

The End of Human Rights? History, Critique, and Defense of a Prescriptive Concept

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Abstract. This article reconstructs a genealogy of one of the most persistent objections ever directed against the discourse of rights: the accusation of abstraction. Rather than treating abstraction as a single, stable criticism, it argues that the meaning of the charge has undergone a series of profound conceptual transformations from the late eighteenth century to the present. Beginning with Burke's historicist critique of the 'Déclaration des droits de l'homme et du citoyen', the article traces how abstraction came to signify, in turn, rationalistic construction, exclusion from the universal subject, denial of human nature, semantic and juridical indeterminacy, the hubris of reason, practical incompleteness, and the ideological concealment of relations of domination. It then examines how these criticisms were reformulated after 1948 in response to the emergence of the contemporary human rights paradigm, focusing on the institutional, anthropological, and ideological critiques developed by authors such as Arendt, Weil, Villey, MacIntyre, Žižek, and MacKinnon. The article argues that contemporary human rights cannot be understood apart from this history of criticism. Far from undermining the human rights project, successive accusations of abstraction have repeatedly compelled it to redefine its philosophical foundations, broaden its universal aspirations, and strengthen its institutional articulation. The legitimacy of human rights is therefore presented not as the product of an unquestionable foundation but as an historically reflexive achievement continually renewed through practices of justification, contestation, and institutional development.

Keywords. Human Rights, Rights of Man, Abstraction, Genealogy, Universalism, Legal Philosophy.

1. From the Rights of Man to Human Rights

1.1. The Historicity of Rights

Neither the "rights of man" nor "human rights" are timeless concepts. The idea of subjective rights as limits on sovereign power emerged only gradually within Western legal thought, acquiring a more definite form between the seventeenth and eighteenth centuries as an individualistic conception of society became firmly established.¹ The declarations of rights adopted at the end of the eighteenth century gave unprecedented political and legal expression to this transformation. Most notably, the 'Déclaration des droits de l'homme et du citoyen' (hereafter, 'Déclaration'), adopted by the French National Assembly on 26 August 1789, proclaimed the rights of individuals—emphatically attributed to all men (*les hommes*)—to be "natural and imprescriptible."² Yet its universalist language should not obscure its local scope. The 'Déclaration' remained a domestic act, legally effective within the boundaries of the nation-state. As Norberto Bobbio famously observed, rights originated in

¹ The literature on the origins of the modern concept of subjective rights is deeply divided. For an overview of the debate, see at least Leo Strauss, *Natural Law and History* (University of Chicago Press 1953); Gerhard Oestreich, *Geschichte der Menschenrechte und Grundfreiheiten im Umriß* (Duncker & Humblot 1968); Michel Villey, *La formation de la pensée juridique moderne* (Les Cours de Droit 1968); Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge University Press 1979); Pietro Costa, *Civitas. Storia della cittadinanza in Europa* (4 vols, Laterza 1999–2001).

² 'Déclaration de droits de l'homme et du citoyen' (1789), art. 1 and 2.

philosophical theories as “universal natural rights” but became, through the French Revolution, “particular positive rights.”³

More than a century and a half—and the catastrophes of two world wars—would pass before rights were proclaimed as “universal positive rights.”⁴ With the adoption of the ‘Universal Declaration of Human Rights’ (hereafter, ‘Declaration’) in 1948, the United Nations General Assembly affirmed for the first time that “all human beings are born free and equal in dignity and rights.”⁵ The ‘Declaration’ also articulated a new normative horizon by establishing an explicit connection between human rights, freedom, justice, and peace⁶. The shift from the eighteenth-century rights of man to twentieth-century human rights was therefore not merely terminological, since it marked the emergence of a new international cultural, political, and legal paradigm based on universal aspirations.

Writing at the end of the first quarter of the twenty-first century, however, those aspirations appear only partially fulfilled. Human rights are increasingly perceived to be under unprecedented pressure, and a growing body of scholarship has argued that their historical trajectory may have reached its end.⁷ According to this view, the age of human rights reached its apogee after the fall of the Berlin Wall before entering a new phase of decline following the global financial crisis of 2008. The primacy of security, the closure of borders, the renewed emphasis on the national rights of citizens, the retreat from cosmopolitan aspirations, and the re-legitimation of war as an instrument of international politics are frequently cited as symptoms of this reversal.

The contemporary crisis of human rights cannot, however, be understood solely by measuring the distance between their normative promises and their practical effectiveness. It must also be situated within the longer history of the objections raised against the universal language of rights. Among these, none has proved more persistent or more philosophically productive than the accusation of abstraction.

This article argues that abstraction has never designated a single defect. Since the late eighteenth century, the term has been used to identify a succession of different alleged weaknesses attributed to the discourse of rights. Such a view also supports a constructive claim. Human rights have survived not despite the accusation of abstraction, but by repeatedly confronting, incorporating, and transforming it. Their contemporary meaning has been progressively reshaped through sustained engagement with the criticisms directed against them. Thus, taking the accusation of abstraction seriously need not lead to the abandonment of human rights. It may instead provide the basis for a historically informed and philosophically minimalist defence of their continuing legitimacy.

The argument proceeds in four stages. Section 1 defines human rights as a historical and prescriptive concept and examines their many faces. Section 2 and 3 reconstruct the changing meanings of the accusation of abstraction, from the critiques of the 1789 ‘Déclaration’ to the twentieth-century reformulations directed against the 1948 ‘Declaration’. Section 4 offers some concluding remarks and briefly addresses the main strategies of delegitimation.

1.2. What Human Rights Are

For the purposes of this article, “human rights” refers to the body of negative and positive rights recognised under international law, directed towards the protection of fundamental human needs and attributed to every human being simply by virtue of being human.⁸ In this strict sense, the human rights paradigm emerged only after the Second World War⁹. Its purpose was to establish the

³ Norberto Bobbio, *L'età dei diritti* (Einaudi 1990) 21–24.

⁴ Ibid 23.

⁵ ‘Universal Declaration of Human Rights’ (1948), art. 1.

⁶ Ibid, Preamble.

⁷ Starting from Costas Douzinas, *The End of Human Rights* (Hart Publishing 2000).

⁸ See in part. Antonio Cassese, *I diritti umani oggi* (Laterza 2005) and Salvatore Zappalà, *La tutela internazionale dei diritti umani. La responsabilità degli Stati e il governo mondiale* (Il Mulino 2023).

⁹ Pietro Costa, ‘I diritti umani’ in Id., *Saggi di storia della cultura giuridico-politica, III. Storie di concetti: diritti* (Giuffrè Lefebvre 2025) 527–537.

normative foundations of a new international order capable, at least in exceptional circumstances, of placing limits upon state sovereignty.¹⁰ Human rights thus represented a profound cultural, political, and legal transformation.¹¹

Their emergence transformed both individual self-understanding and the normative language of social and political life. At the level of individual identity, human rights became “symbols” endowed with deep psychological significance.¹² At the collective level, they came to function as a “new code for humanity,” a “new system for classifying reality,” and a “new common vocabulary,”¹³ as well as a set of “standards of action”¹⁴ providing shared criteria for the international protection of the human person.¹⁵ They are not merely a catalogue of legal entitlements. They also furnish the normative language through which individuals and groups interpret injustice, formulate claims, and evaluate political institutions.

