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## 'This is the World: Have Faith'\*

Shelley Wright, *International Human Rights, Decolonisation and Globalisation: Becoming Human*. London and New York: Routledge, 2001.

Sundhya Pahuja\*\*

### Abstract

*In recent critically inclined texts on human rights, we find a desire to acknowledge the cultural specificity of the human rights regime, to consider the colonial origins of international law and to take account of the putative axiom of globalization. This trilogy is often accompanied by an asserted faith (however vestigial) in the human rights regime. In this essay, the author explores the paradox of such a convergence, asking whether such texts (and the one at hand in particular) are unintentionally performing the question which marks the zeitgeist — that is whether human rights law can ever be anything other than imperializing. To the extent that any sensitization of human rights to its history and context involves a project of 'refounding' them — no matter how 'diverse' the foundation — it would seem that the answer is no. Arguably such projects remain ensnared in the modern oscillation between the myth of universality on one hand and the nihilism of cultural relativism on the other, ironically forgoing consideration of the relationality of being implied by that very oscillation.*

*International Human Rights, Decolonisation and Globalisation: Becoming Human*<sup>1</sup> is an ambitious book. Specifically, it is a sustained attempt to move toward a new human rights, one which is more concordant with 'our times'. Its declared objective is to 'bring together different perspectives and different voices in order to see how they can contribute to a critical analysis of international human rights'. (at 4) In undertaking this task, it would wish to enrich human rights through a consideration of international law's imperial history, and an engagement with its 'globalising' present. In Chapter 1, Wright introduces this project and helpfully describes the way the book approaches this task. Thus Chapters 2 to 5 are 'an attempt to paint a picture of the

\* Dylan Thomas, 'Our Eunuch Dreams', *Collected Poems* (1952), at 14.

\*\* Senior Lecturer, Law School, University of Melbourne, PhD Candidate, Birkbeck, University of London. I wish to thank Vidya Kumar, Mark Antaki and Peter Fitzpatrick for uniformly helpful and thought-provoking discussions during the writing of this essay, and Ruth Buchanan and Peter Fitzpatrick for reading a draft, although of course the views expressed are my own.

<sup>1</sup> Hereinafter *Becoming Human*.

history of human rights with a relatively broad brush' (10) and Chapters 6 to 10 build on this historical background by considering specific examples of human rights. The history Wright paints with her broad brush might be described as impressionistic, though it is arguably not random. Indeed, the logic of the book's structure itself would seem to be related to certain features of Wright's project, notably the desire to move backwards and forwards between an historical contextualization of human rights and a responsive refounding of the same, better suited to this *soi-disant*, global era.

This desire to take account of the 'situation' of human rights, on the hinge, as it were, between the colonial and global eras marks the book out as a good example of a particular brand of contemporary human rights scholarship (emanating primarily from the English-speaking North). In such scholarship, there is a genuine attempt to absorb the lessons of recent critical and historical scholarship from many disciplines (including from the fringes of international law) in the face of which it would seem impossible to ignore the cultural specificity of the human rights regime, increasingly untenable to embrace a vision of human rights which ignores the colonial origins of international law, and essential to take account of the putative axiom of globalization. However, as much as this brand of scholarship wishes to adopt a certain attitude of the *zeitgeist*, it holds firm to a teleological view of history, a metaphysics of the subject and a deep commitment to an ideal of human rights. Indeed, Wright herself declares that '[a]lthough [she] believes it is necessary to place human rights within the very complex context of European colonial history it is not [her] intention to demean or destroy the deep transformative effect human rights or a belief in their efficacy can have'. (at 3)

It is precisely this paradoxical combination of an unwillingness to question 'a belief in [the] efficacy' of human rights with a desire to 'place' human rights within the colonial context that makes *Becoming Human* worth engaging with. Arguably, Wright pushes the notion of human rights law as far as it can go in a certain direction without questioning the quiddity of the notion *per se*. However the desire to maintain her faith holds Wright back from what a continuation in that direction would seem to require: a consideration of the principle of foundation itself. A consideration of foundations (as opposed to engaging in a *refounding*) would certainly be a test of faith. Indeed Wright takes human rights so far down a critical road that it is difficult to imagine a more culturally sensitive version of human rights than that toward which she gestures. And yet by the end of the book, one is left with an uneasy sense that what this increased sensitivity might mean is an ever more tentacular reach of human rights through which what it means to be human is delineated. To put it bluntly, one reason this book is interesting is because it unintentionally performs that question which may well mark the *zeitgeist* — that is whether modern human rights law (even in what might be its best version) can ever be anything other than imperializing. It would seem the answer is no. Arguably, much of the performance of this question is captured in Wright's approach to the concepts in the main title of the book, thus in this review I propose to engage thematically with each of its elements. And if this engagement is in its turn also somewhat impressionistic, then so must it be with a book so broad in scope and vast in ambition. Perhaps it would be best then to read it

