Legal Rights and Structural Inequality: Reading Human Rights Historiography through Fanon

Of course if we choose to use a language comprehensible only to law and economics graduates it will be easy to prove that the masses need to have their life run for them…. Resorting to technical language means you are determined to treat the masses as uninitiated. Such language is a poor front for the lecturer’s intent to deceive the people and leave them on the sidelines. Language’s endeavor to confuse is a mask behind which looms an even greater undertaking to dispossess.

-- Frantz Fanon, *The Wretched of the Earth* ¹

The decade and a half immediately following WWII witnessed a proliferation of international arrangements whose scale was unparalleled in modern history. The enormous transformations after the end of the war, the legacy of fascism, and the gradual demise of formal imperial rule necessitated new forms and modes of political organization: a more representative and participatory global forum for sovereign states, effective supra-national legal structures, and the language of ‘human rights’ as a standard of legitimacy for sovereignty and state action. In the fifteen-year period from 1945 to 1960, the United Nations was established in 1946, the Genocide Convention and the Universal Declaration of Human Rights (UDHR) passed in 1948, the Geneva

Conventions drafted in 1949, the European Convention on Human Rights (ECHR) enforced in 1953, the Convention on Refugees adopted in 1951 and put into force starting in 1954, the Bandung Conference held in 1955, and the Declaration on the Granting of Independence to Colonial Countries and Peoples passed in 1960. Despite the suppression of much of the global idealism of these declarations and conventions within the politics of the Cold War in the 1950s, their promise and their sheer number have nevertheless served to mark the immediate postwar period as a moment of at least aspirational cosmopolitanism. Given the profusion of movements and political arrangements in the late 1940s and 1950s appealing to an ethics of universalism, the period is often seen as the source of what Michael Ignatieff calls the “juridical revolution” of rights-based global governance—the historical consolidation of the idea that there should be governing bodies beyond the state with regimes of institutionalized rights pertaining to individuals and/or political communities.\(^2\) As Igantieff puts it, the Universal Declaration and subsequent documents can be seen as “part of a wider reordering of the normative order of postwar international relations” towards increasing cosmopolitanism.\(^3\)

My focus in this essay is on the stakes involved in constructing historiographies of human rights that take the 1940s and 1950s as inaugurating a legal landscape of progressive cosmopolitanism. I argue that such narratives overlook the structural violence and inequality which accompanied the adoption of legalist rights discourse in newly independent states in the 1950s. The history of rights within independent states in Africa, Asia, and the Caribbean reveals how, rather than fitting neatly into a teleological,


\(^3\) Ibid.
A diffusionist model of globalizing political freedom, their invocation and institutionalization were part of the consolidation and reproduction of colonial social hierarchies during the early years of independence. I make this argument in two parts. In the first section of the paper, I consider more closely the central importance of the post-WWII period to contemporary histories of the human rights system, and underline how the period operates as an originary moment for authors committed to its emancipatory potential. Second, I turn to Frantz Fanon’s incisive analysis of the limitations of rights embedded within sovereign legal frameworks in his 1961 text *The Wretched of the Earth*. Reading *The Wretched of the Earth* as a reflection upon African law and politics during the 1950s, I suggest here a close association between contemporary human rights scholarship’s silence on the formation of the colonized subject (especially as analyzed by Fanon) and its overlooking of an exclusionary chapter in the history of modern human rights.

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Whether or not there is a pre-modern lineage to human rights—in Ciceronian natural law or Stoic *kosmopolites*, for instance—remains a matter of debate. What is considerably less contested is a broad affinity between post-Enlightenment discussions of the ‘rights of man’ in the eighteenth century and the universalist political languages of mid-twentieth century global governance. In her important book *Inventing Human Rights*, the historian Lynn Hunt locates the “predecessors” of the 1948 UDHR in the eighteenth

