

Critics of Human Rights from a Historical Perspective¹

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Abstract: Implementation of human rights is often criticized because it is perceived as being imposed on the rest of the world. In this case, human rights start to be seen as a sole abstraction, an empty word. What are the theoretical arguments of these critics and can we determine any historical grounds for them? In this paper, I will try to point at similar critics after the French Revolution – like that of the Historical School and Hegel – and try to show if some of these critics are still relevant. And I will compare these critics with contemporary arguments of cultural relativists. There are different streams and categorizations of human rights theories in today's world. What differentiates them is basically the source of the human rights. After the French Revolution, the historical school had criticized the individuation and Hegel had criticized the formal freedom which was, according to him, a consequence of the Revolution. In this context Hegel drew a distinction between real freedom and formal freedom. Besides the theory of sources, the theories of implementation such as human rights as a model of learning, human rights as a result of an historical process are worth attention. The crucial point is about integrating human rights as an inner process and not to use them as a tool for intervention in other countries, which we observe in today's world. And this is the exact point why I find the discussion of the sources more important. This discussion can help us to show how the inner evaluation of a society makes the realization of human rights possible and how we can avoid the above mentioned abstraction and misuse.

Keywords: Historical law school, Hegel, cultural relativism

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1. Natural Law Critic of the Historical Law School

The debate after the French revolution is important to understand the source of the conflict. The French revolution which began like a spring with a vital energy, very fast turned into a chaotic period in which the leaders were killed and as time went by, freedoms and rights were forgotten. The influence to other countries is also very important. German intellectuals like Goethe, Hegel, Shelling, Fichte were at the beginning very enthusiastic. Hegel even described the French revolution as a magic sun rising. Also Napoléon was described by him like the 'Weltgeist' on his horse, when he arrived in Jena. But after the destructions, many of these enthusiastic intellectuals witnessed the time of terror and were much more sceptical.

When the revolution began, Burke's "Reflexions on revolution in France" was translated into German and defended by Rehberg, Fichte published his judgments of French Revolution as an answer to Rehberg. The revolution had its roots in the natural rights and the contractual theory. Burke thought that law was a result of the traditions and criticised the natural law and the contractual theory of Rousseau.² So after the French Revolution there was a very large discussion about rights and freedoms and their sources. On the one hand there was the traditionalist critique, on the other hand, the utilitarians' critique of the natural rights and furthermore also there was the historicist critique.³

¹ August Wilhelm Rehberg, *Recherches sur la révolution française*, Vrin, Paris 1998, p. 64.

³ Binoche and Cléro use the concept 'critique historiciste' which include 1) the positivist critique; here we can find the critics of Benjamin Constant and Auguste Comte; 2) the organic historicism which can be analysed in two parts: the linear historicism which is used by Savigny and the dialectical historicism of Hegel. See: Bertrand Binoche and Jean-Pierre Cléro, *Bentham contre les droit de l'homme*, Puf, Paris 2007, p. 186.

The dispute between Thibaut⁴ and Savigny was basically about the codification after the Code Napoleon.⁵ Savigny's book *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* was an answer to Thibaut but it could also be read as the manifest of the historical law school. The term historic school appear first with N.T. Gönner in 1807, who is a college and adversary of Savigny.⁶ Savignys first article in *Zeitschrift für geschichtliche Rechtswissenschaft (Journal of historical legal studies 1815)* the base of this school and his fundamental notions appear.

Savigny, in a way, continued the organicism of Herder. In this movement against the rationality of the Enlightenment, notions like popular consciousness, organic development and process of growth as a result of an inner process appear.⁷ We can see the principles of the historical school like the organic totality, historicism and particularism.⁸ The organic totality is a notion which comes from Schelling but was also used by Savigny and Puchta.⁹

⁴ Thibaut's work was his essay on the necessity of a code for Germany: *Über die Nothwendigkeit eines allgemeinen bürgerlichen Rechts für Deutschland*.

