1. Liberal freedom in a fishbowl

[F]ear destroys freedom.
—Judith Shklar, Ordinary Vices

In truth that which you call freedom is the strongest
of these chains, though its links glitter in the sun
and dazzle your eyes.
—Kahlil Gibran, ‘On Freedom’

This chapter delineates how the concept of liberal freedom, which is central to the pursuit of human rights, is structured and articulated within what I metaphorically describe as the fishbowl. I do not attempt to provide a comprehensive account of liberal freedom, an elusive and paradoxical concept that has also already been the subject of extensive dispute and debate. Rather, my intention is to pursue a philosophical inquiry into the common assumptions on which liberal freedom in the context of human rights is based, and how these become the basis of unfreedom.

LIBERAL FREEDOM AND THE FISHBOWL

Liberal freedom is based on two common assumptions: first, that freedom is a progressive, external pursuit, which is owned or possessed; second, related to the first, that freedom originates or is accessed through the consciously exerted will of a finite, thinking, individual subject. I interrogate these claims not only by building on existing and extensive critiques that have problematized the emancipatory claims of democratic political projects, but also by examining understandings of freedom that are left out or excluded – quite specifically, non-liberal understandings. In this chapter, I unpack how these two core features that are constitutive of liberal freedom, and on which human rights are based, in fact become the source of unfreedom. Centrally, these features obscure how release into the space of human rights, which is the international expression of liberal freedom, actually entails release into a governance regime that not only regulates and disciplines the subject, but also implicates her in
specific ways of behaving, conducting herself and being that amount to being unfree. While resistance to the normative scaffolding of liberal freedom remains possible, my argument is that resistance and disruptions do not in and of themselves bring the resistive subject closer to lasting freedom.

Liberalism has long situated various conceptions of freedom at its core. It includes a range of ways in which freedom is to be achieved, including through negative freedom, positive freedom, republican freedom and the capability approach. While liberal freedom has typically been defined in negative terms, with an emphasis upon maximizing individual freedom and preventing excessive state interference, it has also been associated with happiness, as well as with the maximizing of pleasure—a tradition that established a strong cause-and-effect rationale between freedom and happiness, and which cohered over time into an ideology that John Rawls referred to as the ‘liberalism of happiness’. Some scholars have argued that human rights must be based on a far more robust understanding of liberal freedom, namely, one based on positive duties. While the different approaches to freedom are complex, contradictory and at times confused, the various guises of liberal freedom adhere to the two key features that I have mentioned.

Human rights are the transnational expression of liberal freedom, where the protection of people from the state, together with ensuring their free involvement in/from the state, shifts from being the responsibility of local/state forces to being an international concern. This move towards a transnational mode seems a logical one, given the horrific violations of the Second World War, the scale of suffering and the traumatic dispossession of millions of people over large swathes of territory. There is thus a symbiotic relationship between liberalism, freedom and international human rights. Liberalism – being centrally about freedom from the state – inherently creates rights that protect the individual from arbitrary intervention by the state. Thus human rights represent a modern attempt to formalize the relationship with liberal values – freedom being conceived as integral to both – although the question of whether human rights should solely focus on negative rights or also include positive rights remains an ongoing debate. There is, however, a predominant assumption, set forth in the main UN human rights documents, that the accumulation of more rights brings about more freedom.

The overarching configuration of the rights framework as creating a new, internationalized, universalizing discourse that purportedly offers equal freedom to all demographics has been exposed by, among others, critical legal scholars as having substantial political effects. They have
revealed how liberal framings obscure the normative assumptions and the political and economic agendas that are being reinforced or advanced in and through the discourse of rights. Human rights operate as a constituting discourse and thus a political tool, which can be wielded like any other and can produce outcomes that are not necessarily either progressive or liberating. In other words, human rights have been used for political goals which seem to fundamentally clash with the very idea of human rights, and the freedom it purports to offer all constituencies.

I revisit the symbiotic relationship between the liberal tradition and human rights, arguing that their connection is based not so much on a common pursuit of freedom, but rather on a shared, complex inheritance. This inheritance includes the cruelties and violence of the colonial encounter, aggressive conquests, claims to cultural, racial and civilizational supremacy, as well as the reproduction and reinforcement of gender stereotypes and hierarchies that are either obscured or justified in the name of good intentions and the alleviation of human suffering. This inheritance is partly constitutive of liberal political thought and human rights. These histories continue to inform the present, and frequently manifest as a form of muscular liberalism exerted over various demographics of often adversarial, non-liberal/illiberal ‘Others’. They are also rechannelled into overt suspicion, distrust and/or rejection of anything that politically and philosophically pivots beyond the fulcrum of what I have described in this book’s Introduction as the ‘fishbowl’, and beyond the field of the linked discourses that constitute fishbowl knowledge. And this schema of liberal hegemony continues to confine our understanding of freedom, and actively precludes or truncates other ways of being and of being free in the world.

The bulk of this chapter frames freedom within this complex inheritance and sets out the highly strategic and political nature of the work that freedom does in the context of human rights, even when rights are presented as being agnostic to the pursuit of freedom and concerned only with reducing the worst forms of human suffering and cruelty. Human rights emerge as part of the mode of governance wherein rights-enabled ‘freedom’ is the outcome of a regulatory endeavour that is increasingly articulated in terms of the neoliberal market, and which discursively constitutes the subject of rights. This endeavour establishes a discriminative hierarchy of who counts and who does not among the subjects so constituted. In the process, the central features of liberal freedom – as an aspiration and as an external pursuit by the autonomous subject with rational capacities – are revealed as being thoroughly embedded within relations of power: constrained, confined and managed from within the liberal fishbowl, and producing unfreedom.
Contemporary Critique of Liberal Freedom in Human Rights

Substantive critiques of the central features of liberal freedom on which human rights claim to be based already exist – specifically, that it is an external, linear, progressive pursuit by a universal, finite, thinking subject. While these critiques are diverse and diffuse, they can be diffracted into at least three main trajectories. First, human rights interventions have an expansive set of political effects that are invariably linked to a specific way of being, and of being free. This aspect is evident even in positions that claim to dissociate from freedom, and which are purportedly focused exclusively on alleviating human suffering and ‘putting cruelty first’, in Judith Shklar’s term (discussed in the next section). Second, the work that human rights do in their encounters with culture and cultural difference reveals the contingency of their claims to universality, laid bare especially in the post-9/11 era. Third, the falsity of liberalism’s foundational premise of freedom being integrally linked to a common ‘universal’, rational and thinking subject is exposed through the sharply hierarchical and differentiated understandings of the subject which permeate rights discourse and advocacy.

