

PART 6: HUMAN RIGHTS AND HUMAN RIGHTS EDUCATION: ARRIVING AT THE TRUTH

By Upendra Baxi

a) TRUTH AND TRANSGRESSION

The ways in which the truths of human rights norms and standards are produced *determines* the ways in which we speak about transgression. I use this term because we may not always be able to speak of the “violation” of human rights. Only those human rights norms and standards which impose crystal clear obligations of implementation or enforcement authorize the language of “violation.

Almost all binding human rights treaties craft languages of human rights in ways that render inchoate their actual content, even when we exclude those regimes that authorize state parties to lodge reservations, declarations, or other statements which severely restrict the given range of treaty obligations. Further, the progressive implementation of hierarchies of human rights, based on social, cultural and economic rights that require immediate fidelity, but are difficult to implement immediately, makes it difficult to deploy any languages of “violation.

HRE cannot remain content with the important but still rather technical languages of violation, although these need to be learned by all human rights activists. HRE needs to develop adequate human rights languages to name the violations we abhor. We believe that the language of “transgression serves HRE better than that of “violation” because it enables us to refer to human rights values. The languages of violation designate the legal content and scope of binding human rights norms and standards that often fail to fully serve the values they seek to concretize.

“Transgression” is an experiential category in the sense that people denied their equal worth as human beings feel violated and humiliated, regardless of whether and how obligations arising from human rights norms and standards respond to or redress their experience.

Transgression stimulates political and social action, for it is the full awareness of transgression that first leads to a search for new regimes of human rights norms and standards. A major example was the awareness of multifarious patriarchal transgressions that gave rise to women's claims to their right to be, and to remain "human," encapsulated in the slogan "Women's Rights are Human Rights."

It is necessary for violators, aggressors and trespassers of human rights to deploy power politics in ways that minimize the potential for proactive mobilization by those whose rights have been transgressed. One such way is to inculcate, and reinforce, beliefs in the "justice" of existing political and social arrangements, such that those deprived of their human rights are made to believe that their values are alien impositions, inherently antagonistic and even destructive of the most precious aspects of "culture" and "civilization." The dogma that human rights of "Western" origin are always tainted by an imperialist design, or that most non-Western cultures are beatifically communitarian in the sense that they value duties over rights, or that women have distinct roles that require their submission to transgression, provide examples. The more people buy into the *status quo*, the less likely they are to feel the weight of human rights transgressions and to demand change in social relations and power structures.

Another way of cultivating the "virtue" of submission to transgression consists in developing and maintaining the so-called "progressive" state. This is represented as intensely concerned with transgressions of human rights because it articulates, through constitutions, law, and economic plans for development, blueprints for a better future for all. All political regimes thrive on an expanding rhetoric of concern for the impoverished, the destitute, disadvantaged, and dispossessed. They urge affected people to remain loyal to the State, which cannot reverse millennial injustices overnight because even when it has the will, it does not have the resources to achieve this. It is itself besieged internally with the revolution of rising expectations and externally by patterns of global politics and the many imperatives of the world economy. Its human managers and agents have at best of times limited competence and foresight. The upshot of all this is the insistence that citizens ought to trust the progressive State, which can only bring about amelioration in time, across many generations.

Subjects may criticize a political regime or program but they may not withhold trust, or legitimacy, from their rulers. Still less may they revert to militancy or violence to achieve their aims for that weakens the very instrument of their deliverance. For historically, outside the progressive State as a force for improving human lives, nothing much remains. In all this talk, the state as an entity, itself an ongoing process, actively fostering the interests of the powerful, vanishes from the public view. Politics then emerges as a kind of secular fate: those denied their right to be, and to remain human, may only achieve

incremental progress through a culture that promotes the experience of transgression as *misfortune* rather than *injustice*.

Human rights activism has its tasks defined in the confrontation with State-ordained "truth." In other words, HRE must ensure that the insurgent truths of people's politics prevail over those of power politics.