⁵ The main problem was whether the German people are ready for a new codification or not. Savigny wanted to protect the Roman law because he saw it as something which connected different people and regions. Thibaut's wish was to adopt a new code like the Code Napoléon which had its source in the German law and traditions. Savigny wanted to show that the projects of codifications have their bases in an abstraction of natural rights. The codification must show the spirit of the nation and also Hegel said that it is as absurd to give the English constitution to the Prussians as is absurd to give the Prussian constitution to the Turks. Hegel reminded that Napoléon wanted to give Spain a constitution and they rejected it because the constitution could be good but did not reflect the spirit of the Spanish people. See: Georg Wilhelm Friedrich Hegel, *Rechtsphilosophie*, Ed. Karl-Heinz Ilting, 4. Band, Fromann-Holzboog, Stuttgart-Bad Cannstadt 1974, p. 663.

⁶ Olivier Jouanjan, *Une Histoire de la pensée juridique en Allemagne (1800-1918)*, Puf, Paris 2005, p. 35.

⁷ Alfred Dufour, *Droits de l'homme. Droit naturel et histoire*, Puf, Paris 1991, p. 158.

⁸ Ibidem, p. 182.

⁹ The Hegelian Volksgeist-Theory has an influence on Savigny trough Puchtas mediation. See: S. Brie, *Der Volksgeist bei Hegel und in der historischen Rechtsschule*, Dr. Walther Rothschild, Berlin-Leipzig 1909, p. 1.

It was a reaction against the atomism of the society and the individualism. The notions like historicism and the national particularism comes from Burke and Herder.¹⁰

The historical law school has a double orientation; one romanist-cosmopolitist and the other germanist national-popular.¹¹ Gustave Hugo was a Romanist and also criticised the natural law in his book *Lehrbuch des Naturrechts als positives Rechts*. Savigny saw Roman Law as an example of organic grown law.¹² Savigny, Hugo, Puchta were the representatives of the romanist-universalist¹³ stream and Eichhorn, Jacob Grimm and Beseler were representatives of the the germanist national-popular stream.¹⁴ The germanist stream wanted to return to the German sources and that was the source of the debate between the two.¹⁵

Savigny criticised the concept of a universal natural right and described the natural law school as a “unhistorical school”. The historical school saw law as something which depends on traditions and developed in the society. According to them, law was something which differs from nation to nation and in each society. But Savigny defended that history has continuity.¹⁶ For him the revolutionary rupture was totally an illusion.¹⁷ The historical law school is against the individualism of the French revolution¹⁸ and criticised the universal and abstract Principles

¹⁰ Herder understands the nation as a natural organism and cultural and historical totality. See: Heydar Reghaby, *Revolutionäre und konservative Aspekte in der Philosophie des Volksgeistes*, Inaugural-Dissertation, Berlin 1963, p. 63.

¹¹ A. Dufour, *Droits de l'homme...*, op. cit., p. 158.

¹² Rainer Schröder, *Rechtsgeschichte*, Alpmann Schmidt, 2006, p. 101.

¹³ Jouanjouan describes the historical school as a programme of Savigny and Puchta. See: O. Jouanjouan, *Une Histoire de la pensée juridique...*, op. cit., p. 48.

¹⁴ A. Dufour, *Droits de l'homme...*, op. cit., p. 162.

¹⁵ Otto Gierke, *Die historische Rechtsschule und die Germanisten*, Gustav-Schade, Berlin 1903.

¹⁶ B. Binoche and J-P. Cléro, *Bentham contre les droit de l'homme*, op. cit., p. 186.

¹⁷ *Ibidem*, p. 189.

¹⁸ Wolf Rosenbaum, *Naturrecht und positives Recht*, Hermann Luchterhand Verlag, Darmstadt 1972, p. 48.

and see them as the reasons of the revolution.¹⁹ Today we can see some aspects of these arguments in the critics of the cultural relativist theory.