Because human rights are historical, neither their content nor their interpretation can be fixed once and for all. They must remain capable of responding to changing social conditions, emerging forms of vulnerability, and new experiences of injustice.¹⁶ This openness should not be confused with conceptual indeterminacy. At its core lies what has become over time an irreducible and non-negotiable prohibition against the dehumanisation of others, most clearly embodied in the prohibitions of slavery, torture, and cruel, inhuman, or degrading treatment or punishment.¹⁷ This minimum, now firmly grounded in historical consensus, is intrinsically connected to the rights to life, liberty, security of the person, and due process of law. It also provides the normative foundation for the progressive recognition of a broader set of civil, political, social, economic, and cultural rights. This conception entails a minimalist approach to the philosophical foundation of human rights. Minimalism should not be mistaken for theoretical weakness or limited political ambition. Rather, it is a deliberate methodological choice intended to preserve the possibility of agreement across divergent moral, religious, and philosophical traditions. Drawing on authors such as Michael Ignatieff and Joshua Cohen, I understand human rights as combining the value of pluralism with a commitment to tolerance. Accordingly, their justification is unfoundational,¹⁸ or even anti-foundationalist,¹⁹ insofar as it does not depend upon the acceptance of a single comprehensive conception of the person or the good.

This does not render philosophical justification unnecessary. The search for a single, conclusive foundation may be a “misconceived problem,”²⁰ but the need to justify human rights remains. Because they are continually contested, interpreted, and applied in changing historical circumstances,

¹⁰ See James Nickel, *Making Sense of Human Rights* (Blackwell 2007) 7–21; Samuel Moyn, *Human Rights and the Uses of History* (Verso 2014) 69–87, 87–99.

¹¹ Bobbio (n 3) IX, XVI.

¹² Costas Douzinas, ‘Identità, riconoscimento, diritti: cosa può insegnarci Hegel sui diritti umani?’ in Antonio Carnevale, Irene Strazzeri (eds), *Lotte, riconoscimento, diritti* (Morlacchi 2011) 36; Patricia J. Williams, *The Alchemy of Race and Rights* (Harvard University Press 1991) 165.

¹³ See Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton University Press 2001).

¹⁴ Cassese (n 8) 3–4.

¹⁵ Zappalà (n 8) 11; David P. Forsythe, *Human Rights in International Relations* (Cambridge University Press 2017) 40–74.

¹⁶ Cassese (n 8) 211. See also Charles Beitz, *The Idea of Human Rights* (Oxford University Press 2009); Jeffrey Flynn, *Genealogies of Human Rights: What’s at Stake?* in Adam Etinson (ed), *Human Rights: Moral or Political?* (Oxford University Press 2018) 103–117.

¹⁷ On the troubling revival of the debate over the justification of torture, see Massimo La Torre, Marina Lalatta Costerbosa, *Legalizzare la tortura? Ascesa e declino dello Stato di diritto* (Il Mulino 2013).

¹⁸ Joshua Cohen, ‘Minimalism about Human Rights the Most We Can Hope For?’ (2004) 2 *The Journal of Political Philosophy* 190–213. See also John Tasioulas, ‘Human Rights, Universality, and the Values of Personhood’ (2002) 1 *European Journal of Philosophy* 79–100; Amartya Sen, ‘Elements of a Theory of Human Rights’ (2004) 4 *Philosophy and Public Affairs* 315–356; Joseph Raz, ‘Human Rights Without Foundations’ in John Tasioulas, Samantha Besson (eds), *The Philosophy of International Law* (Oxford University Press 2010) 321–339; John Tasioulas, ‘Towards a Philosophy of Human Rights’ (2012) 1 *Current Legal Problems* 1–30.

¹⁹ Ignatieff (n 13).

²⁰ Bobbio (n 3) XIII, 18.

their legitimacy must itself be continually renewed through argument. Even where broad philosophical agreement appears to exist—for example, around the Kantian conception of human dignity as an inherent value independent of individual merit or moral worth²¹—the practical implications of that principle remain open to interpretation and require further justification.²²

The minimalist conception defended here also clarifies the main difference between contemporary human rights and the eighteenth-century rights of man. Although the former is historically derived from the latter, the two concepts should not be treated as interchangeable. The rights of man were generally understood as natural rights grounded in specific epistemological and metaphysical assumptions. Contemporary human rights, by contrast, remain deliberately neutral, at least in principle, with respect to competing accounts of moral ontology and epistemology.²³ Their universal validity does not depend upon the claim that they can be derived from a single, timeless conception of human nature.

Precisely because they do not rest upon a single metaphysical foundation, human rights are best understood in terms of the normative functions they perform. Negatively, they identify intolerable violations and establish limits that must never be crossed. Positively, they orient political action towards forms of social and institutional organisation capable of protecting and advancing human dignity. In accordance with the minimalist approach defended here, the negative function retains logical priority. Human rights are first and foremost “protective boundaries marking off, like shields around human beings, the domain of evil.”²⁴ They define a culturally inclusive minimum whose protection is mandatory and non-negotiable.

Beyond this minimum, however, they also point towards a broader political horizon. Human rights identify both a threshold beneath which human beings must never be allowed to fall and a horizon towards which political and legal institutions should continually strive. It is precisely this combination of minimum protection and open-ended prescription that makes them historical without making them relative, and universal without requiring a single metaphysical foundation.

1.3. The Many Faces of Human Rights

The preceding discussion has defined human rights as a historical, prescriptive, and philosophically minimalist concept. Precisely these characteristics, however, make the concept internally complex. Human rights cannot be reduced either to moral principles or to legal rules, either to political aspirations or to institutional guarantees. Rather, they occupy an intermediate space in which different normative dimensions continuously interact. Appreciating this complexity is essential for understanding why the concept has repeatedly been accused of being “abstract.”

The first source of tension lies in the relationship between morality and law. Human rights derive much of their normative authority from moral claims concerning the equal dignity of every human being, yet they acquire practical effectiveness only through legal institutions capable of recognising, interpreting, and enforcing them. Their moral dimension explains why they are regarded as inviolable;

²¹ In the vast literature on the subject, see, for example, Jürgen Habermas, ‘The Concept of Human Dignity and the Realistic Utopia of Human Rights’ (2010) 4 *Metaphilosophy* 464–480; Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press 2011) 335; Charles Beitz, ‘Human Dignity in the Theory of Human Rights: Nothing but a Phrase?’ (2013) 3 *Philosophy and Public Affairs* 259–290; Jeremy Waldron, ‘Is Dignity the Foundation of Human Rights?’ in Rowan Cruft, S. Matthew Liao, Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (Oxford University Press 2015) 117–138; A. John Simmons, ‘Human Rights, Natural Rights, and Human Dignity’ in Rowan Cruft, S. Matthew Liao, Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (Oxford University Press 2015) 138–153; Adam Etinson, ‘What’s So Special About Human Dignity?’ (2020) 4 *Philosophy and Public Affairs* 353–381.

²² The point is well illustrated by the famous “dwarf tossing” case. See Cassese (n 8) 54–59.

²³ Cfr. Joel Feinberg, *Social Philosophy* (Prentice-Hall 1973) 84–97; Thomas Scanlon, ‘Human Rights as a Neutral Concern’ in Id., *The Difficulty of Tolerance: Essays in Political Philosophy* (Oxford University Press 2001) 113–123; Maurice Cranston, ‘Are There Any Human Rights?’ (1983) 4 *Daedalus* 1–17.

²⁴ Salvatore Veca, ‘I diritti umani e la priorità del male’ in Michael Ignatieff, *Una ragionevole apologia dei diritti umani*, with essays by Salvatore Veca and Danilo Zolo (Feltrinelli 2003) 101–134, in part. 122. See also Eric Blumenson, *Why Human Rights: A Philosophical Guide* (Routledge 2024) 2.

their legal dimension explains why they can become enforceable.²⁵ Neither aspect is sufficient on its own. Moral principles without institutional embodiment remain politically fragile, while legal rules detached from their moral justification lose much of their normative authority.

