REVIEW ESSAY

FEARLESS SPEECH: SEEKING FREEDOM BEYOND THE (LIBERAL) FISHBOWL


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Ratna Kapur’s latest book provocatively invites readers to join her in her search for freedom.\(^1\) Along the way, she dares us to travel beyond the now well-worn pathways of human rights critique; to venture beyond the confines of the (neo)liberal emancipatory imaginary — the evocative ‘fishbowl’ of her title — and explore alternative non-liberal (not illiberal) understandings of subjectivity and freedom. In her acknowledgments, Kapur describes writing the book as a journey — in both the intellectual and deeply personal realms. In writing this review, we have accepted her invitation to join her search by reflecting on our own research and how it is challenged, changed, reimagined and/or encouraged by her journey in this book.\(^2\)

I DIANNE OTTO

Many readers will already be familiar with Kapur’s powerful critique of the human rights project and its devastating implications for freedom, especially that of sexual, gendered and raced, subaltern subjects.\(^3\) In this book, her critique reaches its zenith, catapulting readers into an entirely new paradigm by insisting, to begin with, that human rights be recognised for what they are and that we need to search for freedom elsewhere. As she says, ‘rights today are active conduits for structures and relations of power, for avid as well as insidious policing and for increased regulation and governance of both the entitled and the disenfranchised’.\(^4\) Kapur does not reject the importance of human rights as a means of granting legibility to otherwise disenfranchised ‘Others’, conditionally offering them entry into the realm of the fully human subject of liberalism. But

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1 Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar, 2018) (‘*Gender, Alterity and Human Rights*’).
2 Early drafts of this review essay were presented at a launch of the book at Melbourne Law School, hosted by the Institute for International Law and the Humanities, 29 November 2018.
4 Kapur, *Gender, Alterity and Human Rights* (n 1) 228.
she implores us to correct our mistaken understanding of human rights as an emancipatory project when it is really a project of governance, drawing an analogy with the subcontinental, metaphorical warning that a rope may be misperceived as a snake and that freedom can only be experienced when the mistake is corrected.

I am among those critics of human rights discourse who have nevertheless held onto a belief in the potential of human rights to deliver on the promise of freedom; a faith that Kapur describes as illusory. Her discussion of the work of some of my human-rights-reinvestment fellow travellers pushes me to rethink this hope for critical redemption of the human rights project. I have sympathy, for example, with Costas Douzinas’ call for de-linking human rights from their institutional and governmental alignments and reviving them as tools that are able to fuel grass roots emancipatory struggle — described by Kapur as ‘seductive nostalgia’. Like Wendy Brown’s argument that the appropriation of human rights and democratic governance by market forces needs to be resisted by reclaiming the political space as a participatory and inclusive domain concerned with ‘ordinary lives’, I have argued for a revival of the political as a counter to the colonisation of human rights and ‘life itself’ by (liberal, Imperial) law. I think of the political work that human rights has done for indigenous peoples, for people with disabilities, and for those living ‘precarious desires’ (Kapur’s term), outside the heteronormative prescriptions of both gender and sexuality.

Yet I must admit that Kapur has a point when she observes that such ‘radical’ reinvestments in human rights are mired in the familiarity and comfort of the ‘fishbowl’. Even the more limited aspiration of seeking legibility by way of human rights recognition, while challenging the known to some extent, remains within the familiar waters of liberal epistemology. So I am compelled to consider what lies beyond the fishbowl’s normative order, in what might be described as the high seas of human knowledge and experience — perhaps part of the ‘common heritage of humanity’.

Having admitted my own susceptibility to the seductiveness of liberalism’s certainties, it will be no surprise that I am grateful that Kapur draws on the work of familiar critical philosophers Eve Sedgwick and Michel Foucault, as well as South Asian and Hindu epistemologies of non-dualism, to signpost some of the many possible routes to non-liberal philosophies and practises of freedom. Kapur uses the example of Sedgwick’s engagement with Tibetan Buddhism to show how the deconstructive theory that grounds her early work in queer philosophy and feminist affect theory, challenging the dualisms that structure Western thought, provides a conduit out of the fishbowl. This alternative non-liberal

5 Ibid 153.
6 Ibid 157.
7 Ibid 161–2, discussing Wendy Brown, Undoing the Demos: Neoliberalism’s Stealth Revolution (Zone Books, 2015).
10 Kapur, Gender, Alterity and Human Rights (n 1) 163.
register of knowledge helps Sedgwick rethink the Cartesian duality of mind and body, understanding subjectivity as located in the continuity of consciousness — the interrelatedness of all phenomena — rather than the individuated and temporal corporeality of the liberal subject of human rights. Several decades before Sedgwick, Foucault was in search of an alternative modality by which to recast the idea of revolution in a way that involved both internal and external change. He found what he was looking for in the revolutionary aspects of Shia Islam, which he described as ‘political spirituality’, which featured in the early stages of the Iranian revolution that overthrew the brutal United States-backed regime of the Shah in 1979. In this register, revolution was understood not only as a political project, but also, and more importantly, as an ethical way of living, described by Drucilla Cornell and Stephen Seely as a totally different understanding of subjectivity that ‘break[s] with conventions, habits, and values of society’. Foucault’s interest in (Western) technologies of the self was deeply informed by his openness to other worlds of knowledge and life. In journeys outside the fishbowl, both Sedgwick and Foucault found non-liberal ways to chart new cartographies of (collective) freedom which involve ‘a turn inwards’ engaging introspection, reflection and self-knowledge. This is precisely what Kapur advises for seekers of freedom and what I now feel challenged to make sense of for myself.