Fighting Cultures of Impunity

The nationalization of political "truth," recurrent in state sponsored and insurgent violence, often legitimates human rights violations and lawless governance. Cultures of impunity then grow apace in the commission of what Jean François describes as the "perfect crime" in his

THE PERFECT CRIME

"It is in the nature of the victim not to be able to prove that one has been done a wrong. A plaintiff is someone who has incurred damages and who has lost the means to prove it. The perfect crime does not consist in killing the victim or the witnesses... but rather in obtaining the silence of the witnesses, the deafness of the judges, and the inconsistency (insanity) of testimony. You neutralize the addressor, the addressee, the sense of testimony. Then everything is as if there were no referent, no damages."

J.F. Lyotard
The Differend: Phrases in Dispute

HRE remains an exercise in the politics for human rights, a politics of memory that subverts nationalization of insurgent truths about human rights violations. It seeks to empower victims to at least become plaintiffs, bearing witness to their own violation. In our sense of that word, owning human rights languages and logics is a way of contesting the patriarchal truths of the state and the power holders in civil society.

The politics of human rights aggravates the global reproduction of rightless peoples. In contrast, politics for human rights seeks to expand the community of human rights. HRE as politics for human rights combats the reproduction of rightlessness represented as a 'natural' human condition.

DIALOGUE REQUIRES FREEDOM OF
SPEECH, ASSEMBLY, AND ASSOCIATION

HUMAN RIGHTS COMPREHENSIVELY CONTEST NARRATIVE
MONOPOLIES IN THE CONSTRUCTION OF TRUTH

WITHOUT RESPECT FOR THE DIGNITY OF THE OTHER
DIALOGUE IS IMPOSSIBLE

DIALOGUE REQUIRES RESPECT FOR ALL AS EQUAL PARTNERS

ALL TRUTHS ABOUT THE WORLD, INCLUDING POLITICAL TRUTHS,
ARISE DIALOGICALLY

Human Rights Truths

We believe, and affirm, that the truths proclaimed by the instruments and movements of human rights everywhere are precious, but not because they are above contention and thus sovereign truths pitted against truths manufactured by the practices of sovereign power. They are precious because they provide the symbolic as well as the material bases for discourse over concepts of what constitutes a “good” life and just political orderings. 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*. HRE is thus irredeemably pluralist, multicultural, and even multi-civilizational.

To be sure, the power of that voice may be deployed in ways that are destructive to human rights cultures. Given the asymmetries in power relations, some power structures are better equipped to enjoy the fruits of human rights, claiming *their* exercise and enjoyment of human rights as setting the boundaries of access to human rights for others.

For example, the freedom of speech, assembly, and association may be used in ways that put to grave risk all that is precious about the achievement of human rights. As serious-minded feminists endeavoring to feminize free speech know well, pornography is often

protected by the First Amendment. As those who protest against communal “hate speech” know well, state censorship carries at times an unconscionable extension of state power.

In sum, the big issue for human rights educators is framed in terms of how *not* to further empower the New Leviathan and yet protect the self-worth and dignity of peoples at times cruelly affected by human rights monopolies. HRE must confront the eternal question of the balance between the empowerment and disempowerment of the State.

Another version of the same problem lies in the protection of “group,” “collective,” and “minority” rights. In a way that matters, being human is defined in terms of “belonging” to one’s community of birth, culture, and religion. But these parameters often entail costs in terms of human rights. Women living under Islamic laws, for example, wish to remain both Muslim and women. The Amish, to take another example, repudiate state sponsored education as destructive of communitarian identity; so do Seventh Day Adventists who, for their own reasons, repudiate modern medicine’s pain management and related forms of life-sustaining treatment. Issues like free choice and voluntary euthanasia pose another set of formidable problems within the range of contemporary human rights norms and standards.