The historical law school tried to explain the source of rights with the notion *Volksgeist* (*Spirit of a Nation*).²⁰ *Volksgeist* is a notion used since Herder but has acquired a new dimension with the historical law school. Savigny said that law, like language, lives in the consciousness of a nation.²¹ *Volksgeist* is a concept which is interpreted in many different ways.²² Hugo used this notion for the Roman law. He tried to understand the Roman law in the spirit of his time and its transformation to his time.²³ Savigny interpreted the notion *Volkgeist* as an ideal notion for the nation and culture and understand it not like Thibaut as the whole of the society.²⁴ Hegel was also on the side of Thibaut in the codification-dispute and interpreted the *Volksgeist*²⁵ different from Savigny. For Hegel the *Volksgeist* is something which is in a permanent change and not something fixed. Hegel thinks that the *Volksgeist* embodies this organicism and must be rational. He sees the *Volksgeist* in relation with the *Weltgeist* (*World spirit*). For Hegel *Volksgeist* depends on the consciousness of the Nation and is something that must be constructed. So the notion is

¹⁹ Leo Strauss, *Droit Naturel et Histoire*, Flammarion, Chicago Press, Chicago 1954, p. 25.

²⁰ Raymond Aron defines historicity as a doctrine which proclaims the relativity of the values and philosophies and also of the historical notions. Leo Strauss stigmatizes this kind of historicism and his historicism of the historical law school. See: Christophe Bouton, *Le procès de l'histoire. Fondements et postérité de l'idéalisme historique de Hegel*, Vrin, Paris 2004, p. 255.

²¹ Carl von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*, 3rd Edition, Heidelberg 1840, p. 11.

²² Christoph Mährlein, *Volksgeist und Recht: Hegel's Philosophie der Einheit und ihre Bedeutung in der Rechtswissenschaft*, Königshausen & Neumann, Würzburg 2000.

²³ Stephan Meder, *Rechtsgeschichte*, Böhlau Verlag, Köln 2005, p. 273.

²⁴ R. Schröder, *Rechtsgeschichte*, op. cit., p 100.

²⁵ For the Notion *Volksgeist* see: Hermann Kantorowics, "Volksgeist und die historische Rechtsschule", *Historische Zeitschrift*, Bd. 108, No. 2 (1912), p. 231.

not only related to the past like in Savigny's organic view.²⁶ On the contrary to Savigny's view for Hegel law can only be realised in the state, where law became objectivity but the Nation (*Volk*) is not yet a State.²⁷ For Hegel only in the State the nation has the consciousness of its rights. It must be reminded that Hegel's *Volksgeist* theory must be analysed with his *Weltgeist* theorie which is in relation with the notion of freedom.

2. Distinction of Hegel between Formal and Concrete Freedom

Hegel's critique of the natural right theory differs from the historical law school and is based on his notion of freedom. Hegel's critique is a get together from the organicism of the historical school and rationalism of the Enlightenment.²⁸ Hegel also criticises the natural law adopted by the Declaration and says that would be better to rename the natural law as philosophical law because when we talk about nature we understand the unconscious nature.²⁹ Natural law in Hegel's theory, is not seen from the classical perspective, he says that it is a mistake to separate positive law from natural law.³⁰ He tries to relative the natural law.³¹ Natural Law and traditions must be evaluated together. So we see that Hegel as different from Savigny does not reject the natural law completely but tries to reconcile positive and natural law.

The French revolution is seen by Hegel as a step in the historical evaluation of the notion of freedom. According to Hegel

²⁶ The opposition between Savigny and Hegel is also seen as the opposition between the "historical" and "philosophical" law school. See: O. Jouanjan, *Une Histoire de la pensée juridique...*, op. cit., p. 57.

²⁷ Oscar Daniel Brauer, *Dialektik der Zeit, Untersuchung zu Hegel's Metaphysik der Weltgeschichte*, Fromann-Holzboog, Stuttgart-Bad Cannstadt 1982, p. 48.

²⁸ B. Binoche and J-P. Cléro, *Bentham contre les droit de l'homme*, op. cit., p. 191.

²⁹ Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts*, Suhrkamp Verlag, Frankfurt am Main 1986, p. 35.

³⁰ Ibidem.