less as a review as such than as a provocation to an impassioned reconception of human rights.

## 1 'International Human Rights'

Wright powerfully delineates the ways in which the contemporary human rights regime has many exclusionary effects, particularly in relation to women and indigenous peoples. To cite just a few examples, in Chapter 7, she persuasively links the ways in which freedom of expression and intellectual property 'can give rise to enormous problems for indigenous peoples closely linked to the long term project of dispossession', effectively participating in the reduction of 'living cultures to museum displays'. (at 147) In Chapter 8 she draws out the inadequacy of international humanitarian law to deal with genocidal and belligerent practices which take the form of sexual violence against women.<sup>2</sup> And in Chapter 9 she describes the ways in which the right to self-determination 'focuses on political rather than on economic rights or basic survival needs'. (at 200)

She compellingly links many of human rights' exclusionary effects to the division between and hierarchization of civil and political rights on one hand and economic, social and cultural rights on the other,<sup>3</sup> as well as the concomitant privileging of the individual over the collective.<sup>4</sup> And these hierarchies within human rights are linked in turn to the putative universality of human rights, a universality which Wright considers to be 'the hangover of colonial thinking' (at 11) and one which we should question lest 'we leave ourselves vulnerable to inaccurate assumptions about the nature of human identity [and] cultural diversity'. (at 11)

However, Wright's attitude to universality is problematic, for just as she is ultimately not prepared to question her faith in human rights, nor is she willing to explore universality *per se* as a concept. Indeed, it would have been helpful as a reader to have a better sense of precisely what Wright herself means by universality. She seems to take its meaning as given, defining it only once, and that too in passing, viz: '[t]he processes may in fact contain the possibility for the creation of global systems of legal protection incorporating human rights as genuinely universal, *i.e. as applicable to everyone*'. (at 112, emphasis added) As this sentence suggests, Wright seems to assume — at least some of the time — that 'real' universality is possible. This is evidenced by what would seem to be part of the cure for the colonial hangover she diagnoses. According to this curative, 'historians and theorists of human rights' (at 99) need to recognize that 'human rights thinking was borrowed from indigenous sources'. (at 99) Thus in Chapter 3 Wright draws on a range of secondary sources from a range of disciplines in an attempt to discover alternative foundations for human rights grounded in non-European perspectives. Her argument here is that

<sup>2</sup> *Becoming Human*, at 163.

<sup>3</sup> See, e.g., *ibid.*, at 190.

<sup>4</sup> See, e.g., *ibid.*, at 67.

colonialism effected not just the imposition of values on the colonized, but also a hitherto unacknowledged exchange of values between colonized and colonizer. One example she points to of the influence that political ideas derived from various groups of colonized people had on the political thought of the colonizer is the ways in which the models of governance of the ‘Iroquois and other northern groups [as well as] the “Five Civilised Nations” of the southern American colonies’ arguably influenced the drafters of the US Constitution. It would seem that in Wright’s argument, what we might call the ‘hidden diversity’ of origin she reveals is what gives human rights the potential to be ‘truly’ universal. And the cultural refounding she engages in is one way to reconcile her desire both to take account of the problematic cultural specificity of the contemporary human rights regime with her unwillingness to ‘dismiss . . . human rights as yet another example of cultural imperialism when they are in fact much more than this’. (at 223)

