefore responsibility for individuals and groups and in particular for 'victims' of diverse kinds. It is to take the view and perspective of the students and in particular of the marginalized. This is an established understanding of HRE, which I mainly support, but would like to see more focus on diversity and local contexts for rights claims, on necessary and unnecessary suffering, and with more weight on the foundations for human rights to enable analysis of competing claims.

6.3.3. Double responsibility

The third type of HRE is about the tension between human rights as the logic of 'the same', the general and common and on the other hand the logic of the individual as unique and different, who is not a general but special and unique human being; and I like to add individual group here. In the previous section it was a concern for the other as a victim, here it is for the other as a unique individual or group, who can be victims but do not have to be.

The first responsibility is for the universal human rights law itself, to make it as universal as possible and to implement it in practice. One side of this responsibility is to construct or develop the norms themselves, which as I see it links to the notion of comprehensive views; but the focus in this school and perspective is more on the established norms and the discourse in which they operate than on previous foundation or construction. The responsibility is closely related to deconstruction, but also to construction, as was

mentioned earlier in the discussion of the intersection between construction and deconstruction across the different schools.

Human rights can in several ways be used as instruments for particular interests and perspectives, as we have seen through the thesis. Deconstruction raises critique of the particular in the universal, aiming to unfold biases and limitations. HRE is then to take part in this critique and make human rights as universal as possible, which is a never ending project. Deconstruction opens up new choices and possibilities and in this context takes responsibility for human rights. This is a project also for HRE at more advanced levels, although the recognition of the need for new rights or new formulations can occur at all levels – including children’s rights.

The particular in the universal is unavoidable; it is the chance for human rights to make a concrete difference and at the same time it represents the threat that human rights could be reduced or substituted for particular interests or perspectives. The answer to this is deconstruction and critical alertness about the use of and choices within human rights discourse; this is an important challenge for HRE in protecting human rights and keeping them close to their visions and imaginations, as well as updating with visions to match new circumstances.

The second dimension of the double responsibility is the responsibility for the unique individual, and I add ‘unique’ groups. This notion of the ‘singular’ surfaces several perspectives in relation to human rights and HRE. First there is, with Levinas, seeing human rights as protection for the different, which mean to recognize the others’ otherness and how it is often these individuals or groups that need the protection that can be provided from application of human rights. To be able to do this, students will have to develop empathy and

sensitivity for the other and different. This can be to protect students in wanting to wear their Hijab, but for others also in wanting to throw it away. Different rights would come into play here – self-determination, freedom of expression, freedom to practise religion, freedom to leave a religion. The individual can also be violated by other individuals or groups; as argued earlier, a HRE which provides awareness of competing rights can promote protection against other individuals as well as against broad power structures.

From the individual who does not appear to be subsumed under a general or universal there can also come a critique of so-called universal human rights. This can reveal that there are humans who are not covered by universal human rights. The history and development of human rights is a history of gradual inclusion of excluded persons from what were seen as universal rights, as when women obtained rights that had been reserved for only for men. The Roma people or gays represent such challenges today. This is a critique of the ‘subject’ in human rights, of who is included in the rights, a critique both Brown and Derrida was concerned about, it is also about the differend who Ingram spoke about. The responsibility has close relations to that for the universal, above, with new possibilities emerging from recognition of individuals who might be excluded.

With the focus on the unique individual Derrida also reminds us of the limitations in the universal. A human rights perspective it based on what is common and equal, and only to focus on the general easily makes one ignore what is unique and different, or outside the rights norms, like student may get their human right to education, but how do education manage to stimulate or respond to the individual talents. To scan reality limited to human rights norms can imply to ignore important matters for individuals, to see an individual is to respond to particular needs, talents, gifts from the unique person. The double responsibility reminds about that it is necessary to exercise openness and sensitivity for the different and

not only see other people through the eyes of the general norms. HRE is also a permanent reminder of the limitations in the general norms.

For Derrida, Dembour and Todd this led to vigilance and ambiguity. For HRE this means preparing the student to experience and deal with moral dilemmas and to operate in the tension between sensitivity for the singular and application of the universal norms. It is to be doubly responsible; for human rights and for the unique and different individual. To be in a state of vigilance means also to take dilemmas as new, to take a fresh look at each case and not fall back on routines or habits; it is to take new decisions – when to apply human rights norms, when to try to change them, when to use them to protect individuals and when to protect individuals against their apparent misapplication or attempts at assimilation.

HRE in this perspective means developing skills in deconstruction of human rights discourses and being deliberately placed in situations of the tensions and dilemmas of the double responsibility. It is to enable learners to be simultaneously empathetic and critical, deconstructive and constructive in a lasting state of vigilance.

Three main types of HRE have been presented here. They have different focuses and are rooted in different ontologies and comprehensive views. They could be seen as exclusive alternatives; yet I find convincing and good elements in all of these approaches. This means that these perspectives may stand in tension with each other but at the same time they supplement each other and bring a complementary and complex approach. I here summarise the gaps and complementarities.

The discourse school with its responsibility for the other as a unique individual is more humble and cautious than the other schools. By that I mean they have a self-critical perspective, because the other individual in their difference can have different needs and

wants from oneself or from how these ‘needs’ are perceived from a general view. Responsibility is not here simply to apply rights, but to establish what the individual wants. Deconstruction of the ‘universal’ is also requested. This is different from the natural law school and also in part from both the deliberative and protest schools, which take their own understandings of norms to be more objective and straight forward, even if contested.

The deliberative framework has its strength and focus on dialogues, on foundations for human rights norms in an overlapping consensus. It communicates with the diversity among students. It shows some weaknesses when the perspectives from the empowerment model are given attention, in that a human rights education which takes deliberative theory as a sole framework could easily focus too much on understandings and foundations of human rights, which is in danger of letting actual human rights violations come second. Empowerment HRE in contrast has a needed focus on victims and change, on making a difference. Yet it could be argued that the empowerment perspective (as with discourse), goes too easy on the basic foundations for norms. Human rights are important and thus it must be possible and necessary to discuss why, and to do that is to give them foundation. I think that several of the understandings of human rights should be presented in HRE. And dialogues on these views are good ways to explore the foundations, where students influenced from diverse comprehensive views, backgrounds and experiences can contribute to the dialogue on human rights and deepen understanding of the norms.

The empowerment or protest school and the discourse school seem closest to each other on the level of general human rights theories, but in HRE the protest school showed very little interest in the critique of human rights discourse which the discourse school engaged in. Whereas the protest school is more action oriented and oriented to real sufferings, the discourse school showed more focus on power and domination in language, which can also

cause suffering. To get to the deeper roots of suffering and oppression language has also to be addressed. But the discourse school was on the other hand too cautious or too distanced from real suffering outside of language. It could be accused of relativism in its foregrounding of the individual.