This dual character becomes particularly evident in the relationship between human rights and the state. Although human rights belong to individuals simply by virtue of their humanity, they remain, for the most part, enforceable only through states. International protection generally becomes available only after domestic remedies have been exhausted, and procedures granting individuals direct access to international judicial bodies remain comparatively rare.²⁶ Consequently, the primary guarantors of human rights are often the very states responsible for violating them.

This structural dependence upon political institutions introduces a second tension. Universal validity coexists with institutional plurality. International mechanisms remain incomplete, regional systems coexist with global ones, and the practical interpretation of rights inevitably evolves over time. Because human rights are historical, their application admits both progressive and regressive developments. Moreover, although they are commonly described as indivisible, political practice frequently accords priority to particular categories of rights, especially civil and political rights.²⁷

A further tension concerns the relationship between aspiration and institution. Human rights articulate a standard of justice that transcends any existing legal order, enabling positive law itself to be criticised. At the same time, they acquire practical force only through institutions capable of translating universal principles into effective legal guarantees. Their distinctive character therefore lies precisely in the continuous interaction between critical aspiration and institutional realisation.

These tensions are not conceptual defects but constitutive features of the human rights project itself. Human rights remain universal while depending upon historically situated institutions; they are morally demanding while legally mediated; they are historically contingent while claiming normative validity. Far from revealing incoherence, these tensions reflect the ambitious attempt to transform universal moral claims into effective legal and political practice.

Precisely because human rights inhabit this intermediate space between morality and law, universality and history, aspiration and institution, they have repeatedly appeared vulnerable to the accusation of abstraction.

2. Human Rights and Their Enemies: The Abstraction of the ‘Déclaration’

The conceptual tensions discussed in the previous section have repeatedly exposed the discourse of human rights to criticism. Among the many objections advanced against it, one has proved remarkably persistent: the accusation of abstraction.²⁸ The charge accompanied the eighteenth-

²⁵ See Elena Pariotti, *I diritti umani. Tra giustizia e ordinamenti giuridici* (UTET 2008) IX, 3–4.

²⁶ Zappalà (n 8) 25. On the problems surrounding the enforceability of human rights, see Onora O’Neill, ‘The Dark Side of Human Rights’ (2005) 2 *International Affairs* 427–439; John Tasioulas, ‘The Moral Reality of Human Rights’ in Thomas Pogge (ed), *Freedom From Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford University Press 2007) 75–101; Adam Etinson, ‘Human Rights, Claimability, and the Uses of Abstraction’ (2013) 4 *Utilitas* 463–486.

²⁷ On the logical and conceptual indivisibility of human rights, see Thomas Casadei, *I diritti sociali. Un percorso filosofico-giuridico* (Firenze University Press 2012). On the indivisibility of human rights from the perspectives of rights-holding and specification, see Thomas Casadei (ed), *Diritti umani e soggetti vulnerabili. Violazioni, trasformazioni, aporie* (Giappichelli 2012) and Maria Giulia Bernardini, Vincenzo Lorubbio (eds), *Diritti umani e condizioni di vulnerabilità* (Erickson 2023).

²⁸ On the nature and meaning of the charge of abstraction levelled against the universalist principles of the 1789 ‘Déclaration’, see Eduardo Chitas, Domenico Losurdo (eds), *Abstrakt und Konkret. Zwei Schlüsselkategorien des zeitgenössischen Denkens* (Peter Lang 2000); Domenico Losurdo, ‘Astratto/concreto. Hegel, Nietzsche, Marx (e la tradizione marxista)’ in Id., *L’ipocondria dell’impolitico. La critica di Hegel ieri e oggi* (Milella 2001) 35–73; Eugenio Scalfari (ed), *Attualità dell’Illuminismo* (Laterza 2001); Fiorinda Li Vigni, *Il concetto di astratto nel giudizio sulla Rivoluzione francese. Burke, Maistre, Cuoco, Hegel, Marx* (Istituto Italiano per gli studi Filosofici 2006); Jeremy Waldron, *Nonsense upon Stilts. Bentham, Burke and Marx on Human Rights* (n.e. Routledge 2015) 166–209.

century doctrine of the rights of man from its very inception and has continued to shape debates on human rights ever since.

Yet abstraction has never meant the same thing. From the late eighteenth century onwards, different authors have employed the term to identify fundamentally different defects, since the apparent continuity of the accusation therefore conceals a profound conceptual discontinuity. This section argues that the history of the criticism of rights may be reconstructed as the history of the successive philosophical meanings attributed to abstraction itself. The aim is not to provide a comprehensive survey of critics of human rights, nor to assess the historical influence of particular authors. Rather, it is to follow the gradual transformation of a single philosophical objection whose meaning changes repeatedly while retaining the same vocabulary. The discussion therefore proceeds genealogically rather than chronologically, since each of the authors considered marks a distinct moment in the conceptual history of abstraction.

Read in this way, the following critiques do not accumulate into a single decisive refutation of rights. On the contrary, they reveal that the accusation of abstraction itself possesses a history. Each reformulation identifies a genuine difficulty while simultaneously redefining the object under discussion. The genealogy reconstructed here therefore serves a double purpose. It explains why the discourse of rights has proved so persistently controversial, and it prepares the argument developed in the following sections: that the contemporary concept of human rights has emerged, at least in part, through its repeated confrontation with these successive critiques.

2.1. The Historicist Critique: Abstraction as Rationalistic and Metaphysical Construction

The first philosophical meaning of the accusation of abstraction emerges in Edmund Burke's historicist critique of the French Revolution. In his *Reflections on the Revolution in France* (1790), Burke argues that the rights proclaimed in the 'Déclaration' are abstract because they are the product of a rationalistic and metaphysical construction, detached from the historical conditions that alone can give political rights concrete reality. Against the revolutionary appeal to universal principles, Burke opposes the accumulated wisdom of history, embodied in the institutions, customs, and constitutional traditions of a particular political community.

For Burke, political and legal order cannot be constructed according to the logic of mathematics or abstract reasoning. It is instead the product of prudence, a practical virtue cultivated through historical experience. The *droits de l'homme*, conceived by French philosophers as universally valid principles, therefore appear to him as a dangerous "mine"²⁹ threatening to destroy the political fabric of Europe. These "clumsy metaphysical subtilities,"³⁰ he argues, are intrinsically absolutist because they admit of no "temperament nor compromise;"³¹ they present themselves as universally binding while ignoring the complexity and contingency of political life.

Burke's critique develops along three closely related lines. First, the rights of man are socially destructive because they dissolve the intermediate institutions and inherited hierarchies upon which political order depends. By grounding society upon a principle of "violent and extreme" equality,³² they erase the diversity of social roles, corporate bodies, and historical traditions that make collective life both stable and meaningful.

Second, they rest upon an impossible fiction. The revolutionaries derive rights from a hypothetical state of nature which, even if it ever existed, has long since been superseded by civil society. Genuine rights are therefore not natural but historical: they emerge gradually through constitutional development and acquire concrete form as positive liberties, privileges, and legal guarantees.³³

²⁹ Edmund Burke, *Reflections on the Revolution in France* (Penguin [1790]1968) 148.

³⁰ Ibid 149.

³¹ Ibid 148.

³² Ibid 112.

³³ Ibid 153.

