

Introduction

Navigating Deep Waters: The Problems of Human Rights and New Perspectives of Inquiry

The far-off blackness ahead of the ship was like another night seen through the starry night of the earth – the starless night of the immensities beyond the created universe, revealed in its appalling stillness through a low fissure in the glittering sphere of which the earth is the kernel.

“Whatever there might be about,” said Jukes, “we are steaming straight into it.”

Joseph Conrad, *Typhoon*

I.1 CRITIQUE AND DEFENSE

In 1945, humanity had sailed through a profoundly dark night. The victims had yet to be counted, but the lessons to be drawn already seemed to be indisputable. One important conclusion was to reassert with sober but unflinching determination an old, revolutionary idea – the idea of every human being’s fundamental rights and equal intrinsic worth. The *Universal Declaration of Human Rights* is the flourish, heralding many following attempts to give these rights a new standing, to make them the mandatory standards for the treatment of humans in ethics and in law, in nation-states, regional organizations and the global community. Some of these attempts met with astonishing success, others were a tragic failure. So far, however, none have achieved the respect that human beings truly deserve.

This inquiry hopes to shed some new light on the content, history, justification and cognitive foundations of this remarkable idea. It argues that a theory of human rights has to engage with these different perspectives to do justice to its subject, in particular if it aims at understanding something meaningful about the relation between human rights, moral cognition and the law. This study intends to identify in a theoretically unconventional and perhaps illuminating way the place of human rights in the human form of life. It will outline why it is crucial to understand the meaning of human rights for humanity’s mode of existence not only for the sake of

analyzing the phenomenon of human rights itself more deeply, but also if we want to fathom what kind of creatures we humans really are. It attempts to rescue the idea of human rights in ethics and law from being washed away by a torrent of critique from history, philosophy, legal theory, moral psychology and neuroscience. It argues that rather than subverting the idea of human rights, the history of this idea and its traces in social practices, as well as normative theory and what is currently known (and not known) about the structure and evolutionary origin of human moral cognition, all only strengthen the case for human rights.

There is a long tradition in philosophy, science and, perhaps most importantly, art that, while devoid of any comforting illusions and bitterly honest about the sinister sides of human emotions, beliefs and actions and the suffering they cause, is driven by a deeply conceived and passionately felt respect for what it means to be human. For these thinkers and artists, humans appear as surprisingly richly endowed beings, with characteristics defying simple explanations, bringing something new and unprecedented to the natural world, radically and rapidly transforming life on Earth by ever new forms of living, insights and the astonishing pursuit of beauty. There is true awe in many voices in philosophy, science and art, expressing the perception that there is a spark of something lovely and sublime in human beings. One of the central reasons for this attitude towards humans is their capacity to act under moral laws with genuine concern for others, to submit to principles of justice, to respect others and their rights and to attempt to build social orders of decency – moved not by the commands of secular or religious superiors, the threat of sanctions, the prospect of direct or indirect personal gains or the hidden, innate machinery of selfishness, but by the autonomous exercise of their moral judgment and the intimate but powerful calls of their conscience. The many other impulses and ideas that drive humans forward, the broad trail of crime and folly in human history and what it says about us, only increase the importance of this often feeble, regularly neglected, occasionally gleefully derided and still sometimes strangely powerful, very peculiar capacity of human beings.

This inquiry will align itself with this tradition with due modesty, maintaining that the idea of human rights expresses a remarkably magnanimous and gentle side of the better parts of human thought and feeling that a human culture disregards to its own detriment. This study will try to show that this idea has deep roots in the history of ethical and legal thought and that it stands up to critical scrutiny of its claim to normative justification both in the ethical and the legal sphere. Its arguments challenge a certain cluster of assumptions about morality in some parts of philosophy, psychology and cognitive science that has become influential over the last decades in a range of different variations and that, for some, defines the hard scientific knowledge of the age. From this point of view, there is no such thing as genuinely selfless morality under principles of justice with a content that is justifiable by convincing reasons, has motivational force and includes all humans or even all sentient beings. Only a life in competing moral clans, guided by a small set of

emotions that are the true core of human morality, comes naturally to human beings. One influential explanation for this is that concern for others beyond limited communities is irreconcilable with the way the human mind has been structured by the forces of evolution. The conclusions drawn from this common point of theoretical departure are diverse: some infer that the best one can hope for is some kind of prudential modification of the natural moral world of human beings to make life on this planet livable, while others are more optimistic and argue that, despite these constraints of human nature, just and caring social and political arrangements are achievable – always threatened, however, by humans' narrow natural moral concerns, which are limited to kin, moral clan members and the well-being and reputation of the agents themselves.