I briefly set out the critiques in relation to each of these aspects in the remainder of this chapter. I elaborate further on these trajectories in subsequent chapters, using the context of gender and alterity in human rights to reveal how the pursuit of freedom by disenfranchized and marginalized persons is structured explicitly, and fundamentally, by the parameters of the liberal fishbowl and its constitutive arrangement of dominant gender, sexual and cultural norms.

Rights Discourse and the Reduction of Suffering

In the contemporary moment, several key voices in liberal rights theory have focused primarily on the ethics and mechanics of freedom from human suffering caused by acts of cruelty. This position draws upon an influential strand of liberal thought – the ‘liberalism of fear’ (LoF) – developed initially in the work of American political theorist Judith Shklar. Claiming to be apolitical and agnostic to power, LoF emphasizes a rigorously defined concept of freedom – freedom from fear. LoF adopts an anti-foundational pragmatism, which proposes intervention in very specific instances only – namely, to alleviate acute human suffering and cruelty.18 In its claim that it does not support the articulation of a political vision, either of happiness, the good life, or how to be and live in the
world, LoF seeks to avoid some of the political implications or effects evident in the position that rights produce freedom. It vigorously adheres to its central position, which opposes state intervention, and in which the role of rights is primarily regarded as providing a bulwark for the private individual against the force of the ‘public’ state. Although LoF promotes an avowedly apolitical stance, I probe the political project that informs it in the context of human rights. LoF is based upon an overly simplistic account of cruelty and fear that obscures how both are integral to the constitution of the subject of human rights and the modern state. I conclude that freedom in this limited guise obscures that human rights are not bulwarks of defence against state power, but are themselves deeply implicated in power, producing exclusions and justifying interventions against the perpetration of cruelty that are themselves cruel and violent.

In her foundational work, Shklar sets out the minimalist brief for LoF, stating that this strand of liberalism is fundamentally opposed to cruelty. The role of liberalism is to restrict itself to bringing about conditions that are essential for a citizen to be able to exercise freedom, including making decisions without fear or favour about most aspects of her life, as is compatible with the like freedom of every other adult subject. Cruelty is understood as ‘the willful inflicting of physical pain on a weaker being in order to cause anguish and fear’, and such ‘fear destroys freedom’. Shklar’s work articulates a constrained and pragmatic understanding of freedom that concentrates primarily on ‘putting cruelty first’, and on alleviating human suffering through the modality of rights to ensure ‘bare survival’. She is interested in enfranchising the disenfranchised, but only to the extent of enabling them to make existential choices that they were unable to make earlier, and helping them to intervene on their own behalf. Shklar depends on law as a central instrument to be applied in order to prevent cruelty, relying on law’s claim to neutrality, even though she recognizes the political nature of law in terms of its links with liberalism. In a similar vein, as American philosopher Richard Rorty states, cruelty is the ‘worst thing we do’; beyond liberalism’s imposition of the rights paradigm to counter cruelty, it has no business to either define happiness or to actively instruct citizens in how happiness, and hence even freedom, might be pursued. Michael Ignatieff, another important voice, makes the same minimalist claim, and specifically connects the project of liberalism with the justification for international human rights. He explicitly states: ‘Human rights are an account of what is right, not an account of what is good. People may enjoy full human rights protection and still believe that they lack essential features of a good life.’
The above scholars focus mainly on highlighting the idea that liberalism has the capacity to generate suitable conditions for the subject of rights to freely exercise 'choice' over the kind of life that she wants to have. In the context of human rights, this objective implies a logical connection between an increase in human rights protection and the expansion of such a subject's freedom to choose, even in this minimalist brief. The freedom in question is construed 'negatively' – in terms of 'negative liberty'. This is an essentially negative politics of prioritizing action against manifestations of cruelty, with an interventionist emphasis on protecting the individual from physical injury, including torture, social and psychological degradation, dispossession, exile and the defeat of everyday expectation and hope. The position of these influential voices is based on a pragmatic anti-foundationalism that refuses to claim a transcendental universal status for some essence of the human subject, such as human dignity or rationality, based on an older natural law tradition and a Kantian secular transcendentalism. This scholarship asserts that what we all share is not an a priori dignity or other aspect of our subjectivity, but an empirical vulnerability. This commonality is what connects us and establishes 'empathy' – that is, openness to the suffering of others – as the foundational ethic of human rights, thus distinguishing LoF from classical liberalism's universalist claims.

While formulating a particular script for 'bare survival', human rights are construed in essentially instrumentalist terms – as bulwarks or shields for vulnerable and powerless subjects – and schematize (political or social) power in negative and repressive terms: as that which denies, erodes, and erases the agency of subjects. The construction of both power and rights in negative terms, and as a zero-sum game in which more rights to individuals means less power to the 'repressive' institutions, is logically predicated upon considering more rights as necessarily entailing more freedom for the rights recipients. In this paradigm, rights are understood and deployed as a form of individual empowerment, providing the human subject with agency and the tools to fight injustice, and also enabling individuals to determine for themselves how they want to live and to use these rights in the way they see fit. As Ignatieff asserts, human rights are a 'systematic agenda of “negative liberty”'. In this scholarship, the universalism of human rights ensures that the rights template remains open to plurality: to 'good lives' rather than a singular vision of the 'good life' to which everyone should aspire and seek to actualize. Provided that a subject has some freedom in the choice of how to live, the substance and content of her life should be left for her to determine in a way that accords with her desires, history and traditions. Thus, the claim here is that such a position ostensibly accommodates a
wide variety of civilizations, cultures and religions, including the non-liberal and illiberal.

There are varied perspectives on how the principle of putting cruelty first and the related reduction of suffering through rights modalities are to be actualized. For Rorty, this means expanding a set of welfare-oriented social rights, which includes getting enough to eat, finding shelter, having access to medicines for one’s children – all of which enable the disenfranchised to avoid a kind of suffering that consists in the humiliation of humans at the hands of other humans; such interventions preserve human dignity.\(^32\) In this respect, the reduction of suffering is equated with an increase in happiness, and the solutions are found within the fishbowl from knowledge infused with the liberal assumption that liberalism embodies a progressive, evolutionary trajectory, and that its inscribed values represent the zenith of civilized thought. Rorty does not support the engagement of any form of radicalism in uncovering the hidden, systematic causes of injustice and exploitation, or in bringing about social and economic transformation. His attention remains primarily on developing the ability to become sensitive to the suffering of others, and identifying with them rather than seeking radical change.