Third, Burke regards the language of natural rights as a political rhetoric serving particular interests while pretending to speak in the name of humanity as a whole. The revolutionary doctrine becomes the ideological banner of an ambitious class of *parvenus*, incapable of recognising that the proper end of politics is not the victory of one social group but the common good understood as the harmonious integration of the whole.³⁴

The abstraction of the ‘Déclaration’ therefore consists, above all, in its image of society as an aggregate of “unconnected individuals.”³⁵ Such an image mistakes a philosophical construction for political reality. By imagining that society can be rebuilt from universal principles alone, the revolutionaries destroy the historical conditions that make liberty itself possible.

Against this rationalistic universalism, Burke opposes the English constitutional tradition as the authentic model of political freedom. The British constitution, shaped through centuries of gradual adjustment and historical continuity, preserves diversity while integrating it within a stable political order oriented towards the common good. Equality, in Burke’s account, is therefore not a principle of social uniformity but a moral recognition of the common humanity of persons whose roles and functions necessarily differ within society.³⁶

Burke thus establishes the first meaning of the accusation of abstraction. According to him, rights appear abstract because they are detached from history and from the concrete life of political communities.

2.2. The Proto-Feminist Critique: Abstraction as the Strategic Contraction of the Universal

Whereas Burke criticised the rights of man for being detached from history, the proto-feminist critique argues that they are abstract because the universal subject to whom they refer is itself artificially constructed. The problem is no longer the rationalistic foundations of rights, but the hidden exclusion operating within their apparently universal language.

According to this critique, the bearer of rights designated by *l’homme et le citoyen* is not humanity as such but a historically situated subject implicitly identified with the male citizen. The universal is therefore achieved only through a strategic contraction of its own referent. The revolutionary syllogism becomes fallacious precisely because its minor premise remains unspoken: “all human beings possess rights; *all human beings are men*; therefore, all men—but not women—possess rights”.

This conceptual operation reinforced a long-standing strategy of dehumanisation directed against women. Although recognised as members of the human species under certain conditions, women were systematically denied those characteristics regarded as necessary for participation in political and civil society. Assimilated to children or to animals—and, above all, defined through their difference from men—they entered modern political theory already excluded from the category of the fully human.³⁷ The legal order established by the social contract consequently appeared, to writers such as Olympe de Gouges, not as the expression of universal reason but as a specifically masculine political construction designed (*fagoté*)³⁸ to preserve existing relations of domination.

De Gouges’ response to the Constitution of 1791 was deceptively simple. Rather than rejecting the revolutionary doctrine of rights, she rewrote the ‘Déclaration’ in the feminine. This gesture, modest in form but radical in its implications, exposed the limits of an abstract universalism that claimed to speak in the name of humanity while excluding half of it.

³⁴ Ibid 123.

³⁵ Ibid 186.

³⁶ Ibid 150.

³⁷ See Carole Pateman, *The Sexual Contract* (Polity Press 1988).

³⁸ Olympe de Gouges, ‘Déclaration de la femme et de la citoyenne’ in Ead., *Œuvres complètes* (tome IV, Cocagne 2017) 49–58, in part. 51.

The Preamble of the *Déclaration des droits de la femme et de la citoyenne* (1791) reveals this contradiction at its origin. Because women—the “mothers, daughters and sisters, representatives of the nation”³⁹—had been excluded from the constituent process, the revolutionary declaration could not legitimately claim to express the will of the nation as a whole. The nation itself must instead be understood as “the union of woman and man,”⁴⁰ making any exercise of sovereignty by only one half of humanity fundamentally illegitimate.

From this premise follows the recognition that “the aim of every political association” must be the integration—not the replacement—of the natural and imprescriptible rights of woman with those of man.⁴¹ Yet this is not merely an extension of the catalogue of rights-holders. Once women become part of the universal subject, the content of universal rights itself is transformed.

Article 2 offers the clearest example of this conceptual shift. Whereas the original ‘Déclaration’ identifies liberty, property, security, and resistance to oppression as the natural rights of man, de Gouges introduces a seemingly minor but philosophically decisive modification. Resistance to oppression becomes, “above all” (*surtout*), the foremost of these rights.⁴² The addition of a single adverb fundamentally redefines the concept of oppression. The traditional problem of resistance to tyrannical government—a vertical relationship between sovereign and subject—is displaced by an analysis of domination operating horizontally within society itself, beginning with the subordination of women to men.

De Gouges’ intervention therefore does much more than expose an inconsistency in the revolutionary doctrine of rights. It demonstrates that universalism cannot be sustained by appealing to abstract categories whose apparent neutrality conceals relations of exclusion. A genuinely universal discourse of rights must instead emerge through the continuous expansion and revision of the very subject it claims to represent.

The immediate political consequences of her intervention were limited. The *Déclaration des droits de la femme et de la citoyenne* was ignored, and women’s participation in the Revolution was progressively suppressed after 1793. Its philosophical significance, however, has proved enduring. De Gouges shows that universality is not compromised by becoming more concrete. On the contrary, universal principles become genuinely universal only insofar as they remain open to those whose exclusion first revealed their incompleteness.

The meaning of abstraction has thus shifted once again. Rights are no longer abstract because they are detached from history, but because the supposedly universal subject of rights conceals historically produced relations of exclusion.

2.3. The Sadean Critique: Abstraction as the Denial of Human Nature

After de Gouges’ exposition of the abstraction of the universal subject of rights, the Marquis de Sade attacks the moral anthropology on which the doctrine of rights itself rests. Rights are abstract, in his view, because they presuppose a conception of human nature fundamentally at odds with the reality of human passions.

A concise formulation of this position appears in the dedication to *La Philosophie dans le boudoir* (1795). Nature alone lays down binding prescriptions, and human beings ought to submit to them rather than presume to transform them. Yet nature itself is neither benevolent nor rational. It is cruel, violent, and indifferent. Human beings can scatter only “a few roses upon the thorns of life” by abandoning themselves entirely to pleasure, yielding to their strongest passions, corrupting

³⁹ Ibid.

⁴⁰ Ibid 52.

⁴¹ Ibid.

⁴² Ibid.

innocence, overturning the rules devised by “cold and insipid moralists,” and allowing instinct alone to guide their conduct.⁴³

Sade thus develops what has aptly been described as a genuinely “demonic” or “voracious” morality, directed above all against the very act of moral judgement.⁴⁴ His universe is inhabited by radically isolated individuals incapable of solidarity or compassion, for whom egoism realised through crime becomes the only authentic law of nature.

Within this framework, fact gives rise to right. Yet the relevant fact is a corrupt and perverse conception of nature that legitimises a form of cruelty which is not merely instinctive but rational, methodical, and calculating. Human beings fulfil nature precisely by becoming criminal, embracing violence, domination, and excess. Sade’s novels therefore function not simply as literary provocations but as philosophical demonstrations of what he takes to be the true structure of human existence.

From this perspective, the doctrine of the rights of man appears profoundly artificial. Rights, morality, and law are all exposed as fictions devised by those unwilling to acknowledge the violence inherent in nature itself. Rather than correcting natural brutality, they merely oppose it with an inauthentic form of domination.⁴⁵

The meaning of abstraction therefore changes once again. Unlike Burke, Sade does not criticise the rights of man because they are detached from history; unlike de Gouges, he does not argue that they conceal relations of exclusion. Instead, he contends that they rest upon an entirely mistaken conception of human beings. Their abstraction lies in the belief that moral and legal norms can restrain desires that are constitutive of human existence. Universal rights consequently appear not merely impracticable but fundamentally anti-natural.

Sade thus relocates the genealogy of abstraction from politics to anthropology. The problem is no longer the historical community or the subject of rights, but the conception of human nature presupposed by the discourse of rights itself.