³¹ Philippe Gérard, *L'esprit des droits. Philosophie des droits de l'homme*, Saint-Louis, Bruxelles 2007, p. 51.

the French revolution asks but can't resolve the question of political freedom.³² Also, taking natural law as the base of the declaration of human rights and the contractual theory is criticized by him. As it can easily be concluded, Hegel criticised the abstraction of the rights along with the contractual theory which is accepted as one of the pillars of the declaration. In this context, he criticised Rousseau's notion of general will. Hegel says that "Rousseau reduces the union of people in the state of a contract and therefore to something based on their arbitrary wills, their opinion and their capriciously given express consent".³³

The interrogation of the sense of liberty is one of the main aims of sustaining the legitimacy of human rights.³⁴ In this context Hegel's differentiation between real/concrete and formal freedom is very important. Hegel makes a distinction between formal and concrete or real freedom. Real freedom can be realised in a learning process. In the *Phenomenology of the Spirit* Hegel shows that freedom is a process of self-consciousness. We can classify this process as following: 1. Individual consciousness, 2. Cultural consciousness and 3. Absolute consciousness.³⁵ In the *Phenomenology of the Spirit*, Hegel attempts to pursue the development of a consciousness that finally transcendent its historical cultural conditions and relativity.

Hegel is not after a destructive form of individualism for the modern world certainly not of the sort that caused the French revolution.³⁶ He is after an individualism that is compatible and can be synthesized with *Sittlichkeit*,³⁷ a notion which is also translated as ethical life. Hegel says that individuals are constructed by their social and cultural worlds. His goal is to get beyond the destructive form of individualism.³⁸

³² Joachim Ritter, *Hegel und die französische Revolution*, Suhrkamp Verlag, Frankfurt am Main 1965, p. 24.

³³ T.M. Knox (Ed.), *Hegel's Philosophy of Right*, Oxford University Press, Oxford 1967, p. 157.

³⁴ P. Gérard, *L'esprit des droits...*, op. cit., p. 52.

³⁵ Philip V. Klein, *Hegel and the Other*, State University of New York, New York 2005, p. 2.

³⁶ Ibidem, p. 142.

³⁷ Ibidem, p. 143.

³⁸ Ibidem.

For Hegel the French revolution is a step in the evolution of the freedom but couldn't realise the concrete or real freedom.³⁹ The master and slave or lord and bondsman relation is important in this context. The slave becomes a dependent consciousness but also the master is not the independent consciousness he thinks he is. He is dependent of the slave. Fear and work transfer the slave. But fear is also the beginning of wisdom. Kojève analyses the master-slave relation in a historical context, antic Greek, Roman Empire, Christianity and French revolution are steps for the realisation of freedom.⁴⁰ Freedom must have four moments. First, it must be subjective, second it must be rational, third it must be concretized and fourth institutionalized embedded in the world which we live.⁴¹ Hegel claims that each individual is the son of his nation at the specific stage in this nation's development. No one can escape from the spirit of his nation. Following this view, all consciousness develops in a specific cultural context and specific historical era.

What does Hegel mean by concrete freedom? The concrete freedom is only possible in the state because state is for Hegel the actuality of concrete freedom. 'Concrete freedom consists in this, that personal individuality and its particular interests not only achieve their complete development and gain explicit recognition for their right but, for one thing, they also pass over of their own accord into the interest of the universal'.⁴² The formal subjective freedom⁴³ of individuals consist in their

³⁹ Hauke Brunkhorst, "Hegel und die Französische Revolution. Die Verzichtbarkeit der Restauration und die Unverzichtbarkeit der Revolution", in: *Die Ideen von 1789 in der deutschen Rezeption*, Herausgegeben vom Forum für Philosophie Bad Homburg, Suhrkamp, Frankfurt am Main 1989, p. 165.

⁴⁰ Alexandre Kojève, *Introduction to the reading of Hegel*, Compiled by Raymond Queneau, Edited by Allan Bloom, Translated by James H. Nichols, Cornell University Press, Ithaca 1980, p. 95; Alexandre Kojève, *Hegel Felsefesine Giriş*, Yapı ve Kredi Yayınları, İstanbul 2001, pp. 71-73.

⁴¹ P. Klein, *Hegel and the Other*, op. cit., p. 227.

⁴² T. M. Knox (Ed.), *Hegel's philosophy of right*, op. cit., p. 160.