In contrast, Ignatieff opposes social rights, or what he describes as collective rights, which he views as leading to ‘rights inflation’ – ‘the tendency to define anything desirable as a right’ – and which ‘ends up eroding the legitimacy of a defensible core of rights’, namely, the entitlements that fall into the category of civil and political rights.\(^33\) Wendy Brown, in her critique of Ignatieff, has argued that the institution being generated and exponentially strengthened by these ‘defensible’ rights is the free market.\(^34\) In this sense, faith is invested in the possibility of greater happiness being achieved through greater rights, the latter of which entails free participation as an economic entity in thriving markets, which will purportedly assist in actualizing one’s vision of the ‘good life’. Freedom is thus directly linked to happiness or the good life – a modality that envisages a central role for the market\(^35\) and the continuous production of the consumer-subject. As long as an expansive plethora of rights ensuring ‘civil and political freedoms’ is in place, happiness can definitely be achieved by these free agents themselves (only) by recourse to the market, posited as the ideal node for exercising personal choice. Thus, for Ignatieff, rights interventions preclude achievement of the ‘good life’ through formations other than the market, in which these autonomous entitled subjects of rights are free to obtain any ‘good’ they happen to desire. The discussion makes evident that even while advancing a position which seemingly ‘puts cruelty first’, this position ultimately endorses a normative script for freedom that includes a happy and
good life made possible through self-assertion, and one that can only be negotiated and overcome by invoking the discourse of human rights. This rationale implies that any other mode of self-empowerment and agency adopted by the subject will necessarily be at odds with the prescriptions of human rights, and therefore may be justifiably targeted as illiberal and repressive, or alienating, or irrelevant.

Theorists who use LoF or similar arguments in human rights vary greatly, as exemplified by the different positions adopted by Ignatieff and Rorty. The branch of scholars who advocate for humanitarian intervention agree that human rights should primarily be about reducing human suffering and fear. While the link between these scholars and LoF is not necessarily explicitly made, similar reasons and justifications are often used in both positions, especially when discussing the nature and meaning of human rights dispensation and the manner in which it is theorized. Peters, for example, argues this point, stating that sovereignty should be based on ‘humanity’; that is, if the state crosses a threshold in failing to protect its citizens against extremely grave human rights abuses such as physical suffering and cruelty, either at the hands of the state or another actor, then other states have a duty to intervene to protect the afflicted citizens of that state. This argument suggests that human suffering precedes all other modalities, including sovereignty, the state and possibly democracy. The LoF, in this sense, comes to mean that global society should primarily aim to protect individuals from cruelty and fear.

Another strand of human rights theorists who work within the trend of LoF are those who promote human dignity as the value that should be given precedence before anything else. In the International Covenants on both Civil and Political Rights (ICCR) and Economic, Social and Cultural Rights (ICESCR), human dignity is proclaimed in the preamble: ‘these rights derive from the inherent dignity of the human person.’ Human dignity is similarly affirmed in the Universal Declaration of Human Rights (UDHR). Hasson states that human dignity is the “ultimate value” that gives coherence to human rights. Yet exactly what dignity means remains unclear and disputed, with Donnelly concluding that in fact it is best not to define human dignity, but rather to leave it open so as not to sell it short.

Baxi is one such scholar who is deeply concerned about preventing cruelty and suffering, in particular ‘the barbarism of power’, and uses notions of humanness and human dignity to justify human rights interventions. He states that ‘[h]uman rights languages are all that we have to interrogate the barbarism of power, even when these remain inadequate to humanize fully the barbaric practices of politics’. However, Baxi is
also very critical of human rights, noting that they are elitist and work to exclude as much as to include. He further notes that human rights have an ‘ambivalent relationship’ to suffering, highlighting how they can sometimes work to create hierarchies of human suffering and arguing, for example, that ‘the paradigm of the Universal Declaration of Human Rights is being steadily supplanted by a trade-related, market-friendly, human rights paradigm’.

At the same time, Baxi does not give up on human rights, but instead suggests that they need to be re-appropriated. He argues that ‘the historic mission of “contemporary” human rights is to give voice to human suffering, to make it visible, and to ameliorate it’. He notes that the notion of human rights being used in ‘the pursuit of happiness’ is an elitist notion, stating that ‘[f]or the hundreds of millions of the “wretched of the earth”, human rights enunciations matter, if at all, as and when they provide, even if contingently, shields against torture and tyranny, deprivation and destitution, pauperization and powerlessness, de-sexualization and degradation’. Baxi also notes the importance of non-state actors (such as global corporations) and their role in causing human suffering, and in turn not only argues for human rights that prevent human suffering at the hands of the state but also uses the human suffering paradigm to call for a broader use of and intervention through human rights law, with a re-appropriation of the term to suit people’s needs according to context.

A key limitation of the argument that projects human rights primarily as a method of reducing suffering and cruelty is that such logic is based on an outmoded notion of power as a monolithic apparatus to be wrested away from the state or institution by the disenfranchised individual. This articulation of the ‘repressive hypothesis’ refuses to take into account the discursive operations of human rights so effectively theorized by Foucault – the fact that human rights are always profoundly implicated in power and operate as technologies of governance that produce and inscribe the very subject to be governed as well as the choices made available to her. Rather than merely defending or protecting her, these controlling forces limit the choices the rights holder has and stipulate how that choice may be exercised and what kind of freedom is to be realized. Rights are not bulwarks of defence against state power, but are a crucial aspect of power’s aperture and governmentality – in other words, rights can themselves be tactics and vehicles of governance and domination, as well as resistance. Golder provides a reading of Foucault’s work on human rights which illustrates how they are simultaneously political tools used by political subjects to capture and subvert power as well as regulatory technologies that constitute these very
subjects and manipulate their conduct. Thus, human rights are thoroughly implicated in power, with their directed understandings of freedom and happiness, primarily towards the market. In the following two sections, I elaborate on how human rights are further implicated in power with their claims to universality and the construction of the subject, as well as their idea of what constitutes fear.

Rights Discourse and the Politics of Universality

In relation to the logic of ‘Othering’, there is a need to further interrogate the understanding of freedom that informs human rights by examining how they construct ‘traditional’ cultures (read as ‘not the West’) as ‘cultural collectives’, which are assumed to inherently constrain the capacity to choose or the agency of their members. This interpretation is principally energized by the idea of the universality of human rights, coupled with the concept of liberal individualism, wherein every individual is recognized as having the capacity to realize rational intentions and the right to a good life, however conceived, without restrictions or obstructions. Universality is tethered to this form of individualism, which is assumed to be effective in fighting tyranny and has been regarded as attractive to oppressed people suffering exploitation and abuse across a broad range of cultures. The ascription to human rights of a universal essence, as enabling and all-inclusive, becomes a coveted object possessing the capacity to release this constituency into a space of lasting freedom.