2.4. The Legal Positivist Critique: Abstraction as Semantic and Juridical Emptiness

With Jeremy Bentham, the accusation of abstraction undergoes a decisive transformation. According to him, rights are abstract because they claim juridical existence independently of the legal order that alone can create and enforce them.

The paradigmatic expression of this critique is Bentham’s *Anarchical Fallacies* (1796), a detailed commentary on the ‘Déclaration’ structured around two closely related claims. The first is jurisprudential: the rights of man are not genuine legal rights but merely moral aspirations. The second is political: precisely because they claim authority independently of positive law, they ultimately undermine the very institution capable of protecting individual freedom—the sovereign state and its monopoly of coercive force.⁴⁶

Bentham’s originality lies in relocating the accusation of abstraction from the level of political philosophy to that of jurisprudence. Unlike Burke, he does not criticise the revolutionary doctrine because it is detached from history; unlike de Gouges, he does not expose its exclusions; unlike Sade, he does not dispute its conception of human nature. Instead, he asks a prior question: what kind of thing is a right?

His answer is uncompromising. The ‘Déclaration’ rests upon foundations that are at once rhetorical, deceptive, and conceptually empty. Indeed, Bentham regards it as contrary to “the nature of things,”⁴⁷ beginning with the obscure distinction between “man” and “citizen” announced in its very title.⁴⁸

⁴³ Donatien-Alphonse-François de Sade, *La philosophie dans le boudoir, ou Les instituteurs immoraux* (Gallimard [1795]1976) 28.

⁴⁴ See Simone de Beauvoir, *Faut-il brûler Sade?* (Gallimard 1955) 20.

⁴⁵ Ibid 67.

⁴⁶ Jeremy Bentham, *Anarchical Fallacies. Being an Examination of the Declarations of Rights Issued during the French Revolution* in Id., *The Works of Jeremy Bentham* (vol 2, Simpkin Marshall 1843) 489–534.

⁴⁷ Ibid 491.

⁴⁸ Ibid 492.

More fundamentally, he argues that the declaration serves no useful juridical purpose. Either it proclaims rights existing independently of legislation—in which case they are unlimited (*unbounded*) and therefore indistinguishable from arbitrary force—or it merely restates rights already recognised by law, in which case it adds nothing to the existing legal order.⁴⁹

This dilemma is reinforced by Bentham's analysis of legal language. The revolutionary text, he argues, is permeated by "radical and pervasive" errors, generated by an abstract, vague, and emotionally charged vocabulary that inflames political passions while encouraging anarchic expectations.⁵⁰

The central example is the word *right* itself. Bentham famously observes that, as an adjective, the term is "innocent as a dove," breathing "nothing but morality and peace."⁵¹ Once transformed into a substantive noun, however, it acquires a dangerous political function, planting "the standard of insurrection, anarchy, and lawless violence".⁵²

Language is therefore never neutral. Rights are not discovered but created by law. As Bentham famously concludes:

Right, the substantive right, is the child of law: from *real* laws come *real* rights; but from *imaginary* laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come *imaginary* rights, a bastard brood of monsters, gorgons and chimeras dire.⁵³

Natural rights are consequently not merely false but conceptually incoherent. They are "nonsense upon stilts,"⁵⁴ because they presuppose the existence of rights prior to the legal order that alone can bring rights into existence. One may reasonably argue that there are moral reasons for creating legal rights before the establishment of the state, but those reasons are not themselves rights—just as, Bentham remarks with characteristic irony, "hunger is not bread."⁵⁵

The political consequences of this confusion are, in Bentham's view, deeply dangerous. By claiming to impose permanent limits upon legislative authority, the doctrine of natural rights deprives the state of the powers necessary to guarantee security and public order. Legislators are reduced to little more than "turkeys,"⁵⁶ while the coercive authority of the legal system is paralysed by arbitrary and self-defeating principles. Faced with what he dismisses as the "execrable trash" celebrated by revolutionary France, Bentham ultimately reaffirms the superiority of the British constitutional tradition, whose rights are genuine precisely because they derive from positive law and have been consolidated through legal and historical practice.⁵⁷

Bentham thus gives the accusation of abstraction an entirely new philosophical meaning. Abstraction no longer refers primarily to history, the universal subject or human nature. It denotes a semantic and juridical error: the confusion between moral claims and legal rights. The problem is no longer what rights ought to protect, but whether rights can exist before the legal order that constitutes them.

2.5. The Providentialist Critique: Abstraction as the Hubris of Reason

The accusation of abstraction undergoes yet another transformation in the work of Joseph de Maistre. Whereas Bentham relocates the problem to the language of law, de Maistre directs it against reason

⁴⁹ Ibid 500–502.

⁵⁰ Ibid 496–497.

⁵¹ Ibid 523.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid 501.

⁵⁵ Ibid.

⁵⁶ Ibid 520.

⁵⁷ Ibid 521–522.

itself. Rights are abstract because they presuppose that human beings are capable of founding political order independently of the providential order governing history.

This critique is most clearly articulated in the *Considérations sur la France* (1796), a work grounded in the conviction that human beings are, paradoxically, freely enslaved. Although they believe themselves to act according to their own will, they unknowingly contribute to the fulfilment of a providential necessity directing the course of history. Humanity is therefore at once proud, sinful, and fundamentally powerless. Its greatest illusion consists in believing itself capable of genuine political creation.⁵⁸

From this perspective, the abstraction of the rights of man does not lie in their juridical status, as Bentham had argued, nor in their detachment from historical experience, as Burke maintained. Their abstraction lies in the rationalist presumption that political institutions can be consciously designed according to universal principles discovered by autonomous reason.

Accordingly, what deserves to be regarded as natural is not the catalogue of rights proclaimed by the French Revolution but the historical order itself. Institutions derive their legitimacy from divine providence rather than from constituent power, and political continuity reflects an order that human beings neither create nor fully comprehend. The revolutionary attempt to discover and proclaim new rights therefore appears as absurd as expecting a tree to bear fruit in the middle of January.⁵⁹

De Maistre repeatedly contrasts this providential conception of history with the rationalist ambitions embodied in both the 'Déclaration' and the revolutionary constitutions that followed it. Their common error consists in imagining that political communities can be reconstructed according to abstract principles valid for humanity as such.

His celebrated observation captures the point:

The Constitution of 1795, like its elder sisters, was made for *man*. But there is no such thing as *man* in the world. I have seen Frenchmen, Italians, Russians, and so on; I even know, thanks to Montesquieu, that *one can be Persian*. But as for *man*, I declare that I have never encountered him in my life. If he exists, it is entirely without my knowledge [...] A constitution made for all nations is made for none: it is a pure abstraction.⁶⁰

This passage represents one of the most radical formulations of anti-universalism produced in the aftermath of the French Revolution. Humanity, considered independently of its historical, cultural, and religious determinations, is itself an abstraction. Political legitimacy therefore cannot be grounded in universal principles but only in historically constituted peoples, traditions, and institutions.

Against the rationalism of the Enlightenment, de Maistre opposes authority, mystery, and providence. Human beings are called not to redesign the political order but to recognise the limits of their own reason and to accept even those historical events that appear incomprehensible or tragic as elements of a providential design. The Revolution itself thus becomes intelligible only as a divine chastisement inflicted upon a humanity that presumed to replace providence with autonomous reason. Its violence acquires a paradoxical redemptive significance: purification is achieved only through suffering and sacrifice.

The Revolution consequently reveals what de Maistre famously describes as "something satanic,"⁶¹ while simultaneously confirming the existence of an "order within disorder."⁶² That order necessarily escapes rational comprehension. Human beings are incapable not only of founding political communities anew but even of fully understanding the historical order within which they already live.