At issue is human agency and autonomy, within the matrices provided by the preferred modes of human affiliation and belonging. In sum, the gravest challenge to HRE arises when people conscientiously “choose” ways of being and living that violate the core of human rights. Equally crucial is the fact that corporate culture, in its current incarnation as overweening global capitalism, may thus promote trade related, market-friendly paradigms of human rights, canceling in the process many achievements of the Universal Declaration of Human Rights, and its vast progeny. Many such kindred risks and dangers accompany and ambush human rights. We reiterate that conflicts of and within the languages and logics of human rights present a serious difficulty, that the much-vaunted *mantric* virtues of universality, indivisibility, and inalienability insufficiently address.

We believe precisely for these reasons in the value of *participative dialogue* in institutions of civil society and state. The more *inclusive* the dialogue the more *hope* there is to examine and eventually liquidate exploitative uses of human rights languages. HRE is a *politics of hope* that assails the “surplus of evil” in national, regional, and global governance and in civil society. When you remove or restrict dialogue, all that remains is *Realpolitik*, a series of violent power games in which human beings everywhere lose any sense of self worth and social esteem, thus legitimatizing docile bodies, colonized minds, and alienated souls.

b) THE SEVEN SISTERS

Human rights education refuses to take political practices at face value and rightly questions the authenticity of public decisions, processes, outcomes, and actors in terms of complex issues concerning

THE SEVEN SISTERS OF HUMANE GOVERNANCE AND POLITICS

- ⇒ **representation**
- ⇒ **mandate**
- ⇒ **accountability**
- ⇒ **responsibility**
- ⇒ **participation**
- ⇒ **transparency**
- ⇒ **legitimacy.**

Representation

Political representation by those who possess the power to make law and public policy should be based on periodic free and fair elections. All individuals of a prescribed minimum age should have the right to contest and vote. Any act of disenfranchisement ought to be capable of effective redress. Systemic tendencies, such as the role of big money, the capture of elections by special interests, force and fraud, corruption and related forms of coercion, that detract from the dignity and worth of individual votes and voters, ought to be constantly reviewed and subject to periodic reform. Human rights oriented principles of structuring representation may require special measures to ameliorate age-old injustices through affirmative action programs that reserve legislative seats for the historically excluded classes and categories such as First Nations peoples, women or “untouchables”. Voter education is thus integral to HRE.

THE PHILOSOPHICAL QUESTIONS

Is political representation a coherent idea?
Is its actualization ever possible?
Is it desirable?
How does it relate to justice?
What notions of "fairness" and "freedom" ought to inform doctrines of "fair" and "free" elections?

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THE SOCIOLOGICAL QUESTIONS

What method of election secures effective representation of all social groups and interests?
Are programs of electoral affirmative action justified?
How may these generate ethnic feudalism rather than social equality?
How much and what kind of learning occurs through instituting political representation?
How are debates covering electoral reform to be framed?

WHILE ELECTORAL DEMOCRATIC PARTICIPATION MAY BE A
NECESSARY CONDITION FOR THE ACHIEVEMENT OF
HUMAN RIGHTS VALUES,
IT DOES NOT CONSTITUTE BY ANY MEANS
A SUFFICIENT CONDITION

Mandate

- How is the notion of “mandate” to be understood as ethically viable?
- How does it relate to notions of popular sovereignty?
- Are grants of power in the people to recall the elected representatives embodied in the very notion of a “mandate?”

Parties and individuals seeking power through periodic free and fair elections may not present agenda or manifestos that transgress and violate internationally declared human rights norms and standards. If every human being has a right to representation in organized political society, then limitations upon this right constitute both a transgression and a violation. The same is true if freedom of speech and expression, association,

HRE becomes meaningful at this level only when it engages in audits of party manifestoes such that the socially responsible exercise of voter preferences is facilitated.

conscience and religion are to be regarded as components of the collective human right to political representation. These factors may cause situations in which political classes, groups, or individuals may fashion their mandates in ways that violate human rights profoundly.