At least two problems can be identified in relation to this argument. First, the practices of ‘traditional’ collectives are ultimately judged against the universal values of human rights which are always calibrated in consonance with the liberal paradigm, thus reiterating, without question, that human rights are the only ‘universal’ language which can effectively challenge tyrannies and hegemonies, and secure freedom for the disenfranchised. Although the purported ‘universality’ of the international human rights discourse is grounded upon an openness towards cultural difference, this very ‘universality’ functions to deny or preclude other possible visions of freedom and the ‘good life’. The liberal claim is that human rights are the primary and central – if not the only – universally available moral language that upholds and validates the rights claims of vulnerable subjects/non-subjects requiring protection from the oppression which they continuously experience in illiberal, patriarchal and ‘primitive’ cultures and societies. The rights discourse is presented as effectively enabling such dependent groups to see themselves as moral agents. Through rights, they can empower themselves to resist or
challenge cultural practices such as the veil, or female genital mutilation, or arranged marriages. When these constituencies resort to human rights protection, it legitimizes their protest against cultural oppression. This argument reflects the classic ruse of liberalism: purposively engaging in politics while donning anti-political garb, that is, positing itself as being prior to or transcending politics, and thus universal.

This duplicitous logic occludes the fact that specific, targeted decisions underpin the liberal conceptions of freedom which inform human rights when they are deployed as a technology of emancipation in the domain of ‘cultural collectives’. Instead of being critically problematized and examined as a political construction, human rights thus deployed are assumed to be universal, essentially and naturally benevolent, with the good intentions of their advocates viewed as unassailable. Even when the rhetoric claims to be hospitable to plurality, this projected expansiveness is ultimately an exclusionary gesture as it operates to install only one possible and desirable script of freedom, namely, happiness or the good life – lives made manifest through full enfranchisement, and ensured by the international human rights that are a given and are enjoyed in liberal societies. Therefore, if struggles are waged to change oppressive traditions and the social order in ‘cultural collectives’, and thus to deliver conditions for a different, ‘good’ life, then this line of argument dictates that this can only be done by invoking the hegemonic discourse of human rights. The claim to the universality of human rights functions to deny or preclude all other possible visions of freedom outside of the liberal fishbowl.

Second, the reactive core of the political project that informs human rights has become acutely evident in the post-9/11 period, where the conceptual emphasis on universality and plurality is displaced by a very clear assertion of the distinction between ‘us’ and ‘them’. Certain unruly and transgressive actors are located outside the order of liberal societies, and the threat they pose to the fishbowl generates acute fear followed by a xenophobic political call for a return to true liberal values. The us/them dialectic is reflective of the constant perceived threat to the fishbowl posed from outside which has legitimated, and continues to legitimate, ‘illiberal’ responses from within – thus exposing the hollowness of the concept of universality. This critical redrawing of the ‘self’/‘other’ boundary as an intellectual parallel to unfolding political–militaristic events on the ground is also a reinscription of the closed circuit of the fishbowl. As noted earlier, this ‘dark side’ of liberal freedom draws upon its colonial legacy and a complex inheritance characterized by the violent domination of ‘Others’. This dark side is evident both historically, in the context of slavery and the colonial
encounter, and in its contemporary imposition of a form of muscular liberalism – deploying strategies of liberal governance infused with attributes reminiscent of ‘responsible’ empire, in a context where the very survival of liberalism is purported to be under threat from barbaric, illiberal ‘Others’. Proposals such as Walzer’s quest to establish mandates or trusteeships to govern societies when self-determination fails, or when famine or civil war destroys a polity, are illustrative of this move.

A similar, more explicit proposal is evident in Ignatieff’s open embrace of small doses of ‘empire’ post-9/11, wherein he argues that the suspension of rights through mechanisms of liberal governance may be the best hope for democracy and stability in certain anarchic parts of the world. He claims that a new imperialism in the form of military occupation and the torture of intractable, adversarial ‘Others’ may be prescribed in order to save liberalism and its global project of human rights from the chaotic violence of feudal, illiberal societies that exponentially breed evildoers such as terrorists who do not cherish or respect human rights, and hence are not entitled to their protections. This form of ‘Empire lite’ – consisting of democracy, human rights and the free market – is to be ‘enforced by the most awesome military power the world has ever known’. Such violence is justified not only to save the world from illiberalism, but also because these counter-measures are in the hands of the United States, which stands as liberalism’s vanguard and whose good intentions are apparently beyond reproach. And for liberal ideologues, such aggression is justified as an act of compassion and benevolence, necessary to bring good governance to those oppressed ‘Others’ who are the helpless victims of the illiberalism that is the socio-political fulcrum of ‘cultural collectives’.

Inevitably, ‘Empire lite’ is a hegemonic modality, but it is one that claims to operate ‘without consciousness of itself as such’, and which is ‘constantly shocked that its good intentions arouse resentment abroad’. It depicts the choice between liberalism and empire as a tragic one for a liberal society, but one that is necessary in the context of rapidly escalating barbarism and a world of non-believers (in the liberal project). The agony and despair experienced by the liberal establishment in making this tragic choice serves as an affective reminder of the fundamental character of the liberal state – as liberal, and also conscious of the emotional cost of fidelity to liberal ideals in this chaotic world. The image of the United States as a reluctant imperialist thrust by conscience onto the global stage to do good in the world may be more visible in the current moment, but it is of course not something new. This deceptive formulation does not attend to the ways in which illiberalism and normative and literal violence are characteristic of the liberal project’s
response to the expanding scenarios of manifest barbarity being wit-
nessed. ‘Lite’ interventions resonate with the historical assertion of
empire, warranted as part of a ‘civilizing mission’ or, in the contempo-
rary moment, to bring about gender liberation or happiness or to alleviate
suffering and ensure bare survival. These interventions have amounted to
nothing less than a call for the recolonization of ‘failed states’ and have
strengthened what Mamdani describes as ‘human rights fundamental-
ism’. This renewed call in the post-9/11 period reinscribes the bound-
daries of the fishbowl and recalibrates the limits of liberal freedom against
an ‘Other’ perceived as ever threatening and ever intent on subverting or
rupturing the securities of the fishbowl, thus resulting in the incarceration
of its inhabitants within their own fears. This call not only justifies
the logic underlying the new imperialism, but also perversely justifies
the liberal resort to the stunted, suffocating rationale of illiberalism as the
appropriate chosen response – specifically, an unequivocal counter-
hostility directed at the unintelligible violent ‘Other’. And this choice
falls within liberal ideology and constitutes part of its shared, complex
inheritance with human rights. A constant measuring of the liberal self
against constituencies of regressive ‘Others’, who were once outside the
fishbowl but are now avidly infiltrating it via political opportunities,
generates and nourishes a crippling sense of embattlement that views all
‘Others’ as a threat to the very survival of liberalism – the preferable and
superior philosophy or way of life. Post-9/11, assertions of universality
have become a thin veneer over a response that has catalyzed increased
surveillance, military interventions and a strengthened security apparatus,
building on a colonial legacy which assumes that there is nothing to be
gained from non-violent forms of engagement with the ‘Other’, who
must be corralled, policed, expelled or eliminated if liberalism’s adher-
ents, allies and structures are to be protected from the constant threat of
imminent violent destruction.