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century, specifically in documents like the French Declaration of Rights of Man and Citizen. For Hunt, the Universal Declaration emerged as the culmination of a long process of intellectual development from the 1760s onward. In the second half of eighteenth-century France and Britain, Hunt argues, ideas emerged of duties, obligations, and guarantees of security that incurred to individuals just from their being recognized as human, independent of class, racial, or national status. While often imperfectly realized in practice, ideas of natural, self-evident rights of physical security and political equality, deriving from the simple fact of human subjectivity, gained public salience through texts like Beccaria’s *On Crimes and Punishments* (1764) and Thomas Paine’s *Rights of Man* (1791); through foundational documents like the French Declaration of the Rights of Man and Citizen; and through social movements like abolitionism. The nineteenth and early twentieth centuries witnessed the gradual waning of these cosmopolitan ideas as “nations turned in upon themselves”: the rise of legal positivism and territorial and often exclusionary nationalism overtook earlier ideas that a modicum of legal rights pertained to all persons *qua* persons. Post-1948 policies and conventions were the resurgence of an older, eighteenth-century cosmopolitanism that had been neglected under the influence of state-centric legalism for over a hundred years. Instead of a historically novel or unprecedented development, postwar emphases on universal legal equality, freedom of speech, freedom of religion, political participation, protection of property, and physical security can be seen as attempts to reach back to an earlier tradition of cosmopolitanism in order to guard against the excesses of nativism.

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6 Ibid., 181-200.
In addition to universalism, twentieth-century human rights norms and eighteenth-century ‘rights of man’ discourse were further united by a shared commitment to legalism and political sovereignty. The UDHR and the French Declaration of 1789 spelled out the content of their respective rights in formal statements linked to particular bodies of governance, the United Nations in one case and the post-Revolutionary state in another.

In the eighteenth century, arguments about the need for a declaration of rights in both the American and French cases insisted that such documents would provide the ethical foundations for new structures of governance, and in turn be protected and actualized by the authority of these same structures. The 1789 Declaration, for instance, both underlined the protection of “natural, inalienable, and sacred rights of man” as the fundamental standard of legitimacy for political authority and (in its Articles 6, 7, and 8) vested state law with the authority to delimit citizens’ actions in order to secure these rights as necessary. As Hunt writes, such a statement of rights at once provided “new grounds for governmental legitimacy” and affirmed the sovereign power of the French state and its institutions as means of ensuring “legal protections of individual rights.”7

Analogously, the UDHR and subsequent UN documents spelled out fundamental human rights—rights against torture and racial discrimination, for example—as conventions given content, legal sanction, and binding force by domestic and supra-national structures of sovereignty: the constitutions of individual nation-states as members of the UN and the various bodies of the UN itself (like the General Assembly, the Economic and Social

7 Ibid., 132. See “Appendix,” in Inventing Human Rights for the full text of the 1789 Declaration. For more on the coercive potential of the new reliance on sovereignty in French revolutionary discourse and the legal foundations of the Terror, see Dan Edelstein, The Terror of Natural Right: Republicanism, the Cult of Nature, and the French Revolution (Chicago: University of Chicago Press, 2009).
Council, and so on). Most mobilization under the name of human rights since the passing of the UDHR has had to accept the authority of states and global governance bodies to intervene in the social sphere when necessary for reasons of enforcement. Rights-claimants have had to articulate claims in ways that express familiarity with the norms recognized as legitimate rights by governing structures. “NGOs,” Hunt notes, “[have] almost all based their programs on the rights articulated in one or another part of the Universal Declaration.”

It is this regime of rights, traceable to eighteenth-century revolutionary republicanism in its universalist ethical language as well as in its grounding of rights-bearing personhood within the discursive and legal authority of domestic constitutional and supranational bodies, that Hunt considers the source of a gradual movement towards cosmopolitanism: “the human rights framework, with its international bodies, international courts, and international conventions, might be exasperating in its slowness…but there is no better structure available for confronting [global] issues.”