Similarly, if implicitly, Wright considers some kind of ‘real’ universal potential in human rights to have been evident in the drafting and adoption of the Universal Declaration of Human Rights (UDHR). There is no explicit explanation for why the UDHR is singled out for attention, though one might wonder whether the choice is linked to Wright’s desire to rescue human rights from the charge of cultural imperialism. This is in the sense that the UDHR is so doctrinally foundational in the contemporary corpus of human rights law that if it too is tainted, it is difficult to imagine any point of departure at all from which a reconception of human rights might be possible. Wright thus engages in a detailed consideration of the voting patterns and commentaries at the United Nations around this document, arguing that ‘[t]he wide representation of nations voting for the Declaration portrays perhaps a surprising unanimity among a range of different political and cultural traditions’. (at 14) To Wright, ‘[t]he claim by some cultural relativists that this document represents a Western imperialist imposition of standards on non-Western cultures is weakened by widespread support for the Declaration in the General Assembly in 1948’. (at 15) This remains tenable for Wright despite her acknowledgement in the next sentence that ‘[i]t is true that most of Africa and much of Asia and the Pacific were still under colonial rule at this time so could not be represented in the drafting or passage of the Declaration’. (at 15) This is because there was still ‘broad support among a range of different cultural and political traditions including Islamic, Asian, Latin American and African’. (at 15)

As a reader, I found myself wondering whether this argument was not troublesome on at least two levels. The first level is the sociological. For even if we do leave aside the fact that much of the world was still under colonial rule during the drafting of the UDHR, it is surely concluding a great deal to point to ‘participation’ and ‘representation’ of ‘different political and cultural traditions’ simply by considering which state delegations said what at the meetings, particularly when this evidence is destined to support at least partly, the argument that the foundational documents of human rights really might be universal after all. This sense is reinforced when the one extended quotation chosen (without comment) to demonstrate that the ‘discussions

were by no means dominated by the Western powers' (at 15) seems to resonate disconcertingly with stereotypes of quaint and pithy Oriental wisdom, explaining that

Chang took an early opportunity to establish that the Universal Declaration could not be a simple reflection of Western Philosophy — and to that end, he advised UN staff to embark on a study of Confucian thought. Chang was remembered and appreciated for two kinds of contributions. On one hand, he regularly caught the attention of other delegates by referring to Chinese practice or quoting a pertinent Chinese proverb. Official records reflect some of these contributions, and in some instances, they appear to have had the effect of helping delegates appreciate an alternative perspective and move beyond an impasse. Third Committee records note his advice to sweep the snow in front of one's own doors and overlook the frost on others' rooftiles.<sup>5</sup>

But even if we take Wright's argument entirely on its own terms, and do believe that 'widespread support for the Declaration' (at 15) at the United Nations could answer the charge of cultural imperialism, it would seem necessary at the very least to examine the intellectual and philosophical commitments of the national leaders on whose participation Wright relies. Indeed many sociologists of law have engaged in related projects, analysing in great detail the ways in which education, for example, (particularly in the context of the colonial era) might be a significant factor in shaping the relationship to international law and human rights of many of the long (and ethnically diverse) list of 'leading international scholars and diplomats' on whom Wright relies for what the reader is effectively being asked to believe is their 'authentic' difference.<sup>6</sup>

But this notion brings me to the second problematic aspect of the argument, which is the epistemological particularity of the notion of human rights itself. Wright shies away from such an engagement throughout the book, sometimes dancing toward it, but ultimately turning away from this dangerous suitor. In such instances, Wright reveals that for her, there is some truer notion of human rights which remains apart from the ways of knowing the world in which it is embedded and innocent of dark imperial desires. One such approach and retreat is visible in Wright's observation that '[v]ery often . . . colonialism may disguise itself behind benign-sounding labels such as modernisation, economic development, self-determination or even human rights' but that these 'more subtle forms of colonialism also involve breaches of human rights less easily identified'. (at 147) Thus in a move not infrequent among its pages, Wright is granting human rights a transcendent existence, loosed from its conceptual moorings and unaffected by its doctrinal manifestations. It is not as simple as an argument that human rights are good in and of themselves but that like any law of good intention, bad people can abuse and manipulate it. Rather it is a characterization of harms done, *already as* breaches of human rights, even if at the time, they were 'less easily identified' precisely because they accorded with (doctrinal) human rights. In a way

<sup>5</sup> *Ibid.*, at 15 (quoting from Waltz, 'Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights', 23 *Human Rights Quarterly* (2001) 44, at 59).