As several postcolonial scholars have argued, this choice is a false one,
as liberalism is itself constituted through and expressive of imperialistic
motives. The forceful rhetoric of protectionism and ‘Othering’ deflects
attention from the symbiotic relationship between historical imperialism
and its contemporary embodiment, both of which are equal exertions of
liberal hegemony. It also cloaks the way that liberalism – which has
always seen itself as having to actively save the world from illiberalism –
may be fully complicit in creating the contemporary conditions that now
require it to save the world. In the process, the critical genealogies of
the relationship between liberalism and empire, its colonial legacies and
violent conquests, become more visible and the ploy of universality is
fully unmasked. Adding this ongoing account of liberal empire to the
historical narrative of human rights is an effort to produce a more disruptive testimonial of liberal hegemonies that inform the project. These unsettling truths diminish the claims to universality and account for the increasingly aggressive ‘us and them’ dialectic that has structured liberal freedom in human rights and that continues to do so.

Rights Discourse and Avatars of the Subject

This discussion enables the emergence of at least three distinct avatars of the subject within human rights discourse. One is that of the utterly vulnerable, suffering and powerless subject, identifiable and identified on account of abject dispossession, yet who has the power to move the entire project of human rights due to the scale of this very dispossession. A second is the successful, empowered subject, who is autonomous and has sufficiently developed sentiments to respond to the suffering of the vulnerable, abject subject. And the third is the belligerent or dangerous subject, who threatens liberal freedom either by a refusal to assimilate with dominant gender, sexual and cultural norms or/and by turning away to pursue an alternative conception of freedom.

The suffering or abject subject is evident in Shklar’s discussion, where she grounds the liberal project in the methodology of determining what counts as ‘cruelty’ and the response of the abject powerless subject to modes of oppression as well as to modes of intervention. She argues that the test for determining which cruelties can be endured and what would constitute efficient LoF interventions is to ask those who are the likeliest victims: ‘Until that is done there is no reason not to assume that the liberalism of fear has much to offer to the victims of political tyranny.’66 Rorty is less ambivalent, declaring that at times ‘these people’ will be misguided and short-sighted and want the wrong things. This may be the result of ‘superstition’ or ‘false consciousness’, but it might nevertheless require liberal intervention or actions that strip such people of their dignity even while it reduces their suffering. Rorty justifies his position via the rationale of unqualified paternalism: ‘We may decide to use their present selves as means to the novel ends that their future selves, or their descendants, will be better off for having adopted.’67 This argument prefigures the justification for ‘Empire lite’, discussed earlier and advanced by Ignatieff, as well as a host of interventions that often discount the views of the subject who is being rescued or aided on the grounds that they do not know what is good for them. For Rorty, such non- or negligible subjects are to be made to progress towards a desirable completeness through liberal removal of the conditions that cause them unnecessary suffering. This removal shifts the sufferers into the position
of empowered ‘subjects’ who – having been sufficiently endowed with adequately developed ‘sentiments’ – can now themselves respond to the ‘suffering of others’. The removal of conditions that cause the unnecessary suffering of powerless victims is a process that invariably casts the suffering ‘Others’ as thoroughly alien to the liberal norm, and not in any way structurally connected to the operations of the liberal project.

Ignatieff, who sharply distinguishes the powerful agent from the powerless subject, presents a very similar understanding. He asserts that human actions can be judged by a simple test of whether, as he puts it, ‘we would wish to be on the receiving end’ of those actions. He states ‘[t]hat we are capable of this thought experiment – that is, that we possess the faculty of imagining pain and degradation done to other human beings as if it were our own – [which] is simply a fact about us as a species’. Further, he continues by noting that since we have the capacity to empathize, and we possess a conscience, ‘we wish to be free to make up our own minds’ about whether to intervene. That some humans are indifferent to the pain of others does not mean that they do not have a conscience – it means that this conscience is free to not/to preferentially/to partially empathize with suffering. Thus, by this logic, opting to be indifferent to the pain of others does not necessarily signify cruelty or solipsism; it may instead signify liberal freedom of choice.

The abject or vulnerable subject has been analysed within feminist legal scholarship in relation to the broader critiques of the universal autonomous liberal subject. Martha Fineman, for example, has advanced the notion of the ‘vulnerable subject’ in arguing in favour of the need for human rights specifically, and politics more generally, to prevent human suffering and to pay more attention to ‘bodily fragility, material needs, and the possibility of messy dependence’. Fineman understands the term ‘vulnerability’ as a heuristic device that represents a common universal experience, which is a part of the human condition and beyond human control. It cannot be hidden, is enduring and is ever present at the institutional and individual levels. She broadens the conception of suffering through her focus on vulnerability and the vulnerable subject, and asks liberals to rethink human suffering through this expanded lens and to actively engage with institutions to respond to this vulnerability. While her discussion is largely directed at the United States, her position draws upon a human rights edifice which addresses these vulnerabilities through institutional and structural commitments to providing basic social goods to human beings. In seeking to dislodge the primacy of the sovereign, self-determining, entitled rational liberal subject by foregrounding the vulnerable subject/non-subject, she notes that, unlike liberal autonomy, the concept of
vulnerability has the potential to describe ‘a universal, inevitable, enduring aspect of the human condition’. Fineman’s work is situated within a larger, now highly familiar, feminist critique of the liberal legal subject and how it is structured by gendered and sexual assumptions and norms. This critique has in turn led to alternative articulations of the gendered subject in law that move beyond this limited construction. While the foregrounding of a vulnerable subject exposes the universal subject as fractured and not whole, a focus on vulnerability risks slipping into a politics of victimization, which negates the victim’s subjectivity and views her as an object of rescue. More significantly, and as I illustrate in various chapters in this book, such interventions do not necessarily alter the ways in which dominant gender and sexual norms structure the formation of the subject. Thus efforts to re-engage with rights may result in the reinscription of the subject’s subordination and exclusion. As Brown states, ‘the first imaginings of freedom are always constrained by and potentially even require the very structure of oppression that freedom emerges to oppose’. Rights may be alluring, and the risk of re-subordination worthwhile, if pitted against an option of no rights and, hence, no recognizable subjectivity. But, in continuing to centralize the role of the state in protecting the vulnerable subject, such interventions continue to run the inevitable risk of subordination and exclusion, and remain confined within a liberal fishbowl. The point here is that the vulnerable or abject subject continues to be articulated in terms of her subordination and against an already empowered autonomous subject.