A similar narrative of human rights is central to Seyla Benhabib’s *Dignity in Adversity*. Like Lynn Hunt, Benhabib sees the post-1945 moment as the source of contemporary political cosmopolitanism and as the re-emergence at a global level, after legally sanctioned racism and totalitarianism, of late Enlightenment ethics. The distinguishing and historically novel characteristic of Enlightenment universalism for Benhabib was the concept of *right*. Turning to Kant’s “Perpetual Peace” essay (1795), Benhabib argues that one of Kant’s main innovations into political thought was to transform norms previously associated with inter-subjective social practices into

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9 Ibid., 213.
inalienable, legally guaranteed and enforceable rights (*recht*). For example, through his Third Article of Perpetual Peace Kant transformed the notion of ‘hospitality’—namely a certain degree of acceptance within one’s own community for those who enter it from outside—into a legal right guaranteed through civil constitutions, first at the domestic level and then within an international federation of states. Benhabib notes that for Kant, “hospitality [was] not to be understood as a virtue of sociability, as the kindness and generosity one may show to strangers who come to one’s land…rather, hospitality [was] a right which belong[ed] to all human beings insofar as we view them as potential participants in a world republic.”

The Kantian description of entitlements on the basis of humanity as legal and political rights rather than social duties or obligations was central to the cosmopolitan project of the eighteenth century. It led to enormous importance being associated with governance structures that could spell out the content and form of rights and then ensure their actualization.

Building her own understanding of cosmopolitanism from this Kantian conception rooted in both ethical universalism and sovereign power, Benhabib emphasizes the close relationship between rights and

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11 So there are parallels between Benhabib’s reading of Kant and Hunt’s reading of French revolutionary thought (though Hunt does not systematically engage Kant’s work). Kant’s enthusiasm for the general principles of 1789 in spite of his disapproval of revolutions more generally has been noted by a number of scholars. On this specific relationship and for Kant’s political thought in the context of new ideas of rights-based legal sovereignty emerging in the late eighteenth century, see Reidar Maliks, *Kant’s Politics in Context* (Oxford: Oxford University Press, 2014) and Daniele Archibugi, “Immanuel Kant, Cosmopolitan Law, and Peace,” *European Journal of International Relations* 1, no. 4 (1995): 429-56.
effective sovereignty: “to be a rights-bearing person means first and foremost to be a member of a sovereign polity that can protect one’s ‘right to have rights’.”\textsuperscript{12}

Benhabib therefore takes one of Kant’s main conceptual innovations to be the idea that basic requirements for human flourishing need to be given specific content, contextualization, and capacity for instantiation as enforceable legal precepts. The covenants and international legal arrangements emerging at the end of WWII signified the recovery of such rights-based ethics, which had been quickly subsumed in early nineteenth-century Europe by the demands of the state system. Postwar human rights law for Benhabib introduced again into international relations a Kantian politics bringing together cosmopolitan morality with constitutional and federative protection. The abstract idea of the cosmopolitan right to hospitality, for example, was embodied within the 1951 Convention on Refugees obliging signatory states to take in populations facing clear danger to lives and freedom within their own countries. Like Hunt, Benhabib sees the postwar period as one in which legal rights pertaining universally to individuals and communities became more and more salient within global politics, superseding nineteenth and early twentieth-century emphases on the rights of sovereign states and peoples as collective and self-contained units. With increasing numbers of binding legal principles that made individuals’ equal political participation and personal security into inalienable rights needing protection (by the international community itself when not by individual states), the post-1948 international community is seen to have been evolving towards a global civil society gaining greater reach and circulation in degrees. The emergence of such a civil society has entailed a broad, gradually diffusing acceptance of

\textsuperscript{12} Ibid., 13.
the universality of “human rights norms across state boundaries, respect for the rule of
law, and the spread of democratic forms of government.”

It has allowed for the re-
distribution of sovereignty and accountability between interlocking states and global
institutions and opened spaces for individuals and groups to start using transnational or
international legal principles as standards of legitimacy for the regimes under which they
live.

Central to Benhabib’s argument about the emancipatory potential of human rights
law are the mutually constitutive concepts of *jurisgenerativity* and *democratic iteration*.

Benhabib uses jurisgenerativity as a descriptive term to characterize the ways that norms
embodied within legal institutions have been taken up by citizens with increasing
frequency over the last half-century and interpreted and practiced according to their
unique contexts and conditions. Often, the interpretation of a particular norm may diverge
from how it was initially expressed in institutional language. Drawing from the legal
theorist Robert Cover, Benhabib argues that jurisgenerativity moves public law from
being a set of formal principles of juridical power to a diffuse discourse that constitutes

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13 Ibid., 114.