<sup>6</sup> See, e.g., the work of Yves Dezalay and Bryant Garth including *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (1996).

then, this is an argument that human rights in and of themselves are good, but that bad things done in their name must be distortions and not related to ‘real’ human rights.

This of course brings us back to the universal, for it might be here that the problem lies. By this I mean that if Wright’s argument is (as it appears to be) that human rights would be better if they were genuinely universal, really ‘applicable to everyone’, then it is arguably problematic to make such an argument without exploring the relationship (by now, well theorized) between the concept of universality itself and the ‘byzantine reinforcements of colonial power and knowledge’.<sup>7</sup> In the final chapter, Wright does express ambivalence about the ‘theoretical commitment to universality’ (at 223) and acknowledges that ‘whether human rights law is a universal system may be debatable’ (at 224). But for Wright this problem would seem to lie in the particular notion of ‘the universality we have now’, a ‘Euro-American meaning of universality’ which ‘it is necessary to give up’ ‘[i]f international human rights are to continue to have universal relevance’. (at 131) For her, what is needed is therefore to devise ‘cross-cultural, common or shared standards for human behaviour’. (at 223) In other words, laws which are ‘applicable to everyone’, Wright’s earlier description of the ‘universal’. Thus Wright’s tremor of uncertainty does not manifest itself in the book as a consideration of the ‘universal’ as a concept *per se* (nor its relationship to Christianity).<sup>8</sup> This is a pity, given the potency (and poetry) of Wright’s many detailed case studies of exclusion.

Similarly, the project of refounding human rights in ‘indigenous sources’ leaves unexamined the way modern law marks its authority precisely through originary gestures.<sup>9</sup> Arguably, no matter what normative content a system is filled with, or what philosophical foundations it might rest on, the gesture of looking for foundations themselves is, in effect, a search for authority. It is an act of ‘discovering’ and narrating an origin which draws a limit by saying ‘this is our beginning’, and it is from here that we exist and have meaning. The effect is thus authoritative and authorizing. So by founding authority, the narrative of origin erases the possibility of being otherwise. Moreover, it prevents the subject of narration from being more than the origin allows. The subject is fixed: it is always already that which is born of its origin. Theories and narrations of self-determination and sovereignty are inextricably bound up with narratives of law’s authority (and that of the state) and its claim to legitimate

<sup>7</sup> N. B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (2001), at 10.

<sup>8</sup> Interestingly, the Oxford English Dictionary defines ‘Universalist’ as ‘one who holds (esp. member of an organized body of Christians who hold) that all mankind will eventually be saved.’ Indeed, the Christian origins of human rights law as well as the complicated relationship between these roots and Human Rights’ putative secularity could have formed the basis for a review essay in and of themselves. Wright often alludes to these connections (e.g., at 26, 50, 58, 59, 93 and 220) but does not unpack the implications of the ostensible replacement of sacred by secular orthodoxies for the foundations and ongoing project of human rights. On this question in general, see e.g. Beard, ‘Understanding International Development Programs as a Modern Phenomenon of Early and Medieval Christian Theology’, 18 *Australian Feminist Law Journal* (2003) 27.

<sup>9</sup> P. Fitzpatrick, *Modernism and the Grounds of Law* (2001). See also, *Divining the Source: Law’s Foundation and the Question of Authority* (special issue of the Australian Feminist Law Journal, forthcoming).

power and violence<sup>10</sup> (a connection Wright decries, asserting that 'rights cannot be established or maintained through force' (at 12)). And thus I wonder whether 'refounding' human rights, even on its unacknowledged 'indigenous sources' would ultimately (or initially?) be incapable of escaping the originary violence of the creation of the subject of law, and therefore of the other — even if now the 'self' is recast — and may play into international law's imperializing urges, this time powerfully delineating what it means to be human.

## 2 'Decolonization'

Wright's take on decolonization is, by and large, to see it as a historical fact engendering certain consequences of which the contemporary human rights regime has yet fully to take account. For Wright, the central consequence being provoked by the historical fact of decolonization is what she calls a 'cultural renaissance'. (at 10) The 'burgeoning and often aggressively defended cultural difference' she sees as now apparent is an essential feature of 'the . . . historical change[s] through which we are currently moving'. (at 10) Here once again she urges things along in a useful direction and then, at a certain point, seems to recoil. And despite (or maybe because of) her emphasis on the 'cultural renaissance', in large measure this return occurs at the point at which colonialism (or imperialism) must itself be considered a cultural project, and one in which human rights might be implicated.