Earlier in this chapter I identified five intersections between the ideas in the four schools, juxtaposing foundations and deliberation, deconstruction and construction, discourse and violation/suffering and so on. This pluralism in approaches and perspectives on human rights should be reflected in HRE. The three main perspectives presented – first dialogue and overlapping consensus, second, empowerment and third, double responsibility - supplement each other and combine to address different important human rights issues, which then also become equally important issues for HRE.

6.4. Concluding Reflections

I have in this thesis gone from human rights theories to HRE and have seen how understandings of HRE stand in relation to the general human rights discourse. I have been engaged with some major and fundamental questions in the human rights theories, and I have also gone in some depth into human rights discourse in terms of the main distinct types of human rights theories. The way I organized the thesis was taken from Dembour and her structuring of the human rights discourse into four schools, which gave me the possibility to explore in a comparative way.

It has been a journey where I have found each of the stops interesting and challenging because I have had to realize that I was finding important perspectives across significant

theoretical divides, as well as finding weaknesses in each of them. When I started I was probably closest to Levinas. I still find Levinas addressing important issues, but he gives a meagre framework for human rights and HRE. Derrida supplemented Levinas with the notion of double responsibility, which gave more room for acknowledgement of the universal norms. Yet while this approach addressed the universal via an interesting and relevant detour of deconstruction, it must also be possible to address human rights norms and foundations directly: in this way the natural law and deliberative schools brought valuable contributions. Lastly, human rights is not only about theoretical, foundational and interpretational issues, they have to be implemented in practice, which was the main focus from the protest school. This has led me through an interesting and challenging journey where I have had to integrate conflicting views. I have ended up with a kind of synthesis of elements which stand in tension with each other; to me they represent necessary supplementary perspectives.

In my interest to see how HRE stands in relation to the general human rights theories, I have moved from the human rights theories to the HRE literature. The HRE literature I have used has been the literature which reflects and deals with HRE at a theoretical level for use in arenas such as teacher education but also with a reference to HRE in basic and formal education. This is a clear limitation to the material for my thesis because, as Flowers and Tibbitts commented, many educationalists on HRE would not use their time to write theoretical articles on how they understand HRE. They focus on concrete teaching and materials for that purpose. The amount of manuals and other teaching material is enormous in this field. It was a choice I had to take, whether or not to go into the practical material; yet this would have forced me to do another thesis from what I was interested in. But I am the

first to admit that to leave the practical material aside is probably a weakness, putting limits on my references to HRE sources. If that material was included some of my results may have been different, for example on understandings around dialogue. In the sources I have used on HRE the issue of dialogue in relation to HRE is not greatly theoretically elaborated; I have a feeling that in the practical material dialogue is in fact used even without a discussion of the theoretical framework which guides the way it is used. To study and critically analyze the HRE material or manuals is an object for at least another thesis. My thesis aims to make a contribution with some reflections on the understanding of HRE which precede the concrete and practical level, although I think that my thesis may have practical implications.

As far as I am aware, there has not been a similar route taken to discuss HRE as I have done, that is, to go from the human rights theories to HRE. In the way I have done this thesis I think I have achieved a presentation of options and aspects in the human rights discourse which are used but also those that have had little attention within the academic discussions of HRE. This has opened up some new perspectives on HRE. I think this type of approach has brought a fresh contribution and new perspectives for the debate on HRE. While showing the differences between the four schools, I have also demonstrated how specific intersections between them can be made, with practical implications.

My first research question or aim was to study human rights theories and second to see how HRE stood in relation to these frameworks. From the four schools it was found to be the protest school which was most common and popular in HRE. There are references to natural law school ideas in particular “human dignity”, but not so much more from the natural law school. HRE has much focus on democracy and common ground which can be related to the deliberative school. A main subject for the general theoreticians in that school such as Habermas and Rawls was the legitimation and foundation of the common norms such as

rights. These normative dialogues, with several perspectives for the dialogue, like impartiality and accountability, were not discussed from my sources in HRE in that school. The discourse school and their critique and reflections on the tension between the same versus the different were similarly marginal in HRE.

I have, in the third and normative research question on how to bring perspectives on HRE, given greater stress to the foundation of human rights in HRE than is reflected in the HRE sources used in this thesis, which had little discussion of the issue. I also take the idea of normative dialogue more into the centre of HRE than my sources on HRE have done, Rawls' framework with overlapping consensus and use of the comprehensive views and public reasoning should have a place in HRE, or at least it should be further discussed in relation to HRE. It is the empowerment approach which is most elaborated within HRE, and the thesis has not contributed much to further elaboration on the position, although I have stressed more than has been done so far in HRE that the struggles are diverse and may also be conflicting. The general theories in the protest school and discourse school and their critique of human rights discourse should have a place in HRE at higher levels. It is a way to protect human rights against "hijackings" of the discourse. To me the double responsibility is a new and interesting model for HRE. I think it should have a place in HRE. These examples show that my first and second research questions have given some results. These concerned some main perspectives taken from the general human rights discourse into HRE, which was my second research question.

I integrated also a fourth research question related to diversity and pluralism, how the general human rights material and the HRE dealt with that issue. I found that in the general discourse it was included in several ways, but that it was not much addressed in the HRE sources in the thesis, in terms of diversity in foundations, struggles and in relation to 'the

different'. Human rights currently exist in an overlapping consensus with a rich and varied multiplicity of theories and traditions that support them. That is a main strength for the norms. I think far more than is reflected in the HRE this pluralism and diversity in critical as well as positive perspectives on human rights should be given room and be used as sources for HRE. This enables respect both for the diversity in the discourse and for communication with the diversity among the students; a one-dimensional HRE does not capitalize on the richness in the discourse, nor relate to the diversity of worldviews and experiences among students and their teachers. The diversity in the human rights discourse is a positive source which HRE should be concerned with, to build on and use it is as a strength. I end this thesis with a quotation from Baxi:

“‘Human rights’ is one phrase, but it encompasses diverse realities and these invite many conflicted narratives. HRE must fully acknowledge and understand the many worlds of meaning in the practice of human rights” (Baxi, 2006a; 17).

