

The End of Human Rights: Critical Legal Thought at the Turn of the Century

Costas Douzinas

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This book is the first major critical exploration of human rights for quite some time. The *End of Human Rights* is an attempt to rescue human rights from positivisation and global political Orwellian-style double-speak. Douzinas, by a critique of the historical and philosophical presuppositions of rights, attempts to present human rights for what they can be, a powerful discourse of rebellion steeped in the duty of the self towards the other. For Douzinas, human rights have two faces: they protect and erode desire; they create the subject and ensure subjection; they function within oppression and bloodshed while promising utopia. And it is this utopia that operates as the driveshaft for human rights, a perpetuated belief in the betterment of the human condition via the proliferation of rights. To this extent, rights lose their purpose or their effectiveness when their promise of utopia is lost. Hence his assertion that human rights end when they lose their end.

Douzinas's critique is three-fold. First, he looks at the history of right and presents an alternate history of the philosophical development of rights, concluding that human rights are not a simple progression from the natural law tradition. Second, he presents a critique of what lies at the centre of modern rights, humanism and individualism. Douzinas exposes the rights claimant, the self, as split and enveloped in desire. Hence human rights operate to provide an imaginary unity for the self, by attempting to satisfy and legitimate the individual will. Third, Douzinas attempts to extract what he sees as the marrow of rights, their revolutionary spirit, utopian value and a promise of a justice which is yet to come.

Douzinas traces the history of human rights and examines a number of critiques of rights. By refuting universalism and historicism, he helps to place rights within their legal, political and ethical context, whereby human rights have become the central focus of modernity. By evaluating the philosophical foundations of human rights discourse, and by exploring their many limitations and inadequacies, *The End of Human Rights* illustrates the cause and effect relationship between rights, the subject and the law. This exploration offers a basis upon which to better understand the role of human rights within modernity, what human rights lead us to expect and what we should expect from them in the future. In *The End of Human Rights*, Douzinas claims that human rights only have paradoxes to offer. He rails against historicism, arguing that human rights are not an evolution of natural law and natural rights. Rather, human rights are a creation of modernity in which nature as a measure of justice and the good is replaced by man and the will. Essentially, human rights are presented as the legal manifestation of the will.

Douzinas begins by disputing the typical liberal historical interpretation of the development of human rights. Relying upon Strauss, Villey and Bloch, he refutes the claim of liberals that human rights are the natural progression

from the classical tradition of natural law and natural rights. He accepts the links between the two as both being at times in history discourses of critique while at the same time being utilised to reinforce politics and the status quo. Douzinas asserts that the descent of human rights into positive legal rights inhibits their traditional critical function. In this way, human rights discourse presents a paradox.

Douzinas places great emphasis upon the role of the subject within the law, extrapolating upon the role rights play in defining the subject. In this way, he laments the replacement of nature with man, the positivisation of rights and their use as a tool of subjection. This immersion of rights in the legal manifestation of the will leaves human rights unable to transcend the present. Hence, for Douzinas, the creation of man as the ultimate standard of virtue, the culture of historicism, and the positivisation of the law are the demons of modernity.

Henceforth, Douzinas plays the exorcist. He introduces the ideological critiques of Burke and Marx. For Burke, rights discourse suffers from metaphysical idealism and rationalism and therefore abstract and general nature of rights discourse renders them unreal and unreliable. For Marx, the French Revolution was not the completion of a historical process, and while rights claimed universality, they merely promoted narrow class interests. For Douzinas, the importance of this critique is the challenge to the idealism and unreality of human rights and the recognition that they are a historical and political creation of modernity.

Following this, *The End of Human Rights* turns to a critique of humanism. Douzinas traces emergence of the autonomous moral individual from Christianity to Kant, as the essence of humanity, the modern subject who is at the heart of modernity. This subject, as defined by Kant, is autonomous and by following a moral law found in the self and legislated by the self makes disinterested choices and becomes free. The subject, however, has grown out of a historical origin of subjection and positive rights operate by shaping the subject and its subjection. Douzinas shows the laws' historical function in shaping the subject, whereby rights have defined the ever-shifting boundaries of acceptance of who is the subject. To this he adds Hegel's claim that human rights operate as a struggle between individuals for recognition, and amount to the mutual recognition between citizens which presupposes and constructs the political community.

However, for Douzinas this subject is not whole: it is split and lacking. This is evidenced by psychoanalytic theory of Freud and Lacan positing the subject as one consumed by an unquenchable desire. The law operates to separate the subject from its desire. It poses as a seamless web and rights operate as rewards to the subject for its subjection under the law. Hence human rights define and underpin the identity of the subject and its relationship with the world and, while they operate by splitting the subject, they construct an imaginary identity of universal wholeness which invokes a sense of utopian harmony.

From the imaginative function of human rights, Douzinas evidences his central thesis, placing the imaginary domain of human rights close to Bloch's

definition of utopia in which the present foreshadows a future not yet and never possible. Thus, wary of the chaotic effects of the coexistence of the imaginary and the real, the claim that under law human rights may offer justice now, *The End of Human Rights* attempts to revive utopia and refute claims that the end of history is nigh. In doing so, Douzinas seeks to extract the energy and rebellious zeal that human rights offer to us. He focuses upon the ethics of alterity characterised by Levinas. The powerful duty and obligation of the subject to respect the singular and unique existence of the other. Douzinas extrapolates from this a community of human rights which he describes as the postmodern moral substance. Douzinas, however, exposes the fragility of this duty as the law attempts to hand out justice to the asylum seeker, when the subject comes face to face with the Other. Returning to Freud, and using the example of the refugee as the absolute other, its presence exposes the split in ourselves, a symbol of our exile, in which the law attempts to deny.

The End of Human Rights allows us to better understand the historical and philosophical presuppositions behind human rights claims. It challenges the underpinnings of traditional liberal rights theory, claiming that there is no one unifying theory of human rights. Douzinas helps to explain the role rights play in constructing and validating the subject within the state, the role of rights as critique and the role of rights in hypocrisy. In this respect, *The End of Human Rights* is a challenging and thoughtful text issuing a challenge to self-assured liberal rights literature.

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