⁴³ This freedom is collectively manifested as "public opinion". Public opinion deserves to be as much respected as despised for its concrete expression and for the concrete consciousness it express, respected for its essential basis (G. F. W. Hegel, *Grundlinien der Philosophie des Rechts*, op. cit., p. 485).

having and expressing their own private judgments, opinions and recommendations. The concrete freedom is that the will has not only subjective aims but also general aims which include the well-being of the society.⁴⁴ This kind of freedom is a superior form of liberty. So as a result, the real freedom is only possible in a process of the consciousness⁴⁵ of the mind which is at the same time a learning process.

3. Human right as a culture and sentimental education

How to bloom concrete freedom in the society? Here we see the importance of the learning process. Hegel's theory of freedom related with the level of consciousness is differentiated but also used by the Frankfurt School. Taking Adorno's negative dialectics and "Education after Auschwitz" as an example, today in Germany we come across 'holocaust-education'. Trying to analyse the Holocaust and its sources, Adorno concludes that education is the main guarantee of that what happened in Germany never takes place again.⁴⁶ The departure point of Adorno's theory of *Bildung* is the common understanding of it as the subjective side of culture. 'Culture' means here the system of representations of what Hegel calls 'objective spirit', that is, of ideas, concepts, worldviews, in which the meanings of humanity in their historical development come into being.⁴⁷

Adorno and Horkheimer draw from the assessment made by Hegel in the chapter on "Absolute Freedom and Terror" of the *Phenomenology of Spirit*, according to which there is a relationship between the ethics of utility of the Enlightenment and terror, which Hegel finds in the French

⁴⁴ Hegel, *Enzyklopädie der philosophie der Wissenschaften III*, Suhrkamp, Frankfurt am Main 1970, p. 288.

⁴⁵ The constitution depends on the consciousness of the people and so the constitution can change depending on the consciousness of liberty; See: Ch. Bouton, *Le procès de l'histoire...*, op. cit., p. 286.

⁴⁶ Theodor W. Adorno, *Erziehung zur Mündigkeit*, Suhrkamp, Frankfurt am Main 1970, p. 104.

⁴⁷ Krassimir Stojanov, "Education as Social Critique: On Theodor Adorno's Philosophy of Education", in *New College*, Oxford, 2013 <http://www.philosophy-of-education.org/uploads/2013%20Conference/Papers/Stojanov.pdf>, (accessed November 10,2013)

Revolution.⁴⁸ Adorno and Horkheimer do not explicitly extend their reflection on ethics to the field of human rights, a bridge between moral sentiments and rights is pursued of Rorty's postmodern approach to moral progress. For Rorty the genocide of the European Jews plays a key role in his recontextualisation of human rights, and he adopts the Holocaust as the inevitable horizon of understanding from which human rights need to be thought when he refers to our rights culture as the Post-holocaust human rights culture.⁴⁹ Drawing on Hegel and Nietzsche, Rorty asserts the historical, contextualist, or perspectivist character of knowledge, a knowledge that is not born out of the historical circumstances.⁵⁰ 'To the metaphysical theories of human rights Rorty opposes a historicist perspective. In the field of the human it is not possible to speak about a human nature because the ambit of the human is precisely the sphere proper of culture. The human nature is cultural.'⁵¹

Rorty in his article "Human Rights, Rationality and Sentimentality"⁵², talks about a human rights culture.⁵³ Rorty says that historicist thinkers have denied that there is such a thing a 'human nature.'⁵⁴ Rorty recommends abandoning 'human rights foundationalism.'⁵⁵ He rejects any sort of Kantian identification with a transcultural and ahistorical

⁴⁸ José Manuel Barreto, "Ethics of Emotions as Ethics of Human Rights: A Jurisprudence of Sympathy in Adorno, Horkheimer and Rorty", *Law and Critique*, Vol. 17, 2006, p. 78.

⁴⁹ Ibid. P. 98.

⁵⁰ Barreto writes: "The human condition is the result of the historical dynamics in which human beings and societies act on themselves. In addition, as there are no phenomena outside the domain of history, there is no human or social nature but historical and cultural configurations", in: J.M. Barreto, "Ethics of Emotions...", op. cit., pp. 99-103.

⁵¹ Ibidem, p. 101.

⁵² Richard Rorty, "Human Rights, Rationality and Sentimentality", in *The Politics of Human Rights*, ed. Obrad Savić, Verso, London 1999, p. 70.