Bibliography

- (1985, Council of Europe Committee of Ministers) On Teaching and Learning about Human Rights in Schools. *Recommendation No. R (85) 7*.
- (1993) The Bangkok Declaration. *The Ministers and representatives of Asian States, meeting in Bangkok from 29 march to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human Rights*
- (1993, United Nations General Assembly) Vienna Declaration & Program of Action. *A/CONF.157/23, 12 July 1993*.
- (1996, United Nations General Assembly) Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education *A/51/506/Add.1 12.December 1996*.
- (2005, United Nation General Assembly) World Plan for Human Rights Education. Plan of Action for the First Phase (2005-2007). *Resolution 59/113 B of 14 July 2005*.
- ALEXANDER, J. M. (2004) Capabilities, Human Rights and Moral Pluralism. "*Capabilities, Human Rights and Moral Pluralism*" in *International Journal of Human Rights*, 8, 451-469.
- ALVES, J. A. L. (2000) The Declaration of Human Rights in Postmodernity. *Human Rights Quarterly*, Vol. 22, No. 2, 478-500.
- AMERICAN ANTHROPOLOGICAL ASSOCIATION (1947, 2000) Statement on Human Rights. IN STEINER, H. J. & ALSTON, P. (Eds.) *International Human Rights in Context*. Oxford, Oxford University Press.
- AN-NA'IM, A. A. (1995a) Problems of Universal Cultural Legitimacy for Human Rights. IN AN-NA'IM, A. A. & DENG, F. M. (Eds.) *Human Rights in Africa. Cross Cultural Perspectives*. Washington, D.C., The Brookings Institution.
- AN-NA'IM, A. A. (1995b) Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment. IN AN-NA'IM, A. A. (Ed.) *Human Rights in Cross-Cultural Perspectives*. Philadelphia, University of Pennsylvania Press.
- AN-NA'IM, A. A. (2008) *Islam and the Secular State*, Cambridge, Massachusetts and London, England, Harvard University Press.
- AN-NA'IM, A. A. & HAMMOND, J. (2002) Cultural Transformation and Human Rights in African Societies. IN AN-NA'IM, A. A. (Ed.) *Cultural Transformation and Human Rights in Africa*. London, New York, Zed Books Ltd.
- ARSLAN, Z. (1999) Taking Rights Less Seriously: Postmodernism and Human Rights. *Res Publica*, Vol. 5, 195-215.
- ASAD, T. (1997) On Torture, or Cruel, Inhuman and Degrading Treatment. IN WILSON, R. A. (Ed.) *Human Rights, Culture and Context*. London, Sterling, Virginia.
- ASAD, T. (2000) What do human Rights do? An Anthropological Enquiry. *Theory & Event*, Vol. 4 No.4.
- ASAD, T. (2003) *Formations of the Secular*, Stanford, Stanford University Press.
- BADIOU, A. (2002) *Ethics*, London, New York, Verso.
- BARRETO, J. M. (2006) Ethics of Emotions as Ethics of Human Rights. *Law and Critique*, Vol. 17, 73-106.
- BAUMAN, Z. (2004) *Identity*, Cambridge, UK, Malden, USA, Polity Press.
- BAXI, U. (1997) Human Rights Education: The Promise of the Third Millennium? IN ANDREOPOULOS, G. J. & CLAUDE, R. P. (Eds.) *Human Rights Education for the Twenty-First Century*. Philadelphia, University of Pennsylvania Press.

- BAXI, U. (2006a) Concepts of Human Rights. IN BAXI, U. & MANN, K. (Eds.) *Human Rights Learning: A People's Report*. New York, PDHRE (Peoples' Movement for Human Rights Learning).
- BAXI, U. (2006b) *The Future of Human Rights*, Oxford, New York, Oxford University Press.
- BAXI, U. (2006c) Human Rights and Human Rights Education: Arriving at the Truth. IN BAXI, U. & MANN, K. (Eds.) *Human Rights Learning: A People's Report*. New York, PDHRE (Peoples' Movement for Human Rights Learning).
- BAXI, U. & MANN, K. (Eds.) (2006) *Human Rights Learning A People's Report*, New York, PDHRE (Peoples' Movement for Human Rights Learning).
- BECK, U. (2006) *The Cosmopolitan Vision*, Cambridge, U K, Malden, USA, Polity Press.
- BENEDEK, W. (2006) Introduction to the system of human rights. IN BENEDEK, W. (Ed.) *Understanding Human Rights: Manual on human rights education*. Graz, European Training and Research Centre for Human Rights and Democracy (ECT).
- BIELEFELDT, H. (1995) Muslim voices in the human rights debate. *Human Rights Quarterly*, 17, 587-617.
- BIESTA, G. J. J. (2001) "Preparing for the incalculable": deconstruction, justice, and the question of education. IN BIESTA, G. J. J. & EUGÉA-KUEHNE, D. (Eds.) *Derrida & Education*. London and New York, Routledge.
- BOYLAN, M. (2000) *Basic Ethics*, New Jersey, Prentice Hall.
- BREMS, E. (2001) *Human Rights: Universality and Diversity*, The Hague, Boston, London, Martinus Nijhoff Publishers.
- BROCK-UTNE, B. (1994) The Distinction between Education about Peace and Development and Value Centred Education Intended to Promote Them. IN RAY, D. (Ed.) *Education for Human Rights*. Paris, UNESCO, International Bureau of Education.
- BROWN, W. (1995) *States of Injury*, Princeton, New Jersey, Princeton University Press.
- BROWN, W. (2002) Suffering the Paradoxes of Rights. IN BROWN, W. & HALLEY, J. (Eds.) *Left Legalism / Left Critique*. Durham & London, Duke University Press.
- BROWN, W. (2004) "The Most We Can Hope For..." Human Rights and Politics of Fatalism. IN BALFOUR, I. & CADAVA, E. (Eds.) *And Justice for All? The Claims of Human Rights*. Durham, NC, Duke University Press.
- BROWN, W. (2006) *Regulating Aversion, Tolerance in the Age of Identity and Empire*, Princeton and Oxford, Princeton University Press.
- BUERGENTHAL, T. & TORNEY, J. V. (1976) *International Human Rights and International Education*, Washington, D.C., Published by US National Commission for UNESCO, Department of State
- CANEY, S. (2005) *Justice Beyond Borders*, Oxford, Oxford University Press.
- CAPUTO, J. D. (Ed.) (1997) *Deconstruction in a Nutshell*, New York, Fordham University Press.
- CARTER, C. & OSLER, A. (2000) Human Rights, Identities and Conflict Management: a study of school culture as experienced through classroom relationships. *Cambridge Journal of Education*, Vol. 30, No. 3, 335-356.
- CHURCHILL, R. P. (2006) *Human Rights and Global Diversity*, New Jersey, Pearson Prentice Hall.
- CLAUDE, R. P. (1991) Human Rights Education, The case of the Philippines. *Human Rights Quarterly*, Vol. 13 No. 4, 453-524.
- COTLER, I. (1993) Human Rights as the Modern Tool of Revolution. IN MAHONEY, K. E. & MAHONEY, P. (Eds.) *Human Rights in the Twenty-first Century*. Dordrecht, Boston, London, Martinus Nijhoff Publishers.
- CUNNINGHAM, J. (1991) The Human Rights Secondary School. IN STARKEY, H. (Ed.) *The Challenge of Human Rights Education*. London, Cassell.