Such theories fail to convince on their own ground, we will argue, if one interprets the empirical evidence of moral psychology and neuroscience within convincing theoretical frameworks and draws plausible conclusions from a sufficiently complex theory of natural evolution's intricate machinery. Even if these theories do not succeed in achieving their theoretical aims, and even though one is well-advised not to draw any normative conclusions from facts of psychology or natural history, such visions can still have substantial harmful effects if sufficiently many people form their idea of the prospects of human morality according to what these theories assert. Such theories can discourage people from pursuing the idea for which a morality of human rights stands – which is not limited to one's own tribe but demands respect, liberty and equality for all human beings, therein lying its whole point and its appeal – by making them lose hope that human beings could be guided by such broader-minded, exacting and generous moral precepts. Such psychological theories may breed cynicism, docile acquiescence to power and self-righteous resignation in a time when a spirited resistance against the dismantling of human rights as an idea, moral practice and legal institution is of central importance if new forms of post-truth political authoritarianism, destructive ethno-nationalism and contempt for human worth are not to win the day. They may also provide an exceedingly and much-desired good conscience for those who have a keen interest in shaking off the shackles of moral principles and weakening the project of human rights because it challenges their power, interests and self-serving actions.¹

A good starting point to indicate in sufficient detail the cognitive interests and the potential novelty of this study's approach is the simple question: What is the idea of human rights about? Answering this question will identify what the object of inquiry is understood to be and what the main aims of this inquiry are.

¹ As Noam Chomsky observed in his reflections about psychology and ideology, two sorts of questions need to be asked if we are presented with claims about the nature and psychology of human beings: "What is the scientific status of the claims? And, What social or ideological needs do they serve? The questions are logically independent, but those of the second sort naturally come to the fore as scientific pretensions are undermined," Noam Chomsky, *For Reasons of State* (New York: The New Press, 2003), 318.

I.2 REASON, CONSCIENCE AND RIGHTS

The *Universal Declaration of Human Rights*, which set the example for the attempts to bring the human rights idea into life in the post–World War II era, famously begins with an anthropological assumption: All human beings, it asserts, “are endowed with reason and conscience.”² Its text does not draw any explicit conclusions from this, but it is clear that these assumed properties are taken to be relevant to the idea of human rights that the *Universal Declaration* restates so powerfully after the cataclysm of World War II. One underlying idea appears to be that *because* of these properties of human beings, alone or in conjunction with others, we justifiably can conclude that humans are endowed with certain inalienable rights. From this perspective, reason and conscience are *justificatory reasons* for the belief that human beings in fact enjoy human rights. Furthermore, all human beings share these attributes. While the meaning of these attributes may raise substantial questions, the general thrust of the statement thus seems sufficiently clear: Human rights are the birthright of thinking and moral beings.

Another dimension of the meaning of this prominent passage is that because of “reason and conscience,” humans are in fact in an epistemic position to *understand* that their human rights are justified, that they are not doomed to ignorance, and consequently they should take action to protect these rights.³ Reason and conscience are the means of identifying human rights as well-justified fundamental claims that human beings are entitled to pursue. Reasoning and moral thought are the epistemic keys that unlock the door to the cognition of human rights.⁴

² UN General Assembly, *Universal Declaration of Human Rights* (UDHR), Resolution 217 A (III), December 10, 1948, Art. 1.

³ The preamble of the UDHR states, after all, that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the *conscience of mankind*” (emphasis added).