⁵⁸ Joseph De Maistre, *Considérations sur la France* (Rusand [1796]1829).

⁵⁹ Ibid 3.

⁶⁰ Ibid 94–95, my translation.

⁶¹ Ibid 71.

⁶² Ibid 156–157.

The accusation of abstraction therefore reaches a new level of philosophical radicality. Rights are no longer criticised because they are detached from history, because they conceal exclusion, because they presuppose an implausible anthropology, or because they lack juridical reality. They are abstract because they embody the Enlightenment's deepest illusion: the belief that reason alone can legislate for history.

2.6. The Idealist Critique: Abstraction as Practical Incompleteness

With de Maistre, abstraction is no longer merely a defect to be exposed but becomes the expression of a fundamental philosophical problem concerning the relationship between universality and historical reality. Hegel inherits this problem, yet transforms it entirely. For the first time, abstraction will cease to be understood simply as an error and will instead become a necessary moment in the realization of freedom itself.

With Hegel, the genealogy of abstraction reaches its decisive philosophical turning point. Whereas the preceding critiques all treated abstraction as a defect to be exposed, he does not simply reject these criticisms but transforms the problem itself. For the first time, abstraction ceases to denote a merely negative quality and becomes a necessary—though still incomplete—moment in the realization of freedom.

This transformation first appears in the *Phänomenologie des Geistes* (1807). There Hegel presents the French Revolution as the historical event through which “absolute freedom” (*absolute Freiheit*) first enters the world.⁶³ The Revolution represents a decisive philosophical achievement. Political authority is no longer grounded in inherited privilege or dynastic legitimacy but in the self-conscious activity of free individuals. For the first time, humanity attempts to organise political life according to genuinely universal principles.

Yet precisely because this freedom remains abstract, it proves incapable of sustaining a concrete political order. Hegel famously argues that absolute freedom “cannot produce any positive work or deed; there remains for it only *negative activity*. It is merely the *fury* of destruction (*die Furie des Verschwindens*).”⁶⁴ The Terror is therefore not an accidental deviation from the Revolution but the manifestation of an internal contradiction. Universal freedom, conceived only as the immediate negation of existing institutions, lacks the mediations necessary for its own realization.

Unlike Burke or de Maistre, however, Hegel does not infer from this that the revolutionary project should be abandoned. On the contrary, abstraction is indispensable. The rights proclaimed in 1789 express a genuine advance in the historical consciousness of freedom because they affirm that every individual possesses an intrinsic claim to legal personality. Their limitation lies not in their universality but in their incompleteness.

This argument is developed systematically in the *Grundlinien der Philosophie des Rechts* (1820). Hegel reconstructs the realization of freedom through three successive moments: Abstract Right (*abstraktes Recht*), Morality (*Moralität*), and Ethical Life (*Sittlichkeit*). Rights belong to the first of these moments. They establish the necessary recognition of persons as bearers of legal personality and formal freedom. Yet considered in isolation they remain one-sided. Freedom acquires concrete existence only through the institutions of ethical life—the family, civil society, and, ultimately, the state.

The abstraction of the rights of man therefore does not consist in their falsity but in their practical incompleteness. They formulate a universal principle whose realization still depends upon institutions capable of reconciling universality with particularity. Freedom cannot remain merely proclaimed; it must become objectively embodied.

This marks the most profound transformation yet undergone by the accusation of abstraction. Abstraction is no longer opposed to reality. It becomes the first moment of a dialectical process

⁶³ Georg Wilhelm Friedrich Hegel, *System der Wissenschaft. Erster Teil, die Phänomenologie des Geistes* (Goebhardt 1807) <<https://www.marxists.org/deutsch/philosophie/hegel/phaenom/kap6b3.htm#sb3>> accessed 29 July 2026.

⁶⁴ Ibid, my translation.

through which reality itself progressively comes to embody freedom. It is simultaneously necessary and insufficient: necessary because no concrete political order can emerge without universal principles; insufficient because universality remains empty until mediated by institutions.

Hegel thus occupies a pivotal place within the genealogy reconstructed in this section. He neither rejects the language of rights nor accepts it in its revolutionary form. Instead, he relocates the entire discussion. The question is no longer whether rights are abstract but how abstraction itself functions within the historical realization of freedom. The accusation of abstraction has been transformed into a philosophical category.

2.7. The Marxian Critique: Abstraction as the Ideological Form of Social Relations

Marx follows Hegel's transformation of the problem while radically relocating its object. If Hegel showed that abstraction is a necessary moment in the realization of freedom, Marx argues that the decisive abstractions are no longer produced primarily by philosophical thought but by the material organisation of society itself. The accusation of abstraction is therefore transferred from consciousness to social relations.

Marx's most systematic discussion of the rights of man appears in *Zur Judenfrage* (1843–44). There he distinguishes between political emancipation, achieved through the modern state, and the more demanding project of human emancipation. Political emancipation undoubtedly represents an important historical achievement, yet it remains confined within the limits of bourgeois society. The rights proclaimed by the modern state express this contradiction. They affirm universal equality while presupposing a social order structured by private property, economic inequality, and competition.⁶⁵ Marx therefore does not deny the historical significance of the rights of man. On the contrary, they represent a decisive stage in the emancipation of modern society. What he contests is their claim to embody universal human emancipation. The individual whose liberty they protect is not humanity as such but the isolated proprietor of civil society: an individual artificially separated from the network of social relations through which human existence is actually constituted.

Rights such as liberty, property, security, and equality consequently do not transcend existing social relations; they stabilise them. Political emancipation separates the citizen from the individual living within civil society, producing a dual existence in which formal legal equality coexists with profound material inequality. The apparent universality of rights therefore conceals the historically specific organisation of bourgeois society⁶⁶.

Unlike Bentham, Marx does not regard abstraction as a semantic or juridical defect. Nor does he, like Burke or de Maistre, reject universal principles in favour of history or tradition. The problem lies elsewhere. Abstraction is ideological because it presents historically contingent social relations—not, as in de Gouges, male sex—as though they expressed universal features of human existence.

In this respect, Marx simultaneously continues and transforms Hegel's project. Hegel had demonstrated that abstract universality requires concrete institutional mediation. Marx argues that those institutions are themselves embedded within historically specific relations of production. The decisive abstraction is therefore no longer philosophical but social. It is generated by the economic organisation of bourgeois society, which itself produces the isolated legal subject presupposed by the discourse of rights.

With Marx, the genealogy reconstructed in this section reaches its nineteenth-century culmination. Beginning with Burke, the accusation of abstraction progressively shifted from history to universality, from anthropology to legal language, from reason to dialectics. Marx introduces one final displacement. Abstraction is no longer understood primarily as a characteristic of ideas but as the ideological form assumed by concrete social relations themselves.

Yet precisely at this point the genealogy also reveals its own limits. Each critique has identified a genuine difficulty within the discourse of rights, but each has understood abstraction differently.

⁶⁵ Karl Marx, *Zur Judenfrage* in Karl Marx, Friedrich Engels, *Werke* (vol. 1, Dietz Verlag 1976) 347–377.

⁶⁶ Ibid.

Rather than converging upon a single objection capable of discrediting rights once and for all, these successive critiques have progressively transformed the meaning of the accusation itself. The history of the criticism of rights is therefore not the history of one objection repeatedly restated, but of one concept repeatedly redefined.

The twentieth century inherits this transformed conceptual landscape. The question will no longer be whether the rights of man are abstract, but whether the international discourse of human rights can overcome the multiple charges of abstraction inherited from the previous centuries.