- DAVIES, L. (2000) *Citizenship education and human rights education. Key concepts and debates*, London, The British Council.
- DAVIES, L. (2004) *Education and Conflict*, London and New York, RoutledgeFalmer.
- DAVIES, L. (2008) *Educating against extremism*, Stoke on Trent, UK and Sterling, USA, Trentham Books.
- DE GREIFF, P. & CRONIN, C. (Eds.) (2002) *Global Justice and Transnational Politics*, Cambridge, Massachusetts, London, The MIT Press.
- DELEUZE, G. (2004) On Human Rights. <http://makeworlds.org/node/97>.
- DEMBOUR, M.-B. (1998) Universalism as arrogance, relativism as indifference: The need for an unstable in-between position. *Information Bulletin, Published by the North/South Coalition*, No. 1, 151-173.
- DEMBOUR, M.-B. (2001) Following the movement of a pendulum: Between universalism and relativism. IN COWAN, J. K., DEMBOUR, M.-B. & WILSON, R. A. (Eds.) *Culture and Rights*. Cambridge, Cambridge University Press.
- DEMBOUR, M.-B. (2006) *Who Believes in Human Rights?*, Cambridge, Cambridge University Press.
- DERRIDA, J. (1990) Force of Law: The "Mystical Foundation of Authority". *Cardozo Law Review*, Vol. 11, 5-6, 919-1043.
- DERRIDA, J. (1996) Remarks on Deconstruction and Pragmatism. IN MOUFFE, C. (Ed.) *Deconstruction and Pragmatism*. London and New York, Routledge.
- DERRIDA, J. (2000) "Of Hospitality", *Anne Dufourmantelle invites Jacques Derrida to respond*, Stanford, California, Stanford University Press.
- DERRIDA, J. (2001a) *On Cosmopolitanism and Forgiveness*, London and New York, Routledge.
- DERRIDA, J. (2001b) "Talking liberties", Derrida interviewed by Montefiore, Alan IN BIESTA, G. J. J. & EGÉA-KUEHNE, D. (Eds.) *Derrida & Education*. London and New York, Routledge.
- DERRIDA, J. (2001c) Text-Wears and Tears (Tableau of an Ageless World). IN HAYDEN, P. (Ed.) *The Philosophy of Human Rights*. St. Paul, Paragon House.
- DERRIDA, J. (2002a) Privilege: Justificatory Title and Introductory Remarks. IN HAMACHER, W. & WELLBERY, D. E. (Eds.) *Who's Afraid of Philosophy?* Stanford, Stanford University Press.
- DERRIDA, J. (2002b) The Right to Philosophy from the Cosmopolitical Point of View. IN TRIFONAS, P. P. (Ed.) *Ethics, Institutions and the Right to Philosophy*. Lanham, Boulder, New York, Oxford, Rowman & Littlefield Publishers, inc.
- DERRIDA, J. (2003) Autoimmunity: Real and Symbolic Suicides - A dialogue with Jaques Derrida. IN BORRADORI, G. (Ed.) *Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida*. Chicago and London, The University of Chicago Press.
- DERRIDA, J. A. R., ELISABETH (2004) *For What Tomorrow. A Dialogue*, Stanford, Stanford University Press.
- DIAS, C. J. (1993) Rural Development, Grassroot Education and Human Rights: Some Asian Perspectives. IN MAHONEY, K. E. & MAHONEY, P. (Eds.) *Human Rights in the Twenty-first Century*. Dordrecht, Boston, London, Martinus Nijhoff Publishers.
- DIAS, C. J. (1994) Peace, Development and Human Rights: From the Grassroots Perspective in Asia. IN DIAS, C. J. (Ed.) *Initiating Human Rights Education at the Gassroots*. Bangkok, Asian Cultural Forum on Development (ACFOD).
- DIAS, C. J. (1997) Human Rights Education as a Strategy for Development. IN ANDREOPOULOS, G. J. & CLAUDE, R. P. (Eds.) *Human Rights Education for the Twenty-First Century*. Philadelphia, PENN, University of Pennsylvania Press.

- DONNELLY, J. (1989) *Universal Human Rights in Theory & Practice*, Ithaca and London, Cornell University Press.
- DONNELLY, J. (2002) The Social Construction of International Human Rights. IN DUNNE, T. & WHEELER, N. J. (Eds.) *Human Rights in Global Politics*. Cambridge, Cambridge University Press.
- DONNELLY, J. (2003) *Universal Human Rights in Theory and Practice* Ithaca and London, Cornell University Press.
- DORSEY, E. (1997) Charter Making and Participatory Research. IN ANDREOPOULOS, G. J. & CLAUDE, R. P. (Eds.) *Human Rights Education for the Twenty-First Century*. Philadelphia, PENN, University of Pennsylvania Press.
- DOUZINAS, C. (1994) Antigone's law: a genealogy of jurisprudence. IN DOUZINAS, C., GOODRICH, P. & HACHAMOVITCH, Y. (Eds.) *Politics, postmodernity and critical legal studies*. London and New York, Routledge.
- DOUZINAS, C. (2000) *The End of Human Rights*, Oxford, Hart Publishing.
- DOUZINAS, C. (2002) Identity, Recognition, Rights or What Can Hegel Teach Us About Human Rights? *Journal of Law and Society*, Vol. 29. No. 3, 379-405.
- DOUZINAS, C. (2007) *Human Rights and Empire: The political philosophy of cosmopolitanism* Abingdon, UK and New York, USA, Routledge-Cavendish
- EAGLETON, T. (1993) Deconstruction and Human Rights. IN JOHNSON, B. (Ed.) *Freedom and Interpretation. The Oxford Amnesty Lectures 1992*. New York, Basic Books, A Division of HarperCollinsPublishers.
- EGÉA-KUEHNE, D. (2001) Derrida's ethics of affirmation: the challenge of educational rights and responsibility. IN BIESTA, G. & EGÉA-KUEHNE, D. (Eds.) *Derrida and Education*. London and New York, Routledge.
- EGÉA-KUEHNE, D. (2004) The Teaching of Philosophy: Renewed rights and responsibility. IN TRIFONAS, P. P. & PETERS, M. A. (Eds.) *Derrida, Deconstruction and Education*. Malden, Oxford, Carlton, Blackwell Publishing.
- EIDE, A. (1983) Dynamics of Human Rights and the Role of the Educator. IN EIDE, A. & THEE, M. (Eds.) *Frontiers of Human Rights Education*. Oslo, Bergen, Stavanger, Tromsø, Universitetsforlaget.
- EIDE, A. (1998) Multicultural Education and Group Accommodation in the Light of Minority Rights. IN ÅKERMARK, S. S. (Ed.) *Human Rights Education*. Turku/Åbo, Institute for Human Rights, Åbo Akademi University in collaboration with The Finnish National Commission for UNESCO and UNESCO.
- ELY-YAMIN, A. (1993) Empowering Visions: Toward a Dialectical Pedagogy of Human Rights. *Human Rights Quarterly*, Vol.15 No 1, 640-685.
- FEINBERG, W. (1995) The Discourse of Philosophy of Education. IN KOHLI, W. (Ed.) *Critical Conversations in Philosophy of Education*. New York, London, Routledge.
- FIELDS, B. A. & NARR, W.-D. (1992) Human Rights as a Holistic Concept. *Human Rights Quarterly*, Vol. 14 No.1, 1-20.
- FLOWERS, N. (2004) How to Define Human Rights Education? - A Complex Answer to a Simple Question. IN GEORGI, V. B. & SEBERICH, M. (Eds.) *International Perspectives in Human Rights Education*. Gütersloh, Bertelsmann Foundation Publishers.
- FOLLESDAL, A. (2005) Human Rights and Relativism. IN FOLLESDAL, A. & POGGE, T. (Eds.) *Real World Justice*. Dordrecht, Springer.
- FOUCAULT, M. (1997a) On the Genealogy of Ethics, An Overview of Work in Progress. IN RABINOW, P. (Ed.) *Ethics, Subjectivity and Truth*. New York, The New Press.
- FOUCAULT, M. (1997b) What is Enlightenment? IN RABINOW, P. (Ed.) *Ethics, Subjectivity and Truth*. New York, The New Press.