⁴ For a detailed account of the drafting process of the *Universal Declaration*, cf. Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 4 ff.; Mary Ann Glendon, *A World Made Anew: Eleanor Roosevelt and the Universal Declaration* (New York: Random House Publishing Group, 2001). The first draft was written by John P. Humphrey, head of the UN Human Rights Division, William Anthony Schabas, ed., *The Universal Declaration of Human Rights: The Travaux Préparatoires*, Vols. I–III (Cambridge: Cambridge University Press, 2013), 281 ff. (E/CN.4/AC.1/3). This draft formed the basis of René Cassin’s new draft, printed in Mare Agi, *René Cassin (1887–1976), Prix Nobel de la Paix: Père de la Déclaration universelle des Droits de l’homme* (Paris: Perrin, 1998), 359 ff. The term “reason” was included in Cassin’s draft by the working group on the *Universal Declaration*, cf. Schabas, *The Universal Declaration*, 788 f. (E/CN.4/AC.1/W.1). The term “conscience” was the end result of an initiative by the influential Chinese delegate Chang to add a Chinese term that he translated literally as “two-man mindedness,” proposing that “sympathy” or “consciousness of one’s fellow man” might be English equivalents, Schabas, *The Universal Declaration*, 800 f. (E/CN.4/AC.1/SR.8). The British delegate Wilson later proposed using the term “conscience,” supported by Chang, among others, Schabas, *The Universal Declaration*, 853 (E/CN.4/AC.1/SR.13). In the final

Interestingly, the foundational role of reason and conscience is more than hortatory rhetoric in the text of the *Universal Declaration*. As was pointed out during a self-reflective moment in the drafting process, the reliance on reasons and arguments was constitutive of this process itself.⁵ To be sure, drafting the *Universal Declaration* was a highly complex affair, embedded in the many conflicting aspirations of the most powerful political forces of the time, not all of these agents devoted to anything remotely resembling obedience to the commands of reason, let alone to a moral cause. After all, this was the time of the twilight of the falling European empires, a time when the dice of future world power were cast and the contours of a new epoch overshadowed by the threat of total nuclear destruction were slowly emerging from the political haze. Nevertheless, and perhaps oddly enough given this historical setting, arguments clearly counted in the drafting process. There is very little in the *Declaration's* final text that mirrors only naked power politics and cannot, despite all its flaws, at least in principle be defended by something like universalizable arguments, controversial as these arguments may be in detail. Clear examples of such power politics, such as the attempt to leave scope for the nonapplication of human rights in the colonies that still existed, were even rebutted – a success that initially was not achieved in other cases such as the *European Convention on Human Rights and Fundamental Freedoms* (ECHR), where champions of this kind of exemption, like Great Britain's governments of the time, had more of a say.⁶

discussion on the matter, Chang argued for dropping “reason and conscience” again. In the discussion about retaining or deleting this clause, Charles Malik, as the clause's most outspoken defender, related it to central properties of human beings, arguing that the drafting Commission “should mention somewhere in the Declaration, perhaps in the Preamble, the qualities which essentially characterized man, since man and his rights were the Commission's main concern.” Cassin had made a similar argument on the importance of clarifying the particular characteristics of human beings in relation to the earlier draft, Schabas, *The Universal Declaration*, 801 (E/CN.4/AC.1/SR.8). The Human Rights Commission voted to retain the clause, Schabas, *The Universal Declaration*, 1673 (E/CN.4/SR.50).

There is much debate about the reconstruction and translation of the meaning of concepts such as reason and conscience, especially in different cultural contexts. Equally rich is the discussion about how to interpret the meaning of a legal term after it has been included in a legal document (or, as in the case of the UDHR, a nonbinding document, albeit with clear legal significance), especially concerning the issue of whether or not any of the meaning associated with it by some of the drafters is relevant for its interpretation or not. Despite these legal hermeneutic intricacies, it seems clear that the passage refers to the rational and moral capacities of human beings, taken as central properties, foundational both for the attribution of their particular moral status and for the possibility of understanding this status and its normative consequences in the form of rights. On the debate and for a predominantly epistemological reading, cf. Morsink, *Origins*, 296 ff.

⁵ Cf. Schabas, *The Universal Declaration*, 1671 (E/CN.4/SR.50), where Charles Malik is quoted as saying: “Without reason, the very work they were engaged in would be impossible; what, then, more ‘reasonable’ than the explicit mention of the factor that constituted the basis of their work, in the very first article?”

⁶ Cf. on Art. 2 UDHR, Glendon, *A World Made Anew*, 149 f., 162, on Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14* (ECHR), ETS 5, November 4, 1950, Art. 56 (former

To the average observer, the two ideas of reason and conscience as justificatory reasons and means of normative cognition that underpin the human rights project according to this central statement by international actors may appear a truism and of no particular concern.