When parties get elected on human rights oriented manifestoes, HRE also entails constant between-elections monitoring of how the “mandate” is actually implemented. It becomes historically empowering when such audits influence the conduct of power politics, at least in the sense that political parties become progressively more constrained to observe human rights values, norms, and standards in their daily conduct and operations.

Accountability and Responsibility

These twin notions need extensive clarification, if only because practices of politics that seem accountable may not be responsible in terms of human rights. Human rights accountability, for example, is accomplished when human rights declarations are subscribed to, treaties and conventions ratified, and corresponding laws duly enacted.

However, accountability does not always result in responsible political action since the duly elected governing elites may not feel burdened by any serious sense of obligation to transform daily practices of power. HRE must remain fully engaged in the creation and sustenance of active human rights affirming political cultures.

Participation

Electoral participation, immensely precious in itself, marks only the beginning of the voyage of participation in the stormy seas of power politics. From a human rights perspective, participation ought to involve the constant and dynamic construction of both trust and distrust. For example, when we seek to innovate political practices to reflect human rights, such as the labors entailed in the reform of law, policy, and administration, we renew our trust in forms of power politics that respond to human rights norms in responsible ways. At the same time, we need to create distrust in the very agencies mandated to protect and promote these norms.

We need to constantly question not just legislative but judicial performance, and to evaluate, even denounce, executive decisions that menace human rights and require the strictest scrutiny on behalf of, and at the behest of, grievously affected peoples, such as:

- *Cross-border threats or use of force*
- *Discriminatory immigration and asylum policies*
- *Anti-welfare state policies*
- *“Developmental” decisions, such as large irrigation projects, urban planning, agrarian reforms, and eco-planning*
- *Globalizing decisions such as deregulation and denationalization*

Understandably, incumbent regimes experience human rights and HRE as

Securing human rights accountability through HRE processes and programs that insist that government accepts human rights values, norms, and standards remains an important task.

subversive.....

Little do they realize that human rights, by their very nature, are processes of countervailing power, or what Roberto Unger would describe as “destabilizing” and “context-smashing” practices. To borrow a phrase from V.S. Naipaul, from the perspective of rightless peoples, having human rights signifies the capability to enact

a million mutinies.....

One apt way to describe human rights, and human rights education, movements is to say that these constitute a diverse and unceasing search for attaining innovative forms of social cooperation.

Participation extends beyond the state to all other forms of civic life such as the family, religion, culture, and the economy. When confined only to the spheres of politics and governance, it tends to lose its emancipative potency. Thus it is possible, for example, to summate so many programs of worker’s participation in business and industry with the motto: *“You participate, I participate, but he profits!”* Much the same may be said of consumer “sovereignty” in an era of global free markets whose producers decide within which context consumers may choose from a range of products, goods, and services.

In the deepest sense, all forms of denial of human agency and autonomy violate the many-sided value of “participation,” especially when we see it as a form of resistance to imposed values. It is on this site that the struggle for HRE remains the most difficult.

Transparency

At the political level, transparency is the opposite of the Secret State - a form of governance that ought to be defined as the gravest threat there is to human rights values, standards, and norms. There is no international human rights declaration affirming the

Governance decisions are taken in the public arena, attended by both publicity and accessibility.

Disclosure is favored over secrecy.

People are given the right to know.

people’s right to know. Human rights activism needs to struggle to install this. That struggle needs to begin at the global level. But if the recent WTO Ministerial Meeting at Doha is any guide, the very Northern States that so munificently dole out, and even impose, transparency norms as an aspect of good governance” have no difficulty in jettisoning these norms when

it suits their interest. The following excerpt from a UNDP Background Paper (2001:99-100) is worth an extensive quote:

Although developing countries prepared themselves well and played an active role in making their views known to at the WTO meetings and consultations in Geneva and subsequently at Doha, their views were not reflected properly (and in some areas not at all) in the several drafts of the Ministerial Declaration that were produced in Geneva and subsequently at Doha. Although the contents of the last Geneva draft were heavily contested by many developing countries, it was nevertheless transmitted without change and in a form that did not incorporate the various diverging views and opinions, thus placing developing countries at a great disadvantage.