- FREEMAN, M. (2002) *Human Rights*, Cambridge, Polity.
- FREIRE, P. (1996) *Pedagogy of the Oppressed*, London, Penguin Books.
- GAETE, R. (1993) *Human Rights and the Limits of Critical Reason*, Aldershot, Brookfield USA, Hong Kong, Singapore, Sydney, Dartmouth.
- GALTUNG, J. (1994) *Human Rights in Another Key*, Cambridge, Polity Press.
- GARFIELD, J. L. (1998) Human Rights and Compassion. IN KEOWN, D. V., PREBISH, C. S. & HUSTED, W. R. (Eds.) *Human Rights and Compassion in Buddhism and Human Rights*. Padstow, Cornwall, Curzon.
- GEORGI, V. B. & SEBERICH, M. (2004) Introduction. IN GEORGI, V. B. & SEBERICH, M. (Eds.) *International Perspectives in Human Rights Education*. Gütersloh, Bertelsmann Foundation Publishers.
- GEWIRTH, A. (1981) The Basis and Content of Human Rights. IN PENNOCK, J. R. & CHAPMAN, J. W. (Eds.) *Human Rights*. New York, London, New York University Press.
- GEWIRTH, A. (1996) *The Community of Rights*, Chicago, London, The University of Chicago Press.
- GLENDON, M. A. (1998) Knowing the Human Declaration of Human Rights. *Notre Dame Law Review*, 73: 5, 1153 - 1176.
- GLENDON, M. A. (2001) *A World Made New*, New York, Random House.
- GUNDARA, J. S. (2000a) *Interculturalism, Education and Inclusion*, London, Paul Chapman Publishing Ltd.
- GUNDARA, J. S. (2000b) Religion, human rights and intercultural education. *Intercultural Education*, Vol. 11, No. 2, 127-136.
- GÜNTHER, K. (1999) The Legacies of Injustice and Fear: A European Approach to Human Rights and their Effects on Political Culture. IN ALSTON, P. (Ed.) *The EU and Human Rights*. Oxford, New York, Oxford University Press.
- HABERMAS, J. (1990) *Moral Consciousness and Communicative Action*, Cambridge, Maldon, Polity Press.
- HABERMAS, J. (1996) *Between Facts and Norms*, Cambridge, Malden, Polity Press.
- HAHN, C. (2005) Diversity and human rights learning in England and the United States. IN OSLER, A. (Ed.) *Teachers, Human Rights and Diversity*. Stoke on Trent, UK and Sterling, USA, Trentham Books.
- HALL, S. (1996) Who Needs Identity. IN HALL, S. & DUGAY, P. (Eds.) *Who Needs Identity in Questions of Cultural Identity*. London, New Delhi, Thousand Oaks, Sage Publications.
- HARTMANN, D. & GERTEIS, J. (2005) Dealing with Diversity: Mapping Multiculturalism in Sociological Terms. *Sociological Theory*, Vol 23. No. 2, 218-240.
- HASTRUP, K. (2001) Accommodating Diversity in a Global Culture of Rights; An Introduction. IN HASTRUP, K. (Ed.) *Legal Cultures and Human Rights*. Hague, Kluwer Law International.
- HATCH, E. (1997) The Good Side of Relativism. *Journal of Anthropological Research*, Vol. 53 No. 3, 371-381.
- HEATER, D. (1984) *Human Rights Education in Schools: Concepts, Attitudes and Skills*, Strasbourg, Council of Europe.
- HEATER, D. (1991) The Curriculum jigsaw and Human Rights Education. IN STARKEY, H. (Ed.) *The Challenge of Human Rights Education*. London Cassell.
- HEYNS, C. (2001) A "Struggle Approach" to Human Rights. IN SOETEMAN, A. (Ed.) *Pluralism and Law*. Dordrecht, Boston, London, Kluwer Academic Publishers.