⁵³ This notion was first used by Eduard Rabossi in his article "Human Rights naturalised".

⁵⁴ R. Rorty, "Human Rights, Rationality and Sentimentality", op. cit., p. 70.

⁵⁵ Michael J. Perry, *The Idea of human rights*, Oxford University Press, Oxford 1998, p. 39.

self and replaces it by a Hegelian identification with our own community understood as a cultural and historical product.⁵⁶ So maybe we must read the historical critics through a human rights culture which cannot be seen apart from a human rights education.

Another important analysis comes from Karl-Otto Apel. Apel uses also Hegel's arguments in his article and draws attention to the problem of the plurality of the good, which is also a very important point for the cultural relativists because they say that the good for one society may not be good for the other. To solve the problem the tolerance is the key in a multicultural society.⁵⁷ Apel makes a distinction between negative tolerance which is based on indifference and positive or affirmative tolerance based on appreciation of the deep and manifold values-traditions and resources that can enrich human culture in general and social engagements of individuals.⁵⁸

Affirmative tolerance can be related to Hegel's theory of recognition. Also Taylor refers to multiculturalism with the argument of Hegel's recognition.⁵⁹ The hegemony of one culture brings problems after Taylor, so we can see the problematic of multiculturalism with surmount the problematic with the arguments of recognition and tolerance. It is this difficulty that Axel Honneth, a Habermasian commentator of Hegel, tries to correct in his major work, *The Struggle for Recognition*. Honneth argues that 'the struggle for recognition is the key ethical relationship or the main form of practical intersubjectivity in the Hegelian system.'⁶⁰ To redress this problem, Honneth supplements Hegel by introducing a third type of recognition, which he calls solidarity.⁶¹

⁵⁶ P.V. Klein, *Hegel and the Other*, op. cit., p. 237.

⁵⁷ Karl-Otto Apel, "Plurality of the Good? The Problem of Affirmative Tolerance in a Multicultural Society from an Ethical Point of View", *Ratio Juris*, Vol. 10, Is. 2, 2002 (199-213).

⁵⁸ *Ibidem*, p. 200.

⁵⁹ Charles Taylor, *Multiculturalisme, Différence et démocratie*, Aubier, Paris 1994, pp. 43;54; 62;70.

⁶⁰ Costas Douzinas, "Identity, Recognition, Rights or What Can Hegel Teach Us About Human Rights?", *Journal of Law and Society*, Vol. 29 (2002), No. 3, p 394.

⁶¹ Axel Honneth, *La lutte pour la reconnaissance*, Cerf, Paris 2002, p. 113.

Honneth says that Hegel's solidarity has its source in the historical process of the Revolution but he tries to develop the 'fraternity' of the French revolution into a intersubjective notion of 'solidarity'.⁶² A personality based on solidarity has all the elements of legal recognition but, it additionally enjoys social esteem, the recognition of its particular characteristics and qualities developed within its group and community.⁶³ Honneth says that the first recognition is about law but the second recognition of values.⁶⁴ Honneth's arguments for recognition are also important for human rights. Because the human rights must be recognised by law but they also have a value in solidarity.

4. Human Rights as a Learning Process

Today we can find a similar debate about rights which has his sources in the debates after the French revolution. Today cultural relativists want to reject rights because they are not compatible with their own culture. This main problem in the debate of the cultural relativist can be derived from Herders enlightenment philosophy and the *Volkgeist* theory.⁶⁵ So we can see some arguments of the cultural relativist theories in the historical law school theory. The historical school has relativized rights which are innate. The cultural relativist theories take over this relativisation of natural rights

⁶² Axel Honneth, "Atomisierung und Sittlichkeit. Zu Hegels Kritik der Französischen Revolution", in: *Die Ideen von 1789*, op. cit., p. 182.

⁶³ According to Douzinas "This intricate but paradoxical intertwinning of identity, desire, and human rights is Hegel's lesson for postmodern jurisprudence", in: C. Douzinas, "Identity, Recognition...", op. cit., p. 395.

⁶⁴ A. Honneth, *La lutte pour la reconnaissance*, op. cit., p. 136.