In Doha, six "friends of the Chair" were appointed to conduct consultations on controversial issues. How they were appointed, what their specific powers were, and why they all came from a similar camp were not explained nor subjected to approval by the members. When a special meeting was convened on the last, the selection of participating countries, what representative authority they had, what was discussed, who convened the meeting, and who prepared the texts and the drafts (including the final Declaration text) were not made known to members or public, let alone decided upon by consensus.

No doubt, HRE has achieved some spectacular results on the political plane where corruption and chicanery, force and fraud, manipulation and mayhem, stand increasingly exposed by the politics for human rights. Equally impressive, in a post-Bhopal, post-Ogoniland, and post-Enron world are calls for transparency in transnational political and corporate practices.

Beyond this, how may we translate the virtue of transparency in social relations governed by family, religion, culture, and mass media? HRE needs to address the notion of reformulating this question as well as fashioning society, rather than merely fashioning state-centric practical responses to these issues.

Legitimacy

The politics of human rights seems to provide a major building block for the legitimization of power. It is a fact of considerable importance that those who seek to govern, and those who oppose them, do employ the languages and rhetoric of human rights, despite different cultures and traditions of power that complicate understanding. Of course, "legitimacy" is a composite production in that it presupposes full adherence to the six other values as well.

Authenticity of NGOs

Many ruling formations have deployed the might of the Seven Sisters with a view, undoubtedly, of augmenting their powers of surveillance and regulatory control over human rights activism. However, socially responsible and responsive forms of HRE must justify their critical morality in more exemplary ways, and to present themselves as more contextually and historically consistent with the Seven Sisters. Already, some operative consensus seems to exist in the diverse NGO worlds. This may be derived from the internal standards that NGOs employ to judge their own worth and that of the others.

...**First:** “Good” or “authentic” NGOs are considered to be those that do not seek to derive material profit from their public activities. HRE differs from power politics by demonstrating non-self-oriented practices of resistance. Even when they marshal material resources from available networks, “good” NGOs must continually combat corruption in their attempt to eradicate the evils named by human rights. At stake, then, is the relative “purity” of moral altruism that activism may command.

...**Second:** the “good” NGOs differ from the “bad” ones by their stance on party politics. The good ones do not “belong” to any political party and do their very best to avoid being co-opted by the programs and processes of party politics. However, NGOs may not be able to avoid engagement with the raw world of power politics; they simply cannot escape ideological affinity or affiliation in the strategic pursuit of HRE. In what ways may these, as it were, sup with the Devil and yet retain their authenticity?

Increasingly, some radical human rights NGOs, having fully ingested the “end of the nation state” dogma, have begun to believe and act according to the maxim that any “real” movement for the future of human rights lies in working from within the Belly of the Beast. The “Beast” is defined variously as the politics of international finance and transnational corporations or efforts to “mainstream” human rights by way of a Global Compact based on ethical trading practices and forms of corporate governance that promote sustainable development.

...**Third:** the global grant and aid economy that now sustains HRE complicates the issues of authenticity. Sources of funding, the ways in which they shape human rights and the HRE agenda, the problem of “staying power” in philanthropic markets and networks, and the development of independent critical pursuits cause pressing problems.

...**Fourth:** HRE activist communities ought not to practice, or engage in, social exclusion and discrimination. Politics for human rights furnishes standards which extend to judging the authenticity of NGOs. Thus, for example, women's NGOs have begun to critique tendencies or practices of sexual harassment within the activist world; homophobic tendencies and practices similarly become a matter of activist public concern; radical eco-activists critique the unsustainable life style of their eco-feeble-minded cousins.