Yet, just as Foucault was excoriated for his engagement with Islam at the time of the Iranian revolution, Kapur elicited hostility from many in the liberal legal academy in the process of writing this book, especially those working with human rights law. When she made the case for moving outside the fishbowl in academic settings, responses included intense scepticism, fear, anxiety and even panic. She suggests that this may be the ‘epistemic anxiety’ that actually ‘destroys’ freedom, fuelling instead the hopeful reinvestment in human rights that she criticises. Kapur obliquely alludes to these reactions many times in the book, asking again and again why liberalism is such a closed system of knowledge; why non-liberal knowledges are so roundly dismissed as backward, dangerous, threatening, uncivilised; and how people living those knowledges are rendered illegible outsiders — subalterns — who need rescue by human rights from their barbaric traditions and circumstances. These are questions we all need to face.

Unlike the turn of both Sedgwick and Foucault to non-liberal epistemologies, which have been dismissed, glossed over, treated as a footnote, forgotten or ignored, Kapur’s journey will, I hope, prompt new ways of thinking about and pursuing both human rights and freedom. The reflections of the three new scholars that follow give me hope that her work will not suffer the same fate as that of her predecessors.

II CLAERWEN O’HARA

This unique book has been an incredibly useful resource for my own research, in which I explore the concept of consensus in international law through the lens

11 Ibid 186–8.
13 Kapur, Gender, Alterity and Human Rights (n 1) 182.
of queer theory. Specifically, I am interested in the work that ideas of consensus do in relation to legal discourses concerning sexuality. A large part of my research focuses on the use of consensus in international and regional human rights law. In this regard, I track the emergence of consensus as a technique of treaty interpretation by regional human rights courts, such as the European Court of Human Rights (‘ECtHR’). I also explore the use of consensus decision-making by international human rights organisations. Finally, I examine the general narrative of ‘international consensus’ in which international human rights law — in particular, instruments such as the *Universal Declaration of Human Rights* — are situated.

Kapur’s book has helped me to unpack the work that consensus does in these different contexts in four key ways: through her metaphors of the fishbowl and the rope-snake, discussion of alterity and call for reflexivity.

The first is her metaphor of the liberal fishbowl, which she uses to explain how we have become trapped within the Western liberal paradigm. As Kapur writes in Chapter 5, this entrapment can be seen in the tendency of critical human rights scholarship to return to, and reinvest in, the human rights project, even after delivering a damning critique of that very project. This is a trend that Ben Golder has called ‘the critical redemption of human rights’. In my own work, I am exploring how claims of consensus can have a totalising effect through the implication that they speak on behalf of ‘everyone’. It is my argument that, by couching both the foundations and content of human rights law in the language of consensus, international courts and institutions have enabled the human rights discourse to grow ever more hegemonic, entrapping us all within its logic.

Kapur explicitly grounds liberalism’s hegemony in the concept of consensus in her book. In the introduction, she writes that there is a ‘consensus that the liberal framework within which freedom is located is the most progressive as well as civilizationally mature project for pursuing the goal of freedom’. In this way, Kapur’s metaphor of the fishbowl helps me to better understand the work that consensus does in patrolling the borders of the human rights paradigm. I

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14 The European Court of Human Rights (‘ECtHR’) uses the concept of ‘European consensus’ as a method of treaty interpretation. For an overview of this method, see Konstantin Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge University Press, 2015).

15 Consensus decision-making involves arriving at an outcome without a vote: see Philippe Urfalino, ‘The Rule of Non-Opposition: Opening up Decision-Making by Consensus’ (2014) 22(3) *Journal of Political Philosophy* 320, 326. International human rights bodies that strive to take decisions by consensus include the human rights treaty bodies, the United Nations Human Rights Council and the Committee of Ministers of the Council of Europe.


17 For commentary on this narrative of international consensus, see generally Joe Hoover, ‘Rereading the Universal Declaration of Human Rights: Plurality and Contestation, Not Consensus’ (2013) 12(2) *Journal of Human Rights* 217.

18 Kapur, *Gender, Alterity and Human Rights* (n 1) 10.


21 Kapur, *Gender, Alterity and Human Rights* (n 1) 6 (emphasis added).
now see consensus — a notion that is, itself, championed by liberal thought\textsuperscript{22} — as the glass that binds the liberal fishbowl and renders it so seemingly inescapable: liberalism’s very own built-in hegemonising device.

The second way in which Kapur’s book has influenced my work is through the other metaphor that she frequently employs throughout her book — that of the rope-snake. In this metaphor, drawn from non-dualist Indian philosophy, the perceiver mistakes a rope for a snake and reacts accordingly. However, whether the perceiver runs away or attempts to study the snake, the perceiver will not be able to fix the error, which is one of misperception. Kapur explains that this can only be remedied through reflection and discernment, by thinking through whether the rope is actually a snake