This recoil is visible in Wright's rendition of the human right most commonly associated with decolonization — the right to self-determination. 'Decolonization', we are told, 'became the principle expression of self determination after the Second World War'. (at 20) But what does it mean to say that 'decolonization' became the expression of self-determination rather than the other way around? Arguably it would imply, as foreshadowed above, that self-determination has a transcendent, pre-colonial existence. And in such a mould, its cultural specificity is naturalized and erased. Implicitly in this formulation, the right to self-determination captures resistance to colonialism: a resistance unexamined for its possible complications. Why, for instance did resistance to colonialism take the form of nationalism? In what ways was nationalism itself a product of the colonial era?<sup>11</sup> And what of the relationship between self-determination and the state form (its only possible outcome according to international law)? What might the ongoing consequences of this be for a system of law based on the existence of nation-states?

Indeed, the state is one of the concepts which Wright sometimes leans toward unpacking (mostly in the context of 'globalization'), and at other times appears to consider to be unproblematic. This latter is sometimes a bit mystifying, and linked to

<sup>10</sup> Derrida, 'Force of Law: The Mystical Foundation of Authority', in J. Derrida, *Acts of Religion* (edited and with an Introduction by G. Andijar) (2002), at 231 *et seq.* See also B. Hindess, *Discourses of Power: From Hobbes to Foucault* (1996).

<sup>11</sup> There is a wide literature on this. For just one illuminating example see Dirks, *supra* note 7.

moments when Wright is connecting human rights to the pre-colonial as, for example, when she writes in relation to her argument that human rights have their foundations in indigenous forms of social organization, that '[w]ithin the Haudenosaunee<sup>12</sup> *equality of citizenship* was something that had existed long before European influence'. (45, emphasis added.) But what is meant here by citizenship? If citizenship is not a relation between subject and state, can the 'right' really have been 'equality of citizenship'? And if citizenship is meant simply to signify any kind of relationship between governor and governed (as the text following the quote would seem to suggest), what are the implications of reading the Haudenosaunee form of social organization as (essentially) equivalent to our modern state — subject relation and all that that implies?

I am not trying to suggest by these questions that Wright is not alive to the construction of knowledge as an important element of imperialism, but rather that her faith in certain conceptual 'basics' (including human rights) both precedes and concludes her inquiry in ways which make these basics immune from important critiques which would seem to arise from the very questions with which she wishes to engage.

For instance, Wright frequently refers to the forms of colonial knowledge through which the European 'self' was contrasted with and placed in a hierarchical relation to the 'other'. She aptly makes the point that '[o]thers outside Europe had to be controlled. Colonisation was never a purely economic or political exercise but has always involved the psychological and cultural need to label, analyse, stigmatise and, frequently, destroy the nonconformist and stranger while of course dispossessing them of all they have'. (at 57) However I wonder whether in Wright's view, this 'other' has too much quiddity as a being herself. For whilst it is central to analyse practices of knowledge creation such that an 'other' to Europe was constructed, it would seem crucial to explore the construction of the 'other' as particularly telling in relation to the needs of the 'self' — to be whole for example,<sup>13</sup> or to have an identity which can be fixed — rather than as facts about the 'other' as a being. Certainly the colonial interaction is extremely significant in the ongoing construction of 'global' identities, but I wonder whether there isn't sometimes a slippage in *Becoming Human* toward accepting certain of the 'anthropological vision[s] that conferred cultural explanations on the colonized world'.<sup>14</sup> Even the idea of a cultural 'renaissance' implies that once free of the yoke of colonialism, there can be a move in non-European cultures 'toward the creation, or re-creation, of non-European models of human behaviour'. (at 214) But this surely underestimates the ways in which tradition (and modernity) were themselves powerfully shaped by colonial history. And to suggest that the unleashing might happen through human rights is again to view it as a

<sup>12</sup> Also known to the colonizers as Iroquois.

<sup>13</sup> On this, see the work of Jennifer Beard especially 'Representations of the Liberal State in the Art of Development', 10 *Griffith Law Review* (2002) 6; *The Art of Development: Law and Ordering in the First World* PhD Thesis, University of Melbourne, November 2002 (Unpublished, copy on file with the author), and *supra* note 8.