- HICKS, D. (1997) Conflict Resolution and Human Rights Education. IN ANDREOPOULOS, G. J. & CLAUDE, R. P. (Eds.) *Human Rights Education for the Twenty First Century*. Philadelphia, PENN, University of Pennsylvania Press.
- HUNT, L. (2007) *Inventing Human Rights, a history*, New York, London, W.W. Norton & Company.
- IGNATIEFF, M. (2001a) Human Rights as Idolatry IN GUTMANN, A. (Ed.) *Human Rights as Politics and Idolatry*. Princeton and Oxford, Princeton University Press.
- IGNATIEFF, M. (2001b) *Human Rights as Politics and Idolatry*, Princeton and Oxford, Princeton University Press.
- ILKKARACAN, P. & AMADO, L. E. (2005) Human rights education as a tool of grassroots organizing and social transformation: a case study from Turkey. *Intercultural Education*, Vol. 16 No. 2, 115-128.
- INGRAM, D. (2004) *Rights, Democracy, and Fulfillment in the Era of Identity Politics*, Lanham, Boulder, New York, London, Oxford, Rowman & Littlefield Publishers.
- ISHAY, M. R. (2004) *The History of Human Rights from Ancient Times to the Globalization Era*, Berkeley, Los Angeles, London, University of California Press.
- KELLY, P. (Ed.) (2002) *Multiculturalism Reconsidered*, Cambridge, polity.
- KEOWN, D. V., PREBISH, C. S. & HUSTED, W. R. (Eds.) (1998) *Buddhism and Human Rights*, Cornwall, Curzon.
- KIWAN, D. (2005) Human Rights and Citizenship: an Unjustifiable Conflation? *Journal of Philosophy of Education*, Vol 39 No 1, 37-50.
- KUKATHAS, C. (1992) Are there any Cultural Rights? *Political Theory*, 20, 105-139.
- KYMLICKA, W. (1998) Multicultural Citizenship. IN SHAFIR, G. (Ed.) *The Citizenship Debates*. Minneapolis, London, University of Minnesota Press.
- LANGLOIS, A. J. (2005) The Narrative Metaphysics of Human Rights. *The International Journal of Human Rights*, Vol. 9, No. 3, 369-387.
- LAUREN, P. G. (1998) *The Evolution of International Human Rights*, Philadelphia, University of Pennsylvania Press.
- LEUPRECHT, P. (2006) Culture against Human Rights? IN BAXI, U. & MANN, K. (Eds.) *Human Rights Learning: A Peoples Report*. New York, PDHRE (People's Movement for Human Rights Learning).
- LEVINAS, E. (1993/2008) *Outside the Subject*, London, New York, Continuum.
- LEVINAS, E. (2007) *Totality and Infinity*, Pittsburgh, Pennsylvania, Duquesne University Press.
- LISTER, I. (1984) *Teaching and learning about human rights*, Strasbourg, School Education Division, Council of Europe.
- LISTER, I. (1991) The Challenge of Human Rights for Education. IN STARKEY, H. (Ed.) *The Challenge of Human Rights Education* London, Cassell.
- LOHRENSCHEIT, C. (2002) International Approaches in Human Rights Education. *International Review of Education*, 48 173-185.
- LYOTARD, J.-F. (1988) *The Differend*, Minneapolis, University of Minnesota Press.
- LYOTARD, J.-F. (1999) The Other's Rights. IN SAVIC, O. (Ed.) *The Politics of Human Rights*. London, New York, Verso.
- MACINTYRE, A. (1985) *After Virtue, A study in Moral Theory*, London, Duckworth.
- MAGENDZO, A. (2005) Pedagogy of Human Rights Education: a Latin American Perspective. *Intercultural Education*, Vol. 16 no. 2, 137-143.
- MARKS, S. P. (1997) Human Rights Education in UN Peace Building: from Theory to Practice. IN ANDREOPOULOS, G. J. & CLAUDE, R. P. (Eds.) *Human Rights Education for the Twenty-First Century*. Philadelphia, PENN, University of Pennsylvania Press.

- MARX, K. (1987) On the Jewish Question. IN WALDERON, J. (Ed.) *Nonsense upon Stilts*. London and New York, Methuen.
- MEINTJES, G. (1997) Human Rights Education as Empowerment: Reflections on Pedagogy. IN ANDREOPOULOS, G. J. & CLAUDE, R. P. (Eds.) *Human Rights Education for the Twenty-First Century*. Philadelphia, PENN, University of Pennsylvania Press.
- MIHR, A. (2004) Human Rights Education: Methods, Institutions, Culture and Evaluation. Magdeburg, Otto-von-Guericke-Universität Magdeburg. Institute für Politikwissenschaft. <http://www.anjamihr.com/resources/HRE-Discussion-Paper-MIHR-PDF.pdf>.
- MIHR, A., PRINT, M., UGARTE, C. & NAVAL, C. (2008) Moral and human rights education: the contribution of the United Nations. *Journal of Moral Education*, Vol.37, No. 1, 115-132.
- MIHR, A. & SCHMITZ, H. P. (2007) Human Rights Education (HRE) and Transnational Activism. *Human Rights Quarterly*, Vol. 29, 973-993.
- MODROWSKI, K. (2006) Paulo Freire and Popular Education in the 20th Century IN BAXI, U. & MANN, K. (Eds.) *Human Rights Learning: A People's Report*. New York, PDHRE (People's Movement for Human Rights Learning).
- MORSINK, J. (1993) World War Two and the Universal Declaration. *Human Rights Quarterly*, 15, 357 - 405.
- MOUFFE, C. (1996) Deconstruction, Pragmatism and the Politics of Democracy. IN MOUFFE, C. (Ed.) *Deconstruction and pragmatism*. London and New York, Routledge.
- MUTAU, M. (2002) *Human Rights, A Political and Cultural Critique*, Philadelphia.
- MUTAU, M. W. (1996) The Ideology of Human Rights. *Virginia Journal of International Law*, 36:, 589-657.
- NICKEL, J. W. (1987) *Making Sense of Human Rights*, Berkeley/ Los Angeles/ London, University of California Press.
- NUSSBAUM, M. C. (1993) Non-Relative Virtues: An Aristotelian Approach. IN NUSSBAUM, M. C. & SEN, A. (Eds.) *The Quality of Life*. Oxford, Clarendon Press.
- NUSSBAUM, M. C. (1995) Human Capabilities, Female Human Beings. IN NUSSBAUM, M. C. & GLOVER, J. (Eds.) *Women, Culture and Development*. Oxford, New York, Clarendon Press.
- NUSSBAUM, M. C. (1999) Capabilities, Human Rights, and the Universal Declaration. IN WESTON, B. H. & MARKS, S. P. (Eds.) *The Future of International Human Rights*. Ardsley, New York, Transnational Publishers, Inc.
- NUSSBAUM, M. C. (2000) *Women and Human Development*, Cambridge, Cambridge University Press.
- NUSSBAUM, M. C. (2002) Capabilities and Human Rights. IN DE GREIFF, P. & CRONIN, C. (Eds.) *Global Justice and Transnational Politics*. Cambridge, Massachusetts, London, The MIT Press.
- OKIN, S. M. (1999) Is Multiculturalism Bad for Women? . IN COHEN, J., HOWARD, M. & NUSSBAUM, M. (Eds.) *Is Multiculturalism Bad for Women?* New Jersey, Princeton University Press.
- OLNECK, M. R. (1990) The Recurring Dream: Symbolism and Ideology in Intercultural and Multicultural Education. *American Journal of Education*, Vol. 98. No. 2, 147-174.
- OSLER, A. (2005) Looking to the future: democracy, diversity and citizenship education IN OSLER, A. (Ed.) *Teachers, Human Rights and Diversity: educating citizens in multicultural societies*. Stoke on Trent, UK and Sterling, USA, Trentham Books.
- OSLER, A. & STARKEY, H. (1996) *Teacher Education and Human Rights*, London, David Fulton Publishers.