This discussion brings me to a second related avatar of the subject, that is, the successful subject. This avatar takes the form of a dyadic relationship between the two distinct subjectivities engendered through human rights: the fully developed, able, empowered, autonomous agent; and the vulnerable or abject victim just discussed, who is also conceived of as a failed subject. The question that arises is whether there are particular scripts formulating how such failed selves – that is, inherently or circumstantially incapable subjects – can be shaped through rights accumulation into successful entities capable of properly exercising choice as legible, empowered, entitled and autonomous self-determining agents. In the well-established liberal tradition, especially that of the English Utilitarians, it is only through undergoing proper education that these failed subjects can become ‘successful’. This is the tradition whose mandates involved excluding colonized subjects from the realms of consensual representative government unless they achieved civilizational maturity by internationalizing the colonial model, developing the capacity to reason outside existent native intellectual and cultural systems.
and assimilating without dissent into the practices of liberalism. However, for scholars such as Rorty, it is not rationality that is sought to be developed, but rather ‘sentiments’ or, as he puts it, ‘sentimental education’. In other words, human rights education, through which we develop the capacity to respond to the suffering of others, enables us to become fully successful rights-bearing subjects. Human rights, which operate through empathy to establish an emotional relationship between empowered and disempowered subjects, is thus utilized as a transformative methodology – one that not only transforms failure into success, but simultaneously transforms the illiberal into liberal, the regressive into progressive.

Paradoxically, the abject, failed subject of human rights is fated to ‘be’ always in the process of ‘becoming’ – that is, to experience a constant deferral of the self-actualization that, in the liberal view, can only be enabled through conditioning and formal education in the normative scripts of the ‘good life’, procured and secured by human rights. Such training in liberal aspiration and action is efficiently provided by international human rights implementers, defenders and experts – who are themselves always already the successful, legible, realized, free subjects/actors as visualized within the fishbowl. Thus, the failed non-subjects are assisted in their evolution not by their own states or societies or knowledge systems, but by international human rights agencies and defenders; that is, the successful subjects. A central contradiction, then, in the liberal construction of both the successful and the failed/abject subject of human rights is that the term ‘subject’ cannot be simultaneously applied to an already empowered agent whose choice must be respected in all circumstances, and to a powerless entity who can validly claim human rights protection. The dialectical relationship between the sovereign subject who has agency and the disenfranchised subject who does not has to be rigorously and continuously upheld if human rights are to retain their place as an effective mode of governance. This is achieved through the education, transformation and ideological compliance of the failed, abject, vulnerable, illegible and/or illiberal ‘Others’ who, prior to this education, are always frustratingly located beyond the ideological purview of fishbowl hegemonies. This differential underscores the fact that while human rights unceasingly disseminate a particular script of ‘happiness’ and the ‘good life’ – in other words, the liberal norm – as an ideal for both successful rights-bearing and failed subjects, it simultaneously operates to ensure that the latter will never be able to attain that norm, or be in the precarious position of imminent lapse from it. This precarity is illustrated by the withdrawal or conditioning of the rights of Muslim citizens in liberal democracies, either through screening or
through the removal of a woman’s veil, as in the United States and France respectively, or by the decriminalization of homosexuality only for it to be subsequently recriminalized, as in India. Thus, the unequal subject-abject power relationship inherently encodes failure, and the failed are forever consigned to the ‘waiting-room of history’ or, rather, the ‘waiting-room of liberal happiness’.

The third avatar of the subject arises from the liberal fear of the ‘Other’, presumed as belligerent, threatening and dangerous. Elaborating on my discussion in the previous section, in the age of the global ‘war on terror’ and in the context of human rights violations in an increasingly phobic and violent world, this fear is of the very real possibility of ideological contagion and physical infiltration by radicalized cadres of illiberal ‘Others’ whose threatening actions invoke a possible subversion and collapse of the liberal order. Liberal responses to this escalation lay bare the true orientation of human rights as a political project – which is not just about addressing and alleviating the pain of those who have suffered cruelty. Rather, the rights framework is fully co-opted into the annihilatory mechanisms of militarism, forming part of the justification for inflicting cruelty to ensure the survival of liberalism. The rights paradigm is now firmly part of the neo-imperialistic rationale that justifies the unconscionable inflicting of cruelty and violence on untold numbers of innocent civilians/’non-combatants’, who are potentially threatening, to ensure the permanent local embedding of the liberal agenda. The liberal fear that underpins this appropriation of the rights discourse involves much more than crippling anxiety, panic and paranoia – it is a totalizing, visceral horror of an ‘Other’ envisioned as dangerous, monstrous, perverse and incomprehensible, and the expurgation of this barbaric ‘Other’ through various political and military means is essential if liberalism is to retain its political supremacy. In the process, the state is given extensive powers to prevent liberalism’s imminent destruction – powers that find their manifestation in military intervention and torture, while also in the process diminishing the political freedoms of those on behalf of whom such interventions are made.

It is in precisely such situations of extremity, crisis and trauma that the sinister side of human rights comes into full display as an embedded component in a liberal schema of assault against a threatening/potentially threatening ‘Other’, in just the same way that human rights operate as a technology of governance. And it is truly ironic that illiberal measures such as cruelty – the perennial primary focus of rights advocacy – in the guise of delivering emancipation, and channelled into a narrative of liberal righteousness, are what centrally inform policy and tactics in this violent targeting of the ‘Other’. The very cruelty from which the abject or
suffering subject is to be rescued through rights is mirrored in the violence applied by militarized liberalism to counter those cruelties and prevent the world from further disintegrating into primitivism, bigotry and chaos. Shklar’s original claim that ‘fear destroys freedom’ comes home to roost in the gut of liberalism itself, since it now has to continually offer a convincing rationale for the continued use of illiberal methods to ensure its own survival and the survival of human rights. To this end, liberal rhetoric constantly and forcefully alludes to a self-righteous reiteration of ‘who we are’; namely, a superior, evolved, Western or westernized human.81 Similarly, liberal advocacy arrives at the point where experiencing empathy for the ‘Other’, and witnessing the massive pain of the abject, vulnerable, failed, terrorized and violated non-subject, no longer forms the motivational substrate of human rights interventions; instead, human rights are unmasked as centrally concerned with, and firmly committed to, the retrenchment of liberalism and the entitled, successful and currently fearful subject, through ‘Empire lite’ and the targeting of the threatening ‘Other’; thus the implicit political project of liberalism becomes aggressively explicit.