<sup>14</sup> Dirks, *supra* note 7, at 302.

transcendent concept, evident when Wright says 'we do not abandon human rights by embedding them in culture'. (at 131) But I find myself tempted here to ask not how we may embed human rights in culture, but rather what kind of cultural product the concept of human rights itself is.

However, the seeds of thinking relationally about the circular self-constitution of self and other are not absent from the book. For instance, Wright observes that '[w]ithin European cultures the desire for *presence* preserved in the written word relegates others, or the "Other", into that which exists only to constitute itself . . .' (at 108, emphasis in original). Ultimately though, Wright would seem to accept certain essences and identities, urging a dismantling of the hierarchies into which those identities have been placed, and a revalorization of the other, rather than a deconstruction of those ways of being and knowing themselves.

This essentialization of the other arguably has several manifestations, including in Wright's argument about the way in which the 'reliance on the written over the spoken word helped to bury the "Otherness" of cultures under the objective analytical purview of the written word'. (at 95) That 'otherness' is buried, rather than itself constructed (and *then* buried, perhaps) is again related to Wright's ambivalence about delving into the nature of foundations and Enlightenment thinking. At one juncture she aptly makes the point that there is a 'deep split within the foundations of Enlightenment civilisation itself — the split between mind/body, reason/passion, male/female, white/black, good/evil'. And she goes on to state that '[t]he very discourse itself allows for this dichotomy to exist and to be perpetuated'. (186) However, in the context of the book as a whole, it seems to me that she doesn't question the existence of the categories themselves, but rather implies that such categories do exist but are artificially separated such that the second term in each pair is devalored. To put this another way, I wonder whether in an attempt to really 'decolonize' human rights (if such a thing is possible), it would be important to recognize that the split is not so much '*within* the foundations of Enlightenment civilisation', as it is the foundation itself. That is, perhaps it is the 'cut' that makes the categories which is the foundation of such thought? If this were so, then a recognition of the same might bring us to a more determinedly relational understanding in which we are forced to take account of the impossibility of fixed and determinate being — both for our 'selves' and for 'others' — in ways which open up, rather than broaden, reorganize, or even revalorize the categorizations on which colonialism and imperialism depended, and arguably on which human rights still depend.<sup>15</sup>

Exploring further the idea of relationality might also help Wright out of the oscillation present throughout the book (and one which is symptomatic, perhaps inevitably, of much contemporary human rights scholarship) between the myth of

<sup>15</sup> This idea of thinking through relationality is inspired by my readings of Jean-Luc Nancy, in particular *The Inoperative Community* (1991), *Sense of the World* (1997) and 'Finite History', in *The Birth to Presence* (1993) 143. It would be absurd to suggest, though, that these provocations come in any way close to indicating his argument, but might hopefully be provocations to the reader to further explore them herself.

universality on one hand and the nihilism of cultural relativism on the other. Wright frequently avers to this oscillation, wary of her thesis being written off by detractors as simply ‘cultural relativism or . . . a descent into chaos’ (at 10) but, as described above, seems to have only some kind of reconceived universalism to which to turn. Indeed, it is difficult to see where else one could go with even a reconceptualized human rights which depend on a notion of the ‘authentic humanity’ which might emerge when our ‘minds and bodies are decolonised’. (at 58) And I wonder whether ‘decolonising our minds’ enough to ‘fac[e] the complexity and positive aspects of diversity and cultural pluralism’ (at 214) in a way which ‘respect[s] democratic participation and governmental, individual and corporate responsibility for the integrity of all human beings’ (at 214) would be to adhere to an unsustainable distinction between substance and form in which form is perceived to be culturally neutral, its possible complications in the maintenance of the hierarchies with which Wright is concerned, erased?