3. Old and New Enemies: The Abstraction of the ‘Declaration’

The genealogy reconstructed so far has traced the successive philosophical meanings attributed to the accusation of abstraction within the eighteenth- and nineteenth-century doctrine of the rights of man. Although Burke, de Gouges, Sade, Bentham, de Maistre, Hegel, and Marx each understood abstraction differently, they all directed their criticism against the philosophical and political project inaugurated by the ‘Déclaration’ of 1789. The emergence of the contemporary discourse of human rights after the Second World War did not bring this genealogy to an end. It transformed both its object and the conditions under which the accusation itself could be articulated.

The adoption of the ‘Universal Declaration of Human Rights’ in 1948 profoundly altered the legal and political framework within which rights were understood. Human rights were no longer conceived primarily as natural rights proclaimed by a revolutionary constituent power but as internationally recognised standards intended to protect every human being regardless of nationality. Universalism itself assumed a different institutional form. It ceased to be principally the philosophical language of natural rights and became the normative language of international law.

This transformation also shifted the focus of the debate. Eighteenth-century critics had asked whether universal rights could be philosophically justified. Twentieth-century critics increasingly asked whether universal human rights could be institutionally realised, whether they genuinely represented humanity as a whole, and whether they remained capable of resisting the political and ideological forces that claimed to speak in their name. The question was no longer simply whether the doctrine of rights rested upon excessively abstract philosophical foundations. It became whether the contemporary discourse of human rights could fulfil the universal aspirations it proclaimed.

The accusation of abstraction therefore entered a new phase. It no longer generated entirely new philosophical meanings comparable to those reconstructed in the previous sections. Rather, it gave rise to new strategies for deploying an inherited conceptual repertoire within a profoundly changed historical context. Earlier criticisms were reformulated in light of the experience of totalitarianism, the internationalisation of legal protection, decolonisation, the emergence of new social movements, and the growing awareness of the ideological uses of universalism. The discussion that follows reconstructs three principal strategies through which the inherited accusation of abstraction was reformulated during the twentieth century.

3.1. Human Rights Are Not Rights

The first twentieth-century strategy of criticism questions whether human rights can properly be regarded as rights at all. The accusation of abstraction is now directed not primarily against their philosophical foundations but against their institutional reality. Human rights are said to remain abstract because they lack the juridical conditions necessary for their effective existence.

This criticism inherits an important aspect of Burke’s and Bentham’s arguments while reformulating it within the legal and political order established after 1945. The issue is no longer whether natural rights can exist prior to positive law. Rather, it is whether rights proclaimed at the international level can become genuinely effective while remaining overwhelmingly dependent upon the sovereign states whose conduct they are meant to regulate.

According to this line of argument, human rights continue to suffer from a structural double deficit. On the one hand, their content remains only partially stabilised through international legal consensus, leaving significant room for divergent interpretation and political disagreement. On the other hand, the institutions responsible for their enforcement remain comparatively weak. International protection generally depends upon the consent of states, which retain the sovereign power to determine the extent to which they are willing to submit themselves to international obligations. Human rights therefore appear less as directly enforceable legal rights than as normative aspirations whose practical force ultimately depends upon national political institutions.

The paradigmatic formulation of this critique was provided by Hannah Arendt in *The Origins of Totalitarianism* (1951). Reflecting on the fate of refugees and stateless persons after the Second World War, Arendt argued that the rights of man proved least effective precisely when individuals were reduced to nothing but their humanity. The historical experience of mass displacement revealed that, although human rights were proclaimed universal and inalienable, their enjoyment depended overwhelmingly upon political membership rather than humanity alone.

This exposed a fundamental paradox. Those expelled from the political community retained only the rights supposedly belonging to every human being, yet these were precisely the rights that could no longer be enforced. As Arendt observed, the world found nothing sacred in the “abstract nakedness of being human and nothing but human.”⁶⁷ It was therefore wiser to rely on “an entailed inheritance”⁶⁸ of rights than on the abstract humanity celebrated by eighteenth-century declarations, since “a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man.”⁶⁹ Humanity, for Arendt, is realized not in abstraction but in political plurality: only participation in a common political world transforms human plurality into juridical equality and effective protection.⁷⁰

The consequence is profound. It is citizenship that renders humanity legally effective, not humanity that generates citizenship. As Étienne Balibar later observed, the history of modern citizenship may indeed be understood as the progressive universalisation of citizenship itself—the principle of the “exclusion of exclusion.”⁷¹ Yet, as Hegel had already suggested, every political community necessarily produces new forms of exclusion. The promise of universal inclusion therefore remains permanently incomplete.

The first twentieth-century strategy thus reformulates the accusation of abstraction by shifting attention from philosophical justification to institutional effectiveness. Human rights are said to be abstract not because their universal aspirations are conceptually mistaken but because they remain insufficiently embodied in legal and political institutions capable of guaranteeing them.

3.2. Human Rights Are Not Human

The second twentieth-century strategy of criticism shifts attention from the institutional status of human rights to the anthropology they presuppose. The accusation of abstraction is no longer directed primarily against the effectiveness of rights but against the conception of the human being embedded within their universal language: an individual conceived in abstract, simplified, and schematic terms, with fundamental dimensions of the human condition stripped away.

This strategy reformulates, under new historical conditions, a problem that had already been anticipated—albeit with diametrically opposed conclusions—by Sade and, in certain respects, even by de Maistre. The issue is no longer whether rights are effectively protected. Rather, it is that they present a distorted, misconceived, or incomplete conception of human nature.

⁶⁷ Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace & Company [1951]1976) 297.

⁶⁸ Ibid 300.

⁶⁹ Ibid.

⁷⁰ Ibid 301–302.

⁷¹ Étienne Balibar, ‘Is a Philosophy of Human Civic Rights Possible?’ (2004) 2/3 *The South Atlantic Quarterly* 311–322, in part. 312, 314, 320–321.

A revealing formulation of this criticism appears in Simone Weil's *La personne et le sacré* (1943). Weil argues that the language of rights rests upon an excessively individualistic view of the person, one that bears witness to the progressive secularisation of law. Rights become matters of reciprocal exchange, animated by what she calls a genuine "commercial spirit (*esprit de marchandage*)."⁷² Having lost both their "purity and effectiveness," they ultimately degenerate into "a shrill lament (*une aigre criailerie de revendication*)."⁷³ According to her, rather than remaining confined within the language of subjective claims, justice should be reoriented towards the impersonal, the absolute, and the moral experience expressed in the simplest of questions: "Why am I being hurt?"⁷⁴

Michel Villey develops a parallel argument from the standpoint of legal philosophy. In *Le droit et les droits de l'homme* (1983), he maintains that the modern doctrine of subjective rights represents a profound rupture with the classical conception of *ius* as an objective order of justice. By identifying law with individual powers and claims, modernity progressively transformed legal discourse into a language of competing subjective interests. The anthropology presupposed by human rights is therefore, in his view, excessively thin, reducing the human person to an autonomous rights-holder while neglecting the objective requirements of justice⁷⁵.

Alasdair MacIntyre provides another well-known formulations of this position. Human rights, he famously argues, are nothing more than "fictions with highly specific properties," and belief in them is "one with belief in witches and in unicorns."⁷⁶ More precisely, rights belong to a rhetoric—or, indeed, to an inconclusive form of "self-assertive shrillness of protest"—behind whose apparent universality lie nothing more than "preferences of will and arbitrary desire."⁷⁷ What presents itself as universal morality is therefore, in reality, the contingent expression of historically situated forms of judgement.