There are ample human rights mechanisms for soliciting the views of those on whose behalf human rights interventions are made. These include the special procedures in the form of special rapporteurs and treaty bodies that enable, in some instances, individual complaints to be made and testimonies to be documented. However, despite these consultative processes and mechanisms, the hierarchized framing of humans that underpins rights protocols remains largely in place. In the liberal rights schema, these ‘Others’ are masses of unintelligible, faceless beings who have no particularity, subjectivity or agency; they are either humanized/deemed as worthy of being saved through the bestowal and reinforcement of rights, or they are dehumanized/deemed as unworthy and excluded from protection. If classified as the latter, they are either neglected, manipulated through ‘lite’ strategies or, if considered a threat to liberal interests, annihilated. As a key instrument deployed to implement ‘Empire lite’ agendas, rights are thus procured and secured either for the greater good of saving liberalism itself from insidious or violent predation by illiberal, adversarial, radicalized ‘Others’, or for saving primarily those constituencies who demonstrate a willingness to embrace liberalism as the only desirable tool of emancipation. The hierarchy of the human subject within human rights is developed through the next three chapters of this book in relation to the precarious sexual subject, the gendered subject and the female ‘Other’. Each chapter further illustrates how she is assembled and assigned, rendered perpetually unstable and insecure, and never fully free within the fishbowl.
LIBERAL FREEDOM AS UNFREEDOM

My discussion thus far has deconstructed two significant dimensions of the rights schema co-opted for the idealization and implementation of liberal ‘freedom’. First, human rights do not lead to lasting freedom, but are mechanisms tied to a specific and normative script of freedom that is in turn tied to a very specific, and narrow, understanding of happiness and the ‘good life’. In fact, the methodology for procuring and securing freedom through rights emerges as thoroughly complicit in an aggressive global political project where even the minimum intervention is productive of specific subjects and political outcomes. Moreover, it is strongly aligned with liberal individualism and human freedom which, in the current moment, are specifically defined in market terms. Human rights not only create, execute and refine a particular script of intervention — whether it is for ‘bare survival’ or eliminating the threat to liberalism posed by the ‘Other’ — but also impose a particular script of freedom to which the failed subject must aspire to become successful. While different chapters in this book explore, in depth, the core postulates of liberal freedom or the lack of it in the lives of both ‘free’ and ‘unfree’ subjects, here I make the generalized assertion that the various strands of liberal freedom are significantly more agenda-driven, in implicit and explicit terms, than they claim to be.

Second, my critical account also makes evident the manner in which human rights actively sequester liberalism from its role in the production and proliferation of the very horrors that human rights actively seek to confront and resolve today. The complex and violent inheritances of liberalism inform the contemporary moment, and within this broader framing human rights emerge not as a righteous, benevolent or minimal-ist enterprise, but as a governance project and a disciplinary mechanism for generating appropriate, homogenous political subjects and assimilating them into a script of ideological compliance and irreversible social transformation, or eliminating those who refuse to comply or turn away from such a mandate. Human rights advance a specific script of freedom even while they simultaneously suspect, denigrate and/or demolish any other vision of freedom. Alternatives are inevitably cast as skewed, grotesque, unworthy and invariably illiberal, deserving to be extinguished so as to stop the slide into political violence and chaos that threatens the supremacy of liberal thought and liberal governance — and this claim to supremacy becomes the central preoccupation of the human rights project. Thus, within the fishbowl, the choice is cast as being between what are perceived as two incommensurable objectives; of these, the idea of liberalism being resisted, refuted or supplanted in any way by any
other modalities is simply intolerable. This proven inability to be ‘open to’, to ‘engage with’ and to ‘learn from’ the ‘Other’, whomever or whatever that ‘Other’ might be, has resulted in a renewed and just as ferocious project of empire that is somehow continually free to pursue ideological and material conquests, even as it ensures its futurity through the constant gestation of those ‘Others’ continuously assimilated into the liberal womb.

NOTES

5. For example, John Locke, who is considered one of the founders of modern-day liberalism and a defender of the negative concept of freedom, promoted the ‘natural freedom of mankind’: John Locke, *Two Treatises of Government*, prep. Rob Hay, vol. 5 (London: Thomas Tegg, 1823; McMaster University Archive of the History of Economic Thought, 2000), p. 15. For an important early critique of this position, see Uday Singh Mehta, *The Anxiety of Freedom: Imagination and Individuality in Locke’s Political Thought* (Ithaca, NY: Cornell University Press, 1992), analysing the central tension in Locke’s idea that human beings have a natural potential to live free lives as individuals, and the political and educational structures which mould the individual. His analysis puts into question the idea that individuality exists outside of these structures which compel external conformity and internal self-restraint.
6. For example, John Locke, who is considered one of the founders of modern-day liberalism and a defender of the negative concept of freedom, promoted the ‘natural freedom of mankind’: John Locke, *Two Treatises of Government*, prep. Rob Hay, vol. 5 (London: Thomas Tegg, 1823; McMaster University Archive of the History of Economic Thought, 2000), p. 15. For an important early critique of this position, see Uday Singh Mehta, *The Anxiety of Freedom: Imagination and Individuality in Locke’s Political Thought* (Ithaca, NY: Cornell University Press, 1992), analysing the central tension in Locke’s idea that human beings have a natural potential to live free lives as individuals, and the political and educational structures which mould the individual. His analysis puts into question the idea that individuality exists outside of these structures which compel external conformity and internal self-restraint.


11. This ongoing conflict can even be seen in the de facto priority given to the ICCPR over the ICESCR, not only in terms of imagination and resource allocation, but also explicitly in the wording of the two, with civil and political rights (the ‘negative freedom’ rights) often being defined in absolute or more absolute terms. For example, ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’ (International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Art. 6(1)), which contrasts with the coached language used in relation to economic, social and cultural rights (the ‘positive freedom’ rights), for example, ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’ (International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, Art. 2(1)).