### 3 Globalization

A great virtue of this book is to refuse the long separation in international law — both conceptual and canonical — between the ‘political’ and ‘economic’ branches of the discipline.<sup>16</sup> It does this in two main ways. One is to analyse and challenge the hierarchization of civil and political rights versus economic, social and cultural rights. The other is to explore the ways in which economic processes, both old and new, impact upon the lives of people in ways which cannot tenably be separated from notions of human rights. And there is much to recommend this challenge to theorists of human rights who would confine their analysis to within the safe boundaries of international legal doctrine. Wright aptly points out that ‘[i]t is as if the international law of human rights and the international law of globalisation and development have been progressing within parallel universes’ (at 22) ‘[b]ut [that] there are signs that the separation of economic thinking and human rights may be diminishing’. (at 23) However, whilst I would share her perception of this diminution, where she would see this visible collapsing of boundaries as something about which to be optimistic, I (perhaps predictably by now) would see this potentially as a cause for concern.

Wright’s main thesis about the challenge ‘globalization’ poses relates to the ways in which international human rights advocates have, ‘until very recently, [failed] to pay adequate attention to the effects of uncontrolled corporate penetration of much of the Third World’ as well as to point out that ‘there has been insufficient recognition of the extreme social, economic, and cultural dislocation felt by women, children, indigenous peoples and the poor generally when this economic penetration either fails owing to financial or structural collapse, or is instituted without regard for the environmental costs of uncontrolled development’. (at 215) Her proposals in this regard focus, by and large, on an extension of the human rights regime into areas generally governed by international economic law and institutions, as well as into the domain of

<sup>16</sup> See generally, Pahuja, ‘Trading Spaces: Locating Sites for Challenge within International Trade Law’, 14 *Australian Feminist Law Journal* (2000) 38.

corporate capital. She would, however, warn against the 'momentar[y] capture' 'of rights discourse' 'by Western commentators who maintain that human rights are coterminous with corporate capitalism and individual initiative' (at 11) and, instead, urge us along the trajectory in which '[h]uman rights and environmental regulation within international law are developing as the constitutional framework for global governance by which economic liberalisation might be tamed'. (at 10)

Wright's programme for moving along such a trajectory is outlined in Chapter 9. It includes, *inter alia*, expanding the notion of international crimes to include serious breaches of economic and social rights, introducing civil liability for breaches of these rights, potentially expanding the dispute resolution mechanisms of the WTO 'to incorporate . . . state responsibility for abuses of [these] human rights' (at 191), giving teeth to the International Covenant on Economic, Social and Cultural Rights (and promoting corporate cooperation), encouraging the international financial and economic institutions such as the World Bank and the International Monetary Fund to take 'a more active role in encouraging observance of human rights and democratic reforms' (at 192) and expanding the normative content of the human rights regime to include a 'right to live includ[ing] the right of access to clean and adequate water supplies' (at 198) as well as many other necessities of life.

However, I wonder whether such a trajectory might not radically increase the imperializing potential of human rights for at least two (related) reasons. The first is the way in which resistance would be captured by an expanded notion of human rights such that the fundamental market logic on which the expanding 'global' order is based would be reinforced rather than challenged. The second is whether, far from contributing to her goal of a human rights which is 'about the creation of international legal structures that have as their highest goal respect for the "being of otherness"' (at 132), the expansion of the human rights regime along the lines Wright suggests — particularly expanded enforcement through the international economic and financial institutions — might instead represent 'an increasingly tentacular extension of the disciplining power of the market and of the "rationalities" of capital'<sup>17</sup> into the very subjectivities she exalts for their 'difference'.

In relation to my first concern, one telling example is Wright's suggestion that '[f]ailure to provide essential medical assistance to alleviate an epidemic [such as HIV/AIDS] could be described as a crime against humanity'. (at 190) It is difficult to discern why one would advocate such an approach rather than challenge the economic structures that produce such disparate access to medical resources in the first place, or the normative framework of the TRIPS regime which makes the production of generic and affordable drugs possibly subject to legally sanctioned retaliatory measures. Indeed, Wright seems loath to question the legitimacy of the TRIPS (or WTO) regime, asserting that either the national emergency exception must surely apply (at 210), or that there are other 'loopholes' (at 210) which would mean that 'many countries could legally do what Brazil has done'. (at 210) And it is difficult to discern whether the consequences of such a right would be to place liability at the

<sup>17</sup> Fitzpatrick, *supra* note 9, at 218.

door of the national leaders who fail to ‘do what Brazil has done’, the drug companies and their CEOs, the rich states who fail to ‘assist’, or those such as the US who file complaints about states which manufacture and distribute generic drugs. This concern could be repeated in relation to Wright’s own concerns about ‘Western development models and the shift from subsistence farming to cash-crop agriculture’ (at 204) in which ‘women are disadvantaged as development capital and technology go to men rather than to women . . . who then ‘frequently cannot use the new seeds and modern agricultural techniques because they cannot read, do not know how to borrow money and will not be accepted as appropriate persons to obtain credit’. (at 204) Wright later suggests that ‘a very hopeful sign has been the development of ‘micro-credit’ banks in many parts of the world’ (at 205) which lend money primarily to women.