14 Ibid., 132. Benhabib follows here the works of political theorists and lawyers on global
governance and international law who similarly see cross-border judicial and civil
society mobilization in the second half of the twentieth century as evidence of growing
citizen empowerment and government accountability. She notes the influence even of
international lawyer Hersch Lauterpacht, a judge at the International Court of Justice
from 1955 to 1960, who predicted a gradual progression in rights-based global legal
activism as early as 1950. Hersch Lauterpacht, *International Law and Human Rights*
(New York: Praeger, 1950). Also see Jürgen Habermas, *The Postnational Constellation*,
Affiliation: ‘Foreign’ Law, Democratic Federalism, and the Sovereigntism of the
(and is constituted by) a range of extra-legal social acts by citizens. In the particular case of human rights law, binding international precepts—say, policies against gender discrimination outlined in the 1979 Convention on the Elimination of Discrimination against Women (CEDAW)—have received instantiation in particular communities by being taken up, translated, and interpreted according to the demands and existing norms of these communities by activists and political actors—for instance, by the action group Women Living Under Muslim Laws (WLUML), which Benhabib cites as an example of the articulation of CEDAW principles by Muslim women both through and in opposition to religious arbitration. Human rights law therefore opens a range of discursive possibilities for rights mobilization, but does not—cannot—fully determine or predict the ways its content will be actualized in different situations. Democratic iterations are the concrete deliberative processes through which jurisgenerativity occurs. Benhabib defines democratic iterations as instances of individuals coming together in public fora—i.e. legally constituted communicative frameworks in which all participants are treated equally—to debate and agree upon the content and best ways of actualizing legal norms. As participatory processes of deliberation about the normative bases of self-governance, the escalation of democratic iterations since 1948 have ensured for Benhabib that the same formal schedules of rights have been and continue to be realized through diverse interpretations and contextualizations.

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16 Benhabib, Dignity in Adversity, 132-35.
The concept of jurisgenerativity is the basis of Benhabib’s argument against critics of international human rights law who focus on its unequal and dominating nature. As Benhabib notes, some of the most incisive contemporary critiques of human rights governance draw attention to how human rights policy-making can consolidate and reproduce an international system that gives some states, political institutions, and market actors the authority to dominate and exclude other states and communities. Hierarchies in material resources and sovereign capacity have made the contemporary global order one in which developing countries of the Global South and much of the world’s poor rarely if ever participate as equals and have their interests represented within even the most ostensibly cosmopolitan and multilateral institutions and arrangements. Operationalized within such a patently unequal system, modern human rights law, critics insist, can be taken up by powerful actors as a project that shores up their own relative political and economic privilege, vesting within them the authority to decide which populations need saving and which acts of violence constitute illegality. Benhabib concedes to this line of critique that the hierarchical distribution of sovereignty globally often distorts the ideal

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17 For an analysis along these lines, arguing that hierarchical relationships skew institutions in favor of wealthy states and transnational corporations (TNCs), see Thomas Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge: Polity Press, 2008).

universalism of human rights, transforming “cosmopolitan intents into hegemonic nightmares.” However, she goes on to argue that focusing exclusively on the imbrication of law with sovereign violence overlooks the important ways that rights-based norms structure and produce diverse forms of grassroots activism. Underlining again the importance of jurisgenerativity to any legal system, Benhabib argues that human rights law is actualized not just in the actions and decisions of states, global governance bodies, or corporations, all of which are capable of privileging some groups and communities over others, but in calls for rights and political accountability by subjects who may not be acting on behalf of or according to the norms prescribed by such governance institutions. Benhabib charts the modern development of human rights as simultaneously a top-down and bottom-up process. The rights-based “global civil society” that has emerged over the course of the postwar period has been embodied within binding frameworks and sovereign legal and political institutions such as the United Nations as well as within rights-claims made by activists and citizens’ groups. While sovereign institutions ensure that rights can be protected and enforced, Benhabib acknowledges that they also make human rights susceptible to the logics of statist and imperial violence. But claims for rights and political accountability made by citizens as part of localized democratic iterations shift the site of rights away from potentially dominating institutions. Benhabib sees democratic iterations as a corrective to overly centralized and static understandings and practices of human rights.