What else, one may be tempted to say, was to be stated in a document intended to revive human moral, legal and political life at a time when half the world and the ethical foundations of an epoch still were lying in smoking ruins? Should the *Universal Declaration* have taken the view that human beings are beastly predators driven by the irrational will to power? Protean beings,⁷ “*nicht festgestellte Tiere*,” animals without a fixed nature,⁸ which are the mere playthings of historical and social change? Shrewd calculators of self-interest following the sole motive of maximizing their own idiosyncratic preferences?

After the Nazi *danse macabre* of murderous folly, after the reign of their abstruse, cruel and deadly ideas about human life, its meaning and the ethical parameters that guide human beings, could one rely on anything other than reason and conscience? After this cataclysm of horrors, which washed away traditions, beliefs and centuries-old cultural assets, turning the supposedly impregnable walls of the institutions of human legal orders into meaningless rubble – at this moment, when it was absolutely necessary that humanity (for once) got it right, because human life for a few precious and awful moments was visibly naked in all its painful vulnerability, fragility and suffering greatness – what should have been endorsed other than the capacity for reasonable thinking and ideas of basic human decency provided by human moral understanding (for whatever they are worth) to lead the way into

Art. 63 ECHR) and background, Alfred William Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001), 288 ff., with the following illuminating comment on the “dogma” of Colonial Application Clauses and the policies of human rights: “The Colonial Office dogma was sometimes relaxed in special circumstances. Thus the *Universal Declaration* on Human Rights of 1948 did not contain a colonial application clause, and a Circular Dispatch from the Colonial Office of July 20, 1948 even stated that the UK could not therefore accept it unless all colonial government did so. This would have entailed the odium of abstaining in the final vote on December 10, with no later opportunity to come on board. In the event the UK did not secure agreement from the colonies before voting for the Declaration, and made it clear that it did indeed apply to all its dependencies. Since it did not bind anyone to do anything and in any event was not a treaty, this was not viewed by the Colonial Office as presenting a real problem.” Britain extended the rule of the ECHR to most colonies in 1953. Official records note that “one of the main objects in inducing colonial territories to apply the convention was for publicity purposes at the United Nations in connection with the draft Convention on Human Rights,” quoted in Simpson, *Human Rights*, 829, among substantial doubts about the political usefulness of this move, given the constraints that the ECHR was feared to impose on colonial rule.

⁷ Cf. Richard Rorty, “Human Rights, Rationality and Sentimentality,” in *On Human Rights: The Oxford Amnesty Lectures*, eds. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 115.

⁸ Friedrich Nietzsche, *Jenseits von Gut und Böse*, in *Friedrich Nietzsche: Sämtliche Werke*, Vol. 5, eds. Giorgio Colli and Mazzino Montinari (Munich: Deutscher Taschenbuch Verlag, 1999), 81.

something resembling a bearable future? Would anything else not have fallen short of the lessons and demands of this pivotal historical moment?

The theoretical rationale underpinning these thoughts about the justification of human rights and the epistemic condition of human beings is far from clear, however, when we consider contemporary debates about rights, their justification and their epistemological foundations, as well as the many questions they raise.

1.3 THE PROBLEM OF RIGHTS

The foundations of rights are debated as much as their content or the claim that there are universal rights pertaining to every human everywhere, a conclusion that the *Universal Declaration* draws as one of its defining elements, echoing the universalistic hopes of the past. To be sure, serious questions are implied by this stance, the answers to which are far from obvious. What does it mean that they are rights that humans are supposed to enjoy *by virtue of their humanity*, as an almost canonical view puts it? If “humanity” refers just to a set of biological characteristics of a biped with a large brain that walks upright, how can rights be derived from such contingent facts? Is there a plausible concept of humanity that does something other than impose parochial views about human existence on others? And even if there is such a concept, are reason and conscience really part of what humanity means? What about emotions or the totality of our bodily existence? Do they not count as well?