16. See, for example, Talal Asad, who argues that human rights have been used, among other things, by colonial empires against the native subject to advance their civilizing missions: Talal Asad, ‘What Do Human Rights Do? An Anthropological Enquiry’, *Theory & Event* 4, no. 4 (2000): muse.jhu.edu/article/32601.


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25. Shklar understood law’s political link to liberalism and that this link exposed the contradiction of law; it revealed law’s lack of neutrality while at the same time recognizing that law’s power relied upon its so-called neutrality: Judith N. Shklar, *Legalism* (Cambridge, MA: Harvard University Press, 1964).
33. Ignatieff, *Human Rights as Politics and Idolatry*, p. 90. Gearty is more nuanced in his discussion of rights inflation. He argues that rights are more often than not viewed as markers of modernity in the contemporary period, and thus they are embraced and used without the meaning and theory behind rights necessarily being understood. For example, the fact that in many ways they restrict popular democracy, and thus can be seen and even used against some of the aims of groups who are calling for such rights, may not at all be appreciated: see Conor Gearty, *Can Human Rights Survive?* (Cambridge: Cambridge University Press, 2006).
36. For slightly different approaches to happiness and the good life, see, for example, Martha C. Nussbaum, ‘Capabilities and Human Rights’, *Fordham Law Review* 66, no. 2 (1997): 273–300. Nussbaum applies her ‘capabilities’ approach to development to the context of human rights, and suggests that human rights and the human rights discourse should focus on the question ‘[w]hat is A actually able to do and to be?’ (at 285). Nussbaum’s liberalism is an expansive and explicitly interventionist one, which rests on the belief that politics should have a larger role in human life and the promotion of ‘their good life’ than merely the prevention of human suffering. Nussbaum’s position remains explicitly embedded in the fishbowl and promotes a liberal, universal idea of freedom as something to be obtained through a ‘capabilities approach’ version of equality, albeit more nuanced.
38. It is worth noting, however, that while Peters believes human rights should limit sovereignty in the name of cruelty, Moyn has critiqued the collapse of humanitarian...
interventions to prevent all human suffering and human rights, stating that the two have become the same in many ways: Moyn, *The Last Utopia*, pp. 220–1. In his view, this result is why and how humanitarian intervention is often wrongly justified in the name of human rights: Samuel Moyn, ‘Judith Shklar versus the International Criminal Court’, *Humanity* 4, no. 3 (2013): 473–500.


44. Ibid., p. 163.

45. Ibid., p. 127.

46. Ibid., The Future of Human Rights, p. 7.


50. Golder, *Foucault and the Politics of Rights*, pp. 115–47. Golder’s reading challenges the view that Foucault capitulated to the terms of liberalism in his ‘embrace’ of human rights in his later work; I elaborate upon this argument in Chapter 6. See also Michel Foucault, ‘Society Must be Defended’: *Lectures at the Collège de France, 1975–76*, eds. Mauro Bertani and Alessandro Fontana, trans. David Macey (London: Allen Lane, 2003), where he refutes the idea that the subject has a pre-existing ontological status or essence; rather, it is constituted through power which operates through ‘bodies, gestures, discourses, and desires’ that are named as ‘individual’ (at pp. 29–30). See also Golder, ‘Beyond Redemption?’; Joe Hoover, *Reconstructing Human Rights: A Pragmatist and Pluralist Inquiry into Global Ethics* (Oxford: Oxford University Press, 2016).


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56. Michael Walzer, 'The Politics of Rescue', *Social Research* 62, no. 1 (1995): 61–2. Walzer repeated his support for the establishment of a mandate or trusteeship system in the context of the refugee crisis that assailed Europe in the summer and autumn of 2015, when large numbers of migrants were fleeing the horrors of the war in Syria. In this respect, Walzer commented: ‘There are countries in the world today that ought to be, for a time, not-independent and not-sovereign. What the world needs, and what the UN might provide if it were the organization it was meant to be: a new trusteeship system for countries that are temporarily unable to govern themselves ... Libya and Syria ought to be UN trusteeships, with some coalition of countries, different in each case, taking responsibility for maintaining law and order and providing basic services to the population – under strict UN supervision’; Michael Walzer, ‘The European Crisis’, *Dissent* (blog), 11 September 2015, www.dissentmagazine.org/blog/michael-walzer-european-refugee-crisis. This move finds support in Ignatieff’s scholarship (for example Michael Ignatieff, ‘The Seductiveness of Moral Disgust’, *Social Research* 62, no. 1 (1995): 95).


59. Asad, for example, argues that cruelty and violence are integral to compassion and good intentions: Talal Asad, ‘Reflections on Violence, Law, and Humanitarianism’, *Critical Inquiry* 41, no. 2 (2015): 390–427. See also Talal Asad, ‘On Torture, or Cruel, Inhuman, and Degrading Treatment’, *Social Research* 63, no. 4 (1996): 1081–1109, where he challenges the universalist discourses generated around the idea of cruelty which obscure the ways in which cruelty is integral to the modern state.

60. Ignatieff, *Empire Lite*.


64. See, for example, Mehta, *Liberalism and Empire*; Said, *Orientalism*; Dhawan, ‘Introduction’. There remains a consistent refusal to work through the legacies of colonialism.


69. Ibid., p. 89.

70. Ibid., p. 89.


74. Ibid., p. 8.

75. For example, several feminist critiques have focused on how liberal legalism has contributed to the construction of gender as a binary system – as male and female, masculine and feminine: Dianne Otto, ‘International Human Rights Law: Towards Rethinking Sex/Gender Dualism’, in *The Ashgate Research Companion to Feminist Legal Theory*, eds. Margaret Davies and Vanessa E. Munro (Farnham: Ashgate, 2013), pp. 197–215; Davies, *Delimiting the Law*; Hunter, ‘Deconstructing the Subjects of Feminism’, p. 160. Smart, for example, argues that law functions as a technology of gender and produces fixed identities and gendered subjects. In her analysis, legal discourse not only brings into being the categories of woman and man, but also normalizes and naturalizes the specific attributes associated with each category: Smart, ‘Women of Legal Discourse’, pp. 34–9. Postcolonial feminism has further complicated this analysis through an examination of how these categories are displaced onto a developed/developing world, ‘us’ and ‘Other’ divide: Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (London: Glass House Press, 2005); Sara Ahmed, ‘Deconstruction and Law’s Other: Towards a Feminist Theory of Embodied Legal Rights’, *Social & Legal Studies* 4, no. 1 (1995): 58.


80. Anker describes this as a shift from fear to horror – a more intense feeling of terror and disgust – and uses Thomas Hobbes’ *Leviathan* to analyse how the liberal state capitalizes on this idea of horror: Anker, ‘Liberalism of Horror’.