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19 Benhabib, *Dignity in Adversity*, 123.
As Bonnie Honig argues, though, what ties together Benhabib’s two sites of rights discourse is a shared commitment to the language of law.\textsuperscript{20} Even when activists enact and embody human rights norms in ways that escape the provenance of formal lawmaking, they do so self-consciously as subjects of legal institutions, either within domestic states or internationally. Extra-legal activism for Benhabib is a way of developing “new vocabularies for public claim-making” and has as its explicit final end enacting concrete change within legal bodies, making the state and transnational institutions its addressees and pushing them to recognize and protect new norms considered integral to human flourishing.\textsuperscript{21} Democratic iterations require participants to first accept the legitimacy of their state’s domestic overall legal system or that of an international body like the UN, and subsequently work amongst themselves and with others to make these sites of sovereignty responsive to certain particular needs. This is clear in Benhabib’s discussion of Muslim feminism’s relationship to the UN’S CEDAW convention over the last five or six decades. In the chapter “Claiming Rights Across Borders,” Benhabib cites as a particularly telling instance of human rights jurisgenerativity the 2003 debates around implementing shariah-based civil justice in the Canadian province of Ontario.\textsuperscript{22} The most important dimension of these debates for Benhabib was the concerted activism by Muslim Canadian women themselves, who worked alongside transnational groups like Women Living Under Muslim Laws (WLUML) and UN agencies to ensure that the provincial government’s decision on shariah-based civil arbitration remained congruent


\textsuperscript{21} Benhabib, \textit{Dignity in Adversity}, 131.

\textsuperscript{22} Ibid., 132-35.
with the Canadian Charter of Rights and Freedoms and with the UDHR’s commitments to universal individual security and equality. The result of such activism was legislation that recognized the legitimacy of faith-based civil tribunals but did not give their decisions legal enforceability over the Canadian constitution. That Benhabib considers the Ontario debate on shariah a paradigmatic instance of successful democratic activism underlines how her understanding of rights-claims requires (1) the self-recognition by subjects of their status as citizens able to access and make appeals to specific principles of human rights agreements and domestic constitutions and (2) acceptance of the legitimacy of the coercive and forceful capacity of transnational and state-level institutions to guarantee and secure rights as constitutionally appropriate. More broadly, the use of legalistic activism as an example of a distinctively postwar “global civil society” and gradually widening ethical and political cosmopolitanism underlines the central place of legal institutionalism to the historiographical lens of Dignity in Adversity. Like Ignatieff, Hunt, and others, Benhabib tells a story of human rights in which cosmopolitan political freedom since the late 1940s has been associated with the rise of national and supra-national rights-based legal frameworks and sovereign bodies and the escalation of judicial and citizen activism drawing from the languages of these frameworks.

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23 Further empirical details of this case as well as a theoretical engagement with its consequences for Canadian multiculturalism and legal reform can be found in Audrey Macklin’s work, which Benhabib cites extensively. Audrey Macklin, “Particularized Citizenship: Encultured Women and the Public Sphere,” in Migrations and Mobilities: Gender, Citizenship, and Borders, eds. Seyla Benhabib and Judith Resnik (New York: New York University Press, 2008), 276-303.
While ostensibly speaking in universal terms and dealing with world history since 1945, neither Hunt nor Benhabib’s works spend much time discussing one of the most important political transformations of the postwar period: decolonization and the building of newly independent states across Asia and Africa. Consequently, there is little to no sustained analysis of the relationship between anti-colonialism and the emerging global human rights regime in the 1950s and 1960s. I want to now argue that, far from being peripheral to Hunt’s and Benhabib’s main projects, this elision actually shapes the historiography of human rights operative in their works. Not engaging with the immediate effects of empire and national independence upon political mobilization allows both authors to overlook the hierarchical nature of formal legal institutions in the postcolonial world and makes possible an unproblematic, teleological narrative of postwar human rights law as a source of emancipation globally. To make my argument, I turn to one of the foundational analyses of twentieth-century decolonization: Frantz Fanon’s *The Wretched of the Earth*.