Furthermore: What is the stuff that human rights are actually made of? Are human rights part of a Natural Law permeating the cosmos? Are they part of the mind-independent fabric of the world, like the Higgs boson? Or are they a tissue of beliefs woven by the hidden operations of the human mind? What are the reasons for their justification? Are they necessary preconditions of human autonomy and action and thus justified because we should not and indeed cannot give up our autonomy? Does a qualified need or interest in the objects protected by human rights give rise to these rights? Or is it an (imagined) contract or consensus? What do these approaches imply for the universality of human rights?

Other questions are no less difficult, not least concerning the precise content of human rights, the exact group of rights-holders, the duty-bearers or addressees of rights and the nature of rights. What is the final criterion that makes a right a *human* right? Not every legitimate human concern has found its way into the bills of rights that determine the current content of human rights. There was no question that the right to life should be included in the *Universal Declaration*. It was equally obvious that a right to be loved would not be included. Why?⁹

⁹ Cf. on the paradoxical, inalienable but unenforceable right to be loved, Theodor W. Adorno, “Minima Moralia,” in *Theodor W. Adorno: Gesammelte Schriften*, Vol. 4, ed. Rolf Tiedemann (Darmstadt: Wissenschaftliche Buchgesellschaft, 1998), 187. An attempt to defend a right of

Humans are regarded as rights-holders. Does this mean every human being, or are certain groups to be excluded – infants, perhaps, because they lack certain properties that would make them fully human in the normatively relevant sense, as some argue?¹⁰ Can groups be rights-holders? Can corporations enjoy human rights? All or just some? What about animals? Or robots? A self-learning algorithm?

The question of the addressees of human rights raises similar problems. Do the addressees of human rights also include private individuals, or are they only legal entities that exercise public power, most importantly states? What about corporations? Finally and importantly: Are human rights moral, legal or both? If the latter, do they mean the same in the moral and in the legal sphere? If not, what are the differences?

The assumption of human beings' shared capacity to understand the point of human rights that underpins the *Universal Declaration* leads us into no less troubled theoretical waters than the questions about the nature, content and justification of human rights. Reason has become a notoriously contentious concept, and conscience, as a human property of constitutive importance for moral orientation, does not necessarily fare better. To be sure, there are many references to reason in the debates about human rights. But what does reason mean in these contexts? A Platonic capacity to access ideas that exist independently of the mind? An Aristotelian understanding of forms or capacity of practical cognition? A natural light that pierces the darkness of error and ignorance, providing cognition that is distinct and clear? A Kantian capacity of principles constituting human understanding? A Hegelian spirit whose might irresistibly wrenches the last secrets from nature's grasp? Something else?

Reason was traditionally thought to be an attribute of human individuals, the epitome of a human being's ability to think and, by thinking, to arrive at conclusions that were insights, not false opinions. Should this idea of subjective reason perhaps be abandoned? Should reason be freed from its incarceration in the human individual because it is actually found somewhere else? Is thinking in fact taking place not "in the head" but in social practices, in *Lebensformen*, which change "as we go along" but whose nature we nevertheless can and must make explicit? Or is reason embedded in specific *Lebenswelten*, lifeworlds, in forms of cooperative communication, where better arguments reign rather than force?

Many people have sought and continue to seek to answer these questions. But is it really worth pursuing them at all? Has the reference to reason not proven to be a dead end? Have we not learned much about the dark side of reason, its immanent dialectic and contingent construction by social forces and narratives woven over time? Have concepts of reason not been tainted by partisan perspectives – of gender,

children to be loved is S. Matthew Liao, *The Right to Be Loved* (Oxford: Oxford University Press, 2015).

¹⁰ Cf. e.g. James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 95.

of social groups defined by skin color or religious outlook, for instance? Are ideas of reason not forged by hidden forces of social power that model them after their own image? What is conscience supposed to mean, apart from highly personal, historically and culturally contingent and subjective perspectives on matters of right and wrong that cannot have any possible claim to objectivity?

The seriousness of these questions and the difficulties in answering them are of some importance. The assertion that there is something about humans that entitles them to certain rights and that they are capable of insight in these matters is not an accessory part of the fundamental claims implied in the ethical and political project that the *Universal Declaration* stands for, but rather it lies at its very core.