Although Weil, Villey and MacIntyre proceed from different philosophical premises, they converge upon a common diagnosis. They all contend that the discourse of human rights presupposes an impoverished conception of the human being. The abstraction they identify lies neither in the universality of rights nor in their legal form, but in the anthropological model upon which those rights depend. Human beings appear primarily as isolated individuals asserting subjective claims, while the relational, ethical, and spiritual dimensions of human existence recede into the background.

3.3. Human Rights as Ideology

The third twentieth-century strategy radicalises the preceding criticisms by questioning not only the institutional effectiveness of human rights or the anthropology they presuppose, but the political function performed by the discourse of rights itself. The accusation of abstraction now becomes ideological. Human rights are said to be abstract because they transform historically contingent relations of power into apparently universal moral norms.

This strategy develops one of the central intuitions already present in Marx's critique: that the universal language of rights itself may function as the ideological expression of particular social and political interests.

According to this line of argument, contemporary human rights discourse frequently coincides with what has been called the "justice of the victors":⁷⁸ the ideological vocabulary through which Western political powers universalise their own historical experience while presenting it as humanity's common destiny.

⁷² Simone Weil, *La personne et le sacré* in Ead., *Écrits de Londres* (Gallimard 1957) 11–44, in part. 17, my translation.

⁷³ Ibid 19, my translation.

⁷⁴ Ibid 11, my translation.

⁷⁵ Michel Villey, *Le droit et les droits de l'homme* (PUF 1983).

⁷⁶ Alasdair MacIntyre, *After Virtue. A study in Moral Theory* (Notre Dame University Press 1981) 70.

⁷⁷ Ibid 71.

⁷⁸ Danilo Zolo, *La giustizia dei vincitori. Da Norimberga a Baghdad* (Laterza 2006).

Slavoj Žižek gives this criticism one of its most provocative formulations. Human rights, he argues, possess a specifically bourgeois ideological orientation. They are, in reality, “human rights are effectively the right of white, male property-owners to exchange freely on the market, exploit workers and women, and exert political domination.”⁷⁹ Yet precisely because they present themselves as universal, they continue to function as the “right to universality as such.”⁸⁰ Human rights become rights that privileged societies no longer need for themselves but are prepared to bestow upon others, much as one gives away old clothes that have ceased to be useful.⁸¹

The underlying accusation is therefore not simply hypocrisy. It is ideological universalisation. Particular historical experiences become detached from their social origins and reappear as though they expressed the interests of humanity as such. Universalism consequently conceals rather than overcomes relations of domination.

The feminist critique developed by Catharine MacKinnon illustrates this mechanism from a different perspective. Building on the problem already identified by de Gouges, she argues that liberal rights universalised specifically male experience, presenting it as the neutral standard of humanity while concealing its particularity.⁸² The issue, therefore, is not simply that women were excluded from the universal subject of rights, but that the universal itself has been constituted through masculine experience. As MacKinnon observes, “What happens to women is either too particular to be universal or too universal to be particular”: either too human to count as specifically female or too female to count as genuinely human.⁸³ Reworking Marx’s critique of political emancipation, she contends that the liberal tradition transformed male experience into the implicit norm of humanity itself. Rights consequently became legal guarantees for the exercise of male privilege: “Women’s rape becomes men’s liberty, gang rape their fraternity, prostitution their property, forced pregnancy their family and their privacy, pornography their speech.”⁸⁴

At stake, therefore, is a problem of visibility and power. Considerable political and moral authority is required not only to denounce violations of rights, but also to have one’s own experience recognised as fully human.⁸⁵ Human rights cannot genuinely belong to those who need them most so long as entire groups remain systematically deprived of the social and political power required to define the very meaning of the human.

The accusation of abstraction thus reaches its twentieth-century culmination. Human rights are said to be abstract because they universalise historically situated relations of domination while masking their contingent origins in the name of humanity. Abstraction becomes the ideological form through which power presents itself as universal.

4. Conclusion

The argument developed in the preceding pages suggests that no single version of the accusation of abstraction succeeds in exhausting the meaning of human rights. From Burke to contemporary critics, the charge has undergone a series of profound conceptual transformations, each of which has compelled the theory of rights to redefine its philosophical and political aspirations.

This conclusion is significant for at least two reasons. First, it shows that the discourse of human rights has never developed independently of its critics. On the contrary, many of its most important conceptual transformations have emerged through sustained engagement with the objections directed against it. Second, it suggests that the history of human rights cannot be understood simply as the

⁷⁹ Slavoj Žižek, ‘Against Human Rights’ (2005) 34 *New Left Review* 115–131, in part. 129.

⁸⁰ *Ibid* 131.

⁸¹ *Ibid* 127.

⁸² Catharine A. MacKinnon, ‘Crimes of War, Crimes of Peace’ (1993) 4 *UCLA Women’s Law Journal* 59–86.

⁸³ *Ibid* 60.

⁸⁴ *Ibid* 73.

⁸⁵ *Ibid*.

progressive affirmation of an ever more universal catalogue of rights. It must also be understood as the history of a concept continually forced to redefine itself.

It thus becomes even clearer that the contemporary concept of human rights is no longer identical to the eighteenth-century doctrine of the rights of man. It has gradually incorporated many of the objections raised against that earlier paradigm while preserving its fundamental normative ambition. Human rights have survived not despite the accusation of abstraction, but by repeatedly confronting, absorbing, and transforming it.

This perspective also provides the basis for a brief response to the three principal contemporary strategies of criticism reconstructed in the previous section.

The first strategy questions whether human rights are genuinely rights, given their continuing dependence upon state institutions for effective implementation. This criticism identifies a real institutional weakness, but it does not demonstrate the impossibility of international legal protection. The experience of the second half of the twentieth century has shown that state sovereignty can indeed be limited in the name of an international project of justice, however incomplete and politically contingent that project remains. The development of stronger international guarantees depends not upon historical necessity but upon continuing political commitment and institutional innovation.

The second strategy argues that human rights are not genuinely human because the universal subject they presuppose remains anthropologically partial. This objection likewise reveals an important conceptual limitation, but it also points towards its own solution. The minimalist conception of human rights defended throughout this article deliberately avoids identifying humanity with any single comprehensive anthropology.

The third strategy portrays human rights as a form of ideology through which particular interests masquerade as universal values. This criticism rightly warns against every attempt to identify existing political arrangements with humanity itself. Yet the ideological misuse of universalism does not invalidate universal aspirations as such. Historical contingency does not imply moral arbitrariness. Properly understood, universalism is neither an empirical description nor an ideological disguise. It is a prescriptive commitment that continues to orient political judgement while remaining permanently open to revision through democratic contestation. Rights are not imposed from above once and for all; they acquire their meaning through the performative practices of claiming, contesting, and institutionalising them. As the tradition inaugurated by de Gouges and continued by contemporary feminist theory demonstrates, the universal meaning of rights is not fixed once and for all but is continually renegotiated through political struggles for inclusion and recognition.

In conclusion, the legitimacy of human rights cannot today rest on the claim that they possess an unquestionable philosophical foundation or are immune from criticism. Rather, it is historical, reflexive, and continually renewed through critical engagement. Because human rights are a prescriptive rather than a descriptive concept, their legitimacy also depends on the institutional practices through which they are interpreted, expanded, defended, and made effective. Legitimacy and effectiveness are therefore inseparable: without the former, human rights lose their normative authority; without the latter, they risk becoming little more than rhetorical declarations. It is precisely through the continuous practices of justification, contestation, and protection that human rights become progressively less abstract.