*The Wretched of the Earth* theorizes twentieth-century colonialism and settler colonialism both as an epistemological universe which forms individual subjectivities and

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24 The lack of a sustained engagement with the political projects of twentieth-century anti-colonialism in human rights scholarship is noted most resolutely in Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010). Moyn critiques much of the existing literature on human rights for either ignoring anti-colonialism’s focus on national self-determination altogether or for imputing to it ideas and motivations which really only became regnant in the late 1970s. As will become clear in the following sections, though I broadly agree with Moyn’s argument about the ways human rights scholarship has often been based on the elision or misreading of anti-colonialism, I depart here from his focus on the emancipatory possibilities of a statist, institutionalist anti-colonial alternative.
psychologies along axes of white/nonwhite, civilized/uncivilized, and human/animal, and as a very particular kind of political system. In addition to analyzing the ways that the languages and lived experiences of colonialism shape ruler and ruled as racialized persons (a topic that also occupies much of his earlier 1952 book *Black Skin, White Masks*), Fanon describes how the institutions of colonialism have large-scale material effects upon the political and economic organization of societies in Africa, Asia, and the Caribbean. Specifically, one of the distinctive characteristics of colonial economic policy for Fanon, shared across its British, French, Portuguese, and Dutch iterations, is the privileging of the urban over the rural. Resources, capital, and institutions are poured selectively into the ports and cities which form the nodes of colonial administration and trade. There is little incentive or desire on the part of administrators to pursue similar policies in rural areas where European populations, institutions, and trade networks have made relatively fewer inroads, and from which less capital is directly generated. Consequently, industrialization in the colony is much more selective and circumscribed than in Western Europe. This has the far-reaching effect of giving only a limited section

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25 In this sense, I would argue that *The Wretched of the Earth* as a text represents a synthesis of Fanon the Lacan-inspired psychologist, diagnosing the self and other constituted through the colonial experience, and Fanon the political economist, outlining the material and large-scale social consequences of colonial policy. In emphasizing the importance of both these dimensions to the category of the ‘political’ in *Wretched of the Earth*, I follow recent scholarship in Africana philosophy that points out the centrality of materialist realism to Fanon’s understanding of political performance. The Fanonian political subject is formed simultaneously through interactions with its racialized others and through the large-scale material processes created by colonial modernity. See Ato Sekyi-Otu, *Fanon's Dialectic of Experience* (Cambridge: Harvard University Press, 1996) and George Ciccariello-Maher, “Decolonial Realism: Ethics, Politics and Dialectics in Fanon and Dussel,” *Contemporary Political Theory* 13, no. 1 (2014): 2-22.

26 Fanon, *Wretched of the Earth*, 66-67.
of the population exposure to the cultural and political forms and practices associated with late nineteenth and early twentieth-century urbanization and industrialization. While those within urban centers are able to participate (however limitedly) within political, economic, and educational institutions we might identify as being modern or at least formed in conversation with capitalist modernity, the majority of the rural population is made comparatively impoverished and kept at a remove from accessing the Europeanized world. The self-interested nature of colonial administration results in the underdevelopment of the countryside and the “organized petrifaction of the peasantry” through the reluctance to bring industrialization to rural areas.27

Any indigenous political mobilization therefore occurs within a space in which the city and the countryside inhabit different material and conceptual universes. The opposition between town and country in the colony maps onto an opposition between populations “excluded from the benefits of colonialism” and “their counterparts who manage to turn the colonial system to their advantage.”28 For Fanon, the profoundly unequal access to urbanization and modernity means that a political consciousness modeled on norms rooted in Western Europe does not have comprehensive appeal in the colony. A workers’ union, for instance, requires access to forms of industrialized capitalist labor and the concept of workers’ legal rights. It has limited traction within a polity where most of the rural population continues to be employed in basic agriculture and is familiar only with kinship or village-based structures of governance: “the proletariat in the colonies is embryonic and represents the most privileged faction of the