The project presupposes that human beings are never again to be treated in the way they had been in the dire epoch preceding the *Universal Declaration*. Its starting point is that the imperative to treat human beings with respect had been well understood before and now has become common knowledge and nothing less than a matter of the very basic moral and legal self-understanding of humanity. The real task therefore is to build institutions that put these insights into practice, arduous and difficult as this may be. Fortunately, this endeavor is able to rely on a firm, normative, reflectively secured foundation that has stood the tough test of time.

Are these assumptions flawed? Are they the ephemeral offspring of a certain moment in history that now has passed? Are they only ideological machinations that should no longer occupy serious thought in a more mature age? Or are they expressions of appropriate respect for the autonomy of human thought and the well-warranted belief that the free exercise of human thinking would lead ultimately to insight into the justifiedness of human rights?

The historical record of human rights does not make the assessment of such claims much easier. Human rights have a very rich and complicated history. They are not an uncontested, self-evident companion of human practice and thought. As Thomas Paine dryly remarked after underlining the universal nature of the French Revolution and in particular of the *Déclaration des Droits de l'Homme et du Citoyen*, “but the governments of all those countries are by no means favourable to it.”¹¹ Armies marched to quell this idea, and powerful structures of suppression were erected to counter its threat to power and material privilege. Many arguments were formulated that criticized this idea. There is no lack of countertheories to the idea of human rights, vividly summed up in Edmund Burke’s attack upon rights and the idea that these rights could form the yardstick for legitimate forms of government:

¹¹ Thomas Paine, “The Rights of Man,” in Thomas Paine, *Common Sense and Other Writings* (New York: Barnes & Noble Classics, 2005), 103.

We have not (as I conceive) lost the generosity and dignity of thinking of the fourteenth century; nor as of yet have we subtilized ourselves into savages. . . . Atheists are not our preachers; madmen are not our lawgivers. . . . We have not been drawn and trussed, in order that we may be filled, like stuffed birds in a museum, with chaff and rags and paltry blurred shreds of paper about the rights of man. . . . We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that individuals would do better to avail themselves of the general bank and capital of nations, and of ages.¹²

Over time, such criticisms of human rights as an idea and political and legal practice came from different political camps, from the right and from the left, from crude ideologies and the commanding heights of philosophy. And human rights have continued to be an embattled idea, from Bentham's passionate critique of the egoistic, destructive, licentious behavior he thought they would breed¹³ to the attack on abstract and general norms under the theoretical auspices of a negative dialectics¹⁴ or post-modernity.¹⁵ The rich array of human rights skepticism in current normative reflection will be discussed in some detail over the course of this inquiry.

Some of these theoretical attacks were backed by important social forces and religious creeds. This is hardly surprising. After all, fundamental rights have played many roles in human history, but not least among these is that of an ethical idea and legal instrument subversive to political power. Moreover, fundamental rights are inconvenient not only for those who aspire to unfettered might, because they draw limits to its exercise; they are inconvenient for others, too, not least for (often comfortably self-righteous) social majorities. Human rights draw lines that limit such majorities' capability to impose their view of what is right and proper on other people as well. Human rights are therefore a precious asset for any minority, for dissidents and outsiders or simply for the weakest members of human associations. That which is inconvenient for political power and social majorities inevitably will have its enemies, and human rights have attracted plenty of such to the present day.

Consequently, there is much to be said about the trajectory, roots, ruptures, discontinuities and tentative approximations to the idea of human rights in theory and practice through human history. What is clear, however, is that by the eighteenth century, this idea had been formulated precisely and become not only

¹² Edmund Burke, *Reflections on the Revolution in France* (London: Penguin Books, 1968), 181 ff.

¹³ Jeremy Bentham, "Nonsense upon Stilts," in *The Collected Works of Jeremy Bentham: Rights, Representation and Reform: Nonsense upon Stilts and Other Writings on the French Revolution*, eds. Philip Schofield, Catherine Pease-Watkin and Cyprian Blamires (Oxford: Clarendon Press, 2002), 317 ff., 321, 398 ff.

¹⁴ Theodor W. Adorno, "Negative Dialektik," in *Theodor W. Adorno: Gesammelte Schriften*, Vol. 6, ed. Rolf Tiedemann (Darmstadt: Wissenschaftliche Buchgesellschaft, 1998), 281.

¹⁵ Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'," in *Deconstruction and the Possibility of Justice*, eds. Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (London and New York: Routledge, 1992), 13 ff., 59 ff.