Again, in the context of a project specifically directed at ‘decolonizing’ human rights, I am surprised at Wright’s willingness to direct human rights to the cause of the expansion of practices of global capitalism which are arguably direct heirs of the imperial legacy. I am puzzled as to why there is no consideration of the possible complicities of such a reconceived human rights with the ongoing expansion of capitalism, particularly as it is arguably well rehearsed by now that ‘colonialism lives on in the massive disparities of wealth and control over capital between north and south’.<sup>18</sup> This is particularly true given Wright’s suggestion that the international financial institutions (IFIs) and international environmental organizations (IEOs) be encouraged to extend their concern into the field of human rights. Although, perhaps Wright’s assumption that resistance is appropriately captured by human rights even in this instance should not come as a surprise at all, given her earlier professed faith that ‘[h]uman rights are at their core radical, even revolutionary, statements about the pre-eminence of human dignity and integrity’. (at 37)

I do not share her faith though that this ‘core’ is culturally neutral, which brings me to the second concern mentioned above. This is related both to the vastly disparate impact the IEOs have on the South versus the North, and the effect of an expanded field of concern in the context of that disparity. Wright is obviously aware of this disparity of impact, however, in observing (with approbation) that ‘[f]inancial institutions such as the IMF and the World Bank . . . are taking on a more active role in encouraging observance of human rights and democratic reforms and are increasingly threatening retaliatory action where regimes refuse to comply’; she simply observes ‘that this activity tends to focus on small, weak states rather than on the major powers where economic and political decisions are usually made is not surprising.’ (at 192) Not surprising perhaps, but I can’t help but wonder whether, in the context of the extremely widespread imposition of conditionalities by the World Bank and IMF in the South, Wright’s prescriptions would not simply intensify the possibilities for regulation by the Bank/IMF (read ‘North’). Broadening the mandate of these organizations along the terms that Wright suggests, would arguably expand the opportunities for conditionality to all matters included within the notion of ‘being

<sup>18</sup> Dirks, *supra* note 7, at 303.

human', an idea which is becoming more insidious with the growth in the significance of these bodies as knowledge-producing institutions. The tentacular spread of the IFIs' and IEOs' construction of knowledge in this way would surely represent a most colonial incursion into the very subjectivities of those touched by its interventions. Thus Wright's way to tackle the invidious position of women in the South in relation to agriculture is not to question 'the new seeds' and all that they represent, but to include those women and adapt *them* to the 'new seeds' (read 'development'?) through the expansion of credit regimes.

Indeed, ironically, in its concluding pages *Becoming Human* would itself seem to navigate along a dangerously colonial continuum, especially given the context to which Wright herself frequently alludes, of the colonial legacy, of the widespread imposition of northern economic structures on the South through the IEOs, and the way in which 'decolonisation took the form of self determination' which itself had to be in the state form. It may be fitting to conclude with an extended quotation which I think sums up the paradox of the book's stated aims with this perilous echo:

By giving up the commitment to universality as a theoretical construct it should be possible to engage in the kind of dialogue that might lead to cross-cultural, common or shared standards for human behaviour.

But we also need to insist on the application of existing human rights standards where European or Western constructs (such as the modern nation-state or economic industrialisation) are adopted. The expansion of Western structures is not always a unilateral imposition of colonialism. Enthusiastic adoption of the apparatus of modern statehood, the trappings of nationalism and reliance on economic arrangements and industrialisation based on European models should make anti-human-rights regimes cautious about their rejection of human rights standards . . . If European institutions are adopted then the human rights that should go with them must also apply. (at 223)

Surely such an exhortation stands at odds with the final, tentative uncertainty that '[w]e do not know what "being human" is, we are still in the process of becoming'? (at 226)