27 Ibid., 65.

28 Ibid., 67.
population. The national labor unions born out of the liberation struggle are urban organizations.”29 Attempts by union leaders to construct a modern labor movement in rural regions rely on local elites who have some experience with urban politics, and do not usually engage the peasantry as active participants: “there is, of course, an agricultural workers’ union but such a formation is content to satisfy the formal need for a ‘united front against colonialism’…. The leaders have lost touch with the peasantry and are mainly concerned with enlisting steelworkers, dockers, and civil servants, etc.”30

In the chapters “The Trials and Tribulations of National Consciousness” and “On National Culture,” Fanon uses his argument about the unrepresentative nature of colonial urban politics to develop a critique of the sorts of nationalist movements he sees developing around him. Fanon stresses that movements for independence emerge slowly over time as colonial activists and thinkers begin to “devote their energy to eliminating iniquities such as forced labor, corporal punishment, unequal wages, and the restriction of political rights.”31 Posited as a “fight for democracy against man’s oppression,” anticolonialism makes repeated reference to legal rights, democratic constitutionalism, economic growth and well-being, and finally state-based self-determination.32 At some level, all of these discourses draw upon political forms created in modern Western Europe: territorial nationalism, statist bureaucracy, constitutionalism, and market capitalism. Due to the material conditions of the colony, facility in these forms of

29 Ibid., 74.

30 Ibid.

31 Ibid., 97.

32 Ibid.
politics—the ability, in Fanon’s own evocative language, to “wield phrases out of Europe’s treatises on ethics and political philosophy”—is concentrated within an urban periphery.\textsuperscript{33} Far from being a genuinely representative crystallization of popular will, anti-colonialism framed exclusively in terms of legal rights and national citizenship excludes rural populations who have not been socialized within the languages of statist or constitutional legalism. Governing through these languages in the immediate post-independence period ensures that peasants remain subjects and targets of administration rather than active political agents themselves. Rendered structurally unable to participate in a politics born out of Europeanized urban modernity, peasants continue to occupy positions of subaltern vulnerability. This can lead to the rise of political systems in which urbanized elites hold almost dictatorial, unchecked authority over the countryside.

“Paradoxically,” Fanon writes, “the national government’s attitude toward the rural masses is reminiscent in some ways of the colonial power. ‘We need to use the lash if we want to take this country out of the Dark Ages,’ the young leaders are not afraid to say.”\textsuperscript{34}

Fanon does not speak about these phenomena in general, abstract terms. He uses specific examples to illustrate his arguments and in most cases builds theory from the observation of contemporary events. The breakdown of anti-Belgian resistance in the Congo into antagonistic class-based and regionalist, secessionist segments during the Congo Crisis of 1960 (occurring as Fanon finished \textit{Wretched of the Earth}) serves as a paradigmatic illustration of the ways the urban-rural divide distorts attempts to craft a

\textsuperscript{33} Ibid., 109.

\textsuperscript{34} Ibid., 72.
singular discourse around national citizenship.\textsuperscript{35} Similarly, the material and conceptual gulf between elite constitutional politics and subaltern mobilization is discussed with reference to the Mau-Mau Revolt in Kenya (1952-60), in which “the political cadres holed up in the towns and made it clear to the colonial authorities they [had] no connections with the rebels…during the Mau-Mau insurrection no known nationalist claimed he was a member of the movement or attempted to defend it.”\textsuperscript{36} The frequency of such concrete political discussions in \textit{Wretched of the Earth} underlines the extent to which Fanon’s theorization about decolonization is shaped by the very particular context of Africa in the 1950s. It is the perceived failure of many African independence movements to be truly inclusive and representative and the willingness of leaders committed to democracy and constitutional rights to treat the rural poor as an inert mass that leads Fanon to develop a broader understanding of the postcolony as the political space in which equating politics with the invocation of legal rights becomes a practice of exclusion. Colonialism’s divisive legacy across the African continent renders appeals to a legal category of humanity modeled on the European historical experience always susceptible to “the erosion of unity, fracture, stratification, and bloody tensions fed by class.”\textsuperscript{37} More than a trans-historical theorization of the postcolonial condition, then, \textit{The Wretched of the Earth} is a text self-consciously documenting and reflecting upon Africa

\textsuperscript{35} Ibid., 106.