- OSLER, A. & STARKEY, H. (1999) Rights, Identities and Inclusion: european action programmes as political education. *Oxford Review of Education*, Vol. 25, Nr. 1&2, 199-215.
- OSLER, A. & STARKEY, H. (2003) Citizenship, Human Rights and Cultural Diversity. IN OSLER, A. (Ed.) *Citizenship and Democracy in Schools: Diversity, Identity, Equality*. Stoke on Trent, U.K. and Sterling, USA, Trentham Books.
- OSLER, A. & STARKEY, H. (2005) *Changing Citizenship*, New York, Open University Press.
- PANNIKAR, R. (2000) Is the Notion of Human Rights a Western Concept? IN STEINER, H. J. & ALSTON, P. (Eds.) *International Human Rights in Context*. Oxford, New York, Oxford University Press.
- PAREKH, B. (2000) *Rethinking Multiculturalism*, Basingstoke, New York, Palgrave.
- PAREKH, B. (2008) *A New Politics of Identity. Political Principles for an Interdependent World* New York, Palgrave Macmillan.
- PDHRE (2006) A Brief History of PDHRE. IN BAXI, U. & MANN, K. (Eds.) *Human Rights Learning: A People's Report*. New York, PDHRE, People's Movement for Human Rights Learning.
- PERERA, L. P. N. (1991) *Buddhism and Human Rights*, Kularatne Mawatha, Sri Lanka, Karunaratne & Sons Ltd.
- POGGE, T. (1995) How Should Human Rights be Conceived. *Jahrbuch für Recht und Ethik*, No 3, 103-120.
- POGGE, T. (2002) *World Poverty and Human Rights*, Cambridge, UK, Maldon, USA, Polity Press.
- POGGE, T. (2007) Severe Poverty as a Human Rights Violations. IN POGGE, T. (Ed.) *Freedom from Poverty as a Human Right*. Oxford, Oxford University Press.
- QUEZADA-REYES, Z. (2004) Selected Models of Human Rights Education in Asia. IN GEORGI, V. B. & SEBERICH, M. (Eds.) *International Perspectives in Human Rights Education*. Gütersloh, Bertelsmann Foundation Publishers.
- RADCLIFFE, D. (1994) Cultural Values and the "Free Development of Personality". IN RAY, D. (Ed.) *Education for Human Rights*. Paris, UNESCO, International Bureau of Education.
- RAJAGOPAL, B. (2003) *International Law from Below*, Cambridge, Cambridge University Press.
- RAJAGOPAL, B. (2005) Limits of law in counter-hegemonic globalisation: the Indian Supreme Court and the Narmada Valley struggle. IN SOUSA SANTOS, B. D. & RODRIGUEZ-GARAVITO, C. A. (Eds.) *Law and Globalization from Below*. Cambridge, Cambridge University Press.
- RAWLS, J. (1996) *Political Liberalism*, New York, Colombia University Press.
- RAWLS, J. (2002) *The Law of Peoples*, Cambridge, Massachusetts, London, Harvard University Press.
- RAY, D. (1994) Rights, Education, and the Evolution of the Curriculum. IN RAY, D. (Ed.) *Education for Human Rights*. Paris, UNESCO, International Bureau of Education.
- RAY, D. & TARROW, N. B. (1987) Human Rights and Education: An Overview. IN TARROW, N. B. (Ed.) *Human Rights and Education*. Oxford, New York, Beijing, Pergamon Press.
- REARDON, B. A. (1995) *Education for Human Dignity*, Philadelphia, PENN, University of Pennsylvania Press.
- RENDEL, M. (1991) Challenging Patriarchy and Hierarchy: The Contribution of Human Rights Education to Achievement of Equality for Women. IN STARKEY, H. (Ed.) *The Challenge of Human Rights Education*. London, Cassell.
- RENDEL, M. (1997) *Whose Human Rights?*, Stoke on Trent, Trentham Books.
- RICOEUR, P. (1976) *Interpretation Theory*, Texas Christian University Press, U.S.

- RICOEUR, P. (1984) *Hermeneutics and the Human Sciences*, Cambridge, London, New York, New Rochelle, Melbourne, Sydney, Paris, Cambridge University press, Editions de la Maison des Sciences de l'Homme.
- RORTY, R. (1993) Human Rights, Rationality and Sentimentality. IN SHUTE, S. & HURLEY, S. L. (Eds.) *On Human Rights*. New York, Basic Books.
- RUDELIUS-PALMER, K. (2006) Can a Universal Culture of Human Rights and Peace Exist in Multi-Cultural Societies? IN SEUNG-MI, L. & ENCABO, M. J. C. (Eds.) *Intercultural Understanding and Human Rights Education in the Era of Globalization*. Seoul, Asia-Pacific Centre of Education for International Understanding (APCEIU).
- SCHMIDT-SINNS, D. (1980) How Can We Teach Human Rights? *International Journal of Political Education*, vol. 3 no. 2, 177-187.
- SCOTT, J. W. (1996) *Only Paradoxes to Offer, French Feminists and the Rights of Man*, Cambridge, Harvard University Press.
- SEN, A. (1993) Capability and Well-Being. IN NUSSBAUM, M. C. & SEN, A. (Eds.) *The Quality of Life*. Oxford, Clarendon Press.
- SEN, A. (1999) *Commodities and Capabilities*, Oxford, Oxford University Press.
- SEN, A. (2007) *Identity and Violence*, London, Penguin Books.
- SHAFER, S. M. (1987) Human Rights Education in Schools. IN TARROW, N. B. (Ed.) *Human Rights and Education*. Oxford, New York, Beijing, Frankfurt, Sao Paulo, Sydney, Tokyo, Toronto, Pergamon Press.
- SHARMA, A. (2004) *Hinduism and Human Rights*, New Delhi, Oxford, New York, Oxford University Press.
- SHARMA, A. (2006) *Are Human Rights Western?*, New Delhi, Oxford, New York, Oxford University Press.
- SHUE, H. (1980) *Basic Rights; subsistence, affluence and U.S. foreign policy*, New Jersey, Princeton University Press.
- SPENCER, S. (2000) The implications of the Human Rights Act for Citizenship Education. IN OSLER, A. (Ed.) *Citizenship and Democracy in Schools: diversity, identity, equality*. Stoke on Trent, Trentham Books.
- SPIVAK, G. C. (2003) Righting Wrongs. IN OWEN, N. (Ed.) *Human Rights and Human Wrongs*. Oxford, Oxford University Press.
- SPRING, J. (2000) *The Universal Right to Education: Justification, Definition, and Guidelines*, Mahwah, New Jersey, London, Lawrence Erlbaum Associates, Publishers.
- SPRING, J. (2008) *Wheels in the Head*, New York, London, Lawrence Erlbaum Associates, Taylor & Francis Group.
- STAMMERS, N. (1999) Social Movements and the Social Construction of Human Rights. *Human Rights Quarterly*, 21, 980-1008.
- STARKEY, H. (1992) Teaching for Human Rights and Social Responsibility. IN LYNCH, J., MODGIL, C. & MODGIL, S. (Eds.) *Cultural Diversity and the Schools*. London, Washington, D.C., The Falmer Press.
- STARKEY, H. (2006) Intercultural Understanding and Human Rights Education: Where we are now and where we are heading for? IN SEUNG-MI, L. & ENCABO, M. J. C. (Eds.) *Intercultural Understanding and Human Rights Education in the Era of Globalization*. Seoul, Asia-Pacific Centre of Education for International Understanding (APCEIU).
- STAVENHAGEN, R. (2008) Building Intercultural Citizenship through Education: a human rights approach. *European Journal of Education*, vol.43 no.2, 161-179.
- TARROW, N. (1990) Human Rights Education. *Educational Research Quarterly*, Vol 12.No.4, 12-22.