⁶⁵ "Moral relativism, the normative base of cultural relativism (...) the protogorean thesis in terms of community as the measure of all things (...) had a foothold in philosophical thought until the eighteenth century when J.G. Herder dissented from Enlightenment philosophy claims that all nations had a unique way of being only regional and contingent principles existed. Condemning universal values he introduced the concept of *Volkgeist*, the spirit of the nation", in: Jerome J. Shestack, "The Philosophic Foundations of Human Rights", *Human Rights Quarterly*, Vol. 20, No. 2, 1998, p. 229.

as universal rights. But also the approaches of cultural relativists differ. For example Donnelly defends a 'relative and tempered' universalism⁶⁶ and shows the defects of a strong cultural relativism.⁶⁷

Hegel is also a philosopher who is by some interpreters seen as a cultural relativist.⁶⁸ But the interpretation of the *Volksgeist* theory as something which is in a permanent change and the relation between the *Volksgeist* and *Weltgeist* (*World Spirit*) show that we can't count Hegel in the cultural relativist theories. Hegel's concept of freedom leads us to another discussion. Real freedom is only possible in a learning process and is in relation with the consciousness. This consciousness is not only subjective but must become an objective consciousness of the society. Real freedom as something learned and not imposed can be a key for the human rights education. The critique of Hegel is that the formal freedom is a step of the French Revolution but not enough can be applied to human rights. Human rights can only through an internalisation of the rights with a learning process be realised.

We can find some of Hegel's arguments developed in the theses of Horkheimer and Adorno in relation with education but Rorty tries to develop these theses to a human right theory: sentimental education. So we see the importance that

⁶⁶ Jack Donnelly, "The Relative Universality", *Human Rights Quarterly*, Vol. 29, No. 2, 2007 (281-306).

⁶⁷ Donnelly, in his book *Universal Human Rights in Theory and Practice* makes an analyse of cultural relativism, and says that the cultural relativism is understood as either strong cultural relativism or weak cultural relativism. The strong cultural relativism tries to take culture as the source of legitimacy of one rule. On the other hand, weak cultural relativism takes cultural argument seriously but tries to surmount to the excess of universality. Donnelly tries to show the weakness of the radical cultural relativist argument and says that morally to defend this strong cultural relativism has its defects. Donnelly tries to show the weakness of the radical cultural relativist argument and says that morally to defend this strong cultural relativism has its defects. He claims that we mustn't place culture against human rights. We must also see the abuses made in the name of human rights. Donnelly is for the relativity of the universal rights and his functional effectiveness. See: Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca 2013, p. 120).

⁶⁸ Kain sees Hegel as a serious cultural relativist, see: P.V. Klein, *Hegel and the Other*, op. cit., p. 234).

not only the education of human rights is important but also how to internalise this education and here the sentimental education can play another key role.

Culture must be understood in this context as something not imposed but something learned. Apel sees the problems when one culture is imposed and sees the solution in the positive tolerance. So in a multicultural society we cannot impose one culture, like cultural relativists try to resolve the problem. But from another perspective, cultural relativists are right, because human rights as something imposed has also no future. The “theory of recognition” developed with Taylor and Honneth’s theses becomes more important because the dialogue and the positive tolerance can be a key in resolve some problems. Human rights become a culture but also a method of intervention in other countries. So like Hegel differentiates formal and real freedoms, we must differentiate between formal and real human rights. Human rights are abused by a hegemonic language.⁶⁹ Only through a learning process⁷⁰ and the consciousness of the society the human rights can be internalised and exercise.

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⁶⁹ Marcel Gauchet in his book *La démocratie contre elle-même* (*Democracy against its own*) criticised the human rights as ideology. Gauchet says that the ideology of human rights will be for long-time the hegemonic language of the democracy; see: Marcel Gauchet, *La démocratie contre elle-même*, Gallimard, Paris 2002, p. 376.

⁷⁰ Kuzgun says that the humanitarian education must be active and not passive; see: Yıldız Kuzgun, “İnsan Hakları ve Eğitim”, *İnsan Haklarının Felsefi Temelleri*, Ed. Ioanna Kuçuradi, Türkiye Felsefe Kurumu, Ankara 1980, p. 161.

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