...**Fifth:** the operative consensus names certain forms of "bad faith" NGOs by their agenda:

- GRSNGOS (government/regime sponsored NGOs)
- BNGOS (business and industry sponsored NGOs)
- BENGOS (business and industry sponsored corporate environmental NGOs)
- PATNGOS (patriarchy promoting, misogynist NGOs)
- RNGOS (racist NGOs)
- ECNGOS (NGOS that extol ethnic cleansing)
- ACRNGOS (anti-child rights NGOs that advocate exploitation of children.)

By definition, good NGOs emerge as:

- SAGS (social action groups)
- ORPS (organizations of the rural poor)
- POPRPS (participatory organizations of the rural impoverished)
- WRHRG (groups that insist that women's rights are human rights)
- CRNGOS (child rights advocacy groups)
- FN/ IPR NGOS (First Nations/Indigenous People/Populations Rights NGOs)
- CDRNGOS (assemblages of civil and democratic rights NGOs)
- SDNGOS ('sustainable development NGOs)
- BIOENGOS (bioethics NGOs)
- AGANGOS (anti-globalization NGOs)
- ANNGOS (NGOs that deal with issues such as nuclear safety/waste/decommissioning of civilian nuclear energy plants and the post Cold War arsenal of floating nukes)
- LSTGNGOS (lesbigay/transgender people's rights NGOs)

The philosophical and ethical diversity of human rights groups and human rights education offer us the moral and spiritual biographies of authentic and inauthentic HRE practices. This is an area that requires a great deal more thought and reflection than is currently available in the world of human rights.

NGO Politics

HUMAN RIGHTS NGO'S ARE NOT DEMOCRATICALLY ORGANISED

The politics of NGOs, even the “good” ones, remains a taboo topic. But even “good” NGOs come into being by, and through, cooperative conflict. The conflict does not necessarily take the form of value-based politics; after all, all “good” human rights NGOs are united by the pursuit of a common goal. Within this form, however, divergences exist. Some NGOs dedicate themselves to the promotion and protection of human rights that have already been declared; others work towards human rights still struggling for birth - which are as diverse as the human right to peace; to immunity from corrupt governance; to sexual orientation and conduct.

Value-based politics also entails the struggle to prioritize human rights values. It is on this terrain that the politics for human rights develops intense forms of cooperative conflict, whose histories have yet to be written - in itself an important task for HRE. Of equal or perhaps greater importance are *interest-based politics*, which are unavoidable even in the field of human rights, and are marked by a complex struggle over “representation,” which often disguises the conflicting aspects of inter- and intra-NGO relationships. Very few are mass subscription organizations, where human rights stakeholders have a voice in the activist governance. Most recipients have no historic choice but to defer to a “superior” voice that articulates human suffering and human rights transgressions and violations. The competition for being more “authentically” representative generates forms of interest-based politics.

THE POLITICS OF POWER

- TERRITORIALITY
the struggle over occupation of the human rights "turf"
- COMPETITION
the struggle for available resources
- IMPERIALISM
new constructs of narrative monopolies
 - Men may not authentically speak for women's rights
 - Dead White Males may not be trusted to speak to the cause of the emancipation of women
 - Euro-American progressive critics of colonialism and imperialism must be put to the litmus test that may expose residues of "regressive" Eurocentrism
 - Non-indigenous individuals must be subjected to strict scrutiny when they presume to promote and protect the human rights of indigenous peoples
 - Globalizing middle classes may never be trusted when they seek to give voice to human suffering

*How can "good" NGOs craft their own mandates in terms superior to their "rivals?"
How can they fashion "superior" approaches of autonomy and accountability to their funding agencies? What may be said to mark the distinction, in free, market-driven social philanthropy, between grassroots and Astroturf NGOs?*

These questions complicate relations as well as the bases of judgment. Further, in a heavily globalized world, it is difficult to draw lines between human rights movements and human rights markets, since both are driven by the imperative to commodify human suffering, and both reproduce the very politics of power that they resist.