- TARROW, N. (1992) Human Rights Education: Alternative Conceptions. IN LYNCH, J., MODGIL, C. & MODGIL, S. (Eds.) *Cultural Diversity and the Schools. Human Rights, Education and Global Responsibilities*. London, Washington, D.C., The Falmer Press.
- TASCON, S. (2008) Human Rights and Critical Whiteness: Whose Humanity? *The International Journal of Human Rights*, Vol. 12 No. 3, 307-327.
- TASIOULAS, J. (2002) Human Rights, Universality and the Values of Personhood: Retracing Griffin's steps. *European Journal of Philosophy*, 10:1, 79 - 100.
- TAYLOR, C. (1985) Atomism. IN TAYLOR, C. (Ed.) *Philosophy and the Human Sciences, Philosophical Papers 2*. Cambridge, New York, Cambridge University Press.
- TAYLOR, C. (1996) *Sources of the Self*, Cambridge, Massachusetts, Harvard University Press.
- TAYLOR, C. (1999) Conditions of an Unforced Consensus on Human Rights. IN SAVIC, O. (Ed.) *The Politics of Human Rights*. London, New York, Verso.
- TIBBITTS, F. (1994) Human Rights Education in Schools in the Post-Communist Context. *European Journal of Education*, 29 No 4, 363-376.
- TIBBITTS, F. (2002) Understanding What We Do: Emerging Models for Human Rights Education. *International Review of Education*, Vol. 40 No 3-4, 159-171.
- TIBBITTS, F. (2005) Transformative learning and human rights education: taking a closer look. *Intercultural Education*, Vol. 16 No. 2, 107-113.
- TIBBITTS, F. (2007) Overview of Research and Evaluation within Human Rights Education. <http://www.brea.org>. Human Rights Education Associates (HREA).
- TODD, S. (2007) Promoting a Just Education: Dilemmas of rights, freedom and justice. *Educational Philosophy and Theory*, Vol 39. no.6, 592-603.
- TOMASEVSKI, K. (2001) *Human Rights in Education as Prerequisite for Human Rights Education*, Stockholm, Swedish International Development Cooperation Agency, Sida.
- TOSCH, J. (2006) *The Pursuit of History*, Harlow, England, London, New York, Boston, San Francisco, Toronto, Sydney, Singapore, Hong Kong, Tokyo, Seoul, Taipei, New Delhi, Cape Town, Madrid, Mexico City, Amsterdam, Munich, Paris, Milan, Pearson Longman.
- TRIFONAS, P. P. (2000) *The Ethics of Writing: Derrida, Deconstruction, and Pedagogy*, London, Boulder, New York, Oxford, Rowman & Littlefield Publishers, INC.
- TRIFONAS, P. P. & PETERS, M. A. (Eds.) (2004) *Derrida, Deconstruction and Education*, Malden, Oxford, Carlton, Blackwell Publishing.
- TURNER, B. S. (2006) *Vulnerability and Human Rights*, Pennsylvania, The Pennsylvania State University Press.
- TWISS, S. B. (2005) Comparative Ethics, a Common Morality, and Human Rights. *Journal of Religious Ethics*, Vol 33. Nr 4., 649-657.
- UNTERHALTER, E. (2005) Global inequality, capabilities, social justice: the millennium development goal for gender equality in education. *International Journal of Educational Development* Vol. 25, 111-122.
- WANG, Z. (2002) Toward a Postmodern Notion of Human Rights. *Educational Philosophy and Theory*, Vol. 34 No. 2, 171-183.
- WESTON, B. H. (2006) Human Rights: Concept and Content. IN CLAUDE, R. P. & WESTON, B. H. (Eds.) *Human Rights in the World Community*. Philadelphia, University of Pennsylvania Press.
- WIATR, J. J. (2006/2007) Civic Education for Human Rights. *The Journal of the Central European Political Science Association*, Vol.2 No2, 95-102.
- WONG, D. B. (2006) *Natural Moralities. A defence of Pluralistic Relativism*, Oxford, New York, Oxford University Press.

- YOUNG, I. M. (1996) *Communication and the Other: Beyond Deliberative Democracy*. IN BENHABIB, S. (Ed.) *Democracy and Difference*. Princeton, New Jersey, Princeton University Press.
- YOUNG, I. M. (1997) *Difference as a Resource for Democratic Communication*. IN BOHMAN, J. & REHG, W. (Eds.) *Deliberative Democracy*. Cambridge, London, The MIT Press.
- YOUNG, I. M. (1998) *Polity and Group Difference: A critic of the Ideal of Universal Citizenship*. IN SHAFIR, G. (Ed.) *The Citizenship Debates*. Minneapolis, London, University of Minnesota Press.
- YOUNG, I. M. (2000) *Inclusion and Democracy*, Oxford, Oxford University Press.