\textsuperscript{36} Ibid., 71.

\textsuperscript{37} Ibid., 238.
in the 1950s. Historicizing Fanon’s arguments about the effects of colonial economic policy in determining the demographics of modern legal subjectivity allows us to see how appeals to ‘rights’ outlined and secured by national or supra-national constitutions cannot in any substantive sense have provided a source or promise of political freedom for the continent’s most marginalized populations during the early years of independence.

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Lynn Hunt’s *Inventing Human Rights* and Benhabib’s *Dignity in Adversity* are two of the most influential and important recent works of international history and political theory, respectively. Together, they are representative of a growing body of literature on the postwar human rights system that takes seriously the system’s aspirational promises about universal security and emancipation. For historians and political scientists committed to the sort of institutional cosmopolitanism embodied within the UN system, international law, and inter-state conventions, the past half-century

38 David Macey’s excellent intellectual biography stresses this point about the centrality of North and West African politics in the 1950s to the development of Fanon’s thoughts about revolution and independence. David Macey, *Frantz Fanon: A Biography* (New York: Picador, 2000).

39 Indeed, the deeply unequal nature of constitutional access at the time of independence—the material distance separating constitutional and other rights-based legal frameworks of relatively elite and mostly urban authorship from the world of the rural poor—has been empirically noted by a number of historians of African politics. See, for instance, Issa G. Shivji, *The Concept of Human Rights in Africa* (Dakar: CODESRIA, 1989) and *Rights and the Politics of Recognition in Africa*, eds. Francis Nyamnjoh and Harri Englund (New York: Palgrave Macmillan, 2004).

40 For a helpful overview of the emergence of this literature since the 1940s and the role of academics as well as policymakers in its development, see the influential survey article by American legal historian Ken Cmiel: Kenneth Cmiel, “The Recent History of Human Rights,” *American Historical Review* 109, no. 1 (2004): 117-35.
represents a gradual realization of the often-ignored idea that certain norms and securities apply to all persons from the basic demonstrable fact of their personhood. Implicitly or explicitly, celebratory narratives about the expansion of human rights-based governance in the late twentieth century employ a shared teleological historiography: the decades since the 1940s are seen as a period when the formalization and acceptance of rights-based agreements provided sources of political freedom and mobilization for governments and activists alike. What I have drawn out through my readings of Hunt and Benhabib is the way such narratives are predicated upon a legal subjectivity that is distinctively modern, arising in late eighteenth Europe with Kant’s writings on republicanism and the political thought of the French Revolution. Framing one’s actions in civil society and the public sphere according to precepts outlined in written constitutions and covenants, engaging the state and making it responsive to one’s needs, and accepting the authority of domestic and supra-national sovereign institutions to intervene and secure rights as necessary all require access to and familiarity with such things as constitutions, state citizenship and institutions, and global governance. The performance of juridical democratic politics requires a being that knows itself to be constituted by and protected by the law. To associate the escalation of rights-based activism in the postwar period with the actualization of cosmopolitan freedom is to assume the universalization of the juridical subject bequeathed to us from the originary moments of European political modernity.

Reading Fanon’s *Wretched of the Earth* as a meditation upon the politics of decolonizing African states in the 1950s and early 1960s makes us attentive to the problems with such a broad assumption. For Fanon, economic policies of agrarian
underdevelopment keep African peasants removed from rapidly modernizing and Europeanized urban centers well into the early years of independence. Practices of formal, state-based citizenship and constitutional politics do not reach into the lifeworlds of these peasants. To ground political mobilization in appeals to rights outlined in state or international institutions means to prohibit them from direct participation. The historiography of postwar rights operative in much human rights scholarship is silent on this dimension of world history. It does not take the immediate effects of colonial modernity and the attendant subject-formation of the postcolonial subaltern as topics of analysis and so has little recognition of how rights themselves may in the mid-twentieth century have enacted forms of political silencing that the universalism of the UDHR and liberal constitutionalism was meant to overcome. The telling of the post-1948 human rights story becomes straightforwardly progressive and teleologically emancipatory through the narrative exclusion of the Third World peasant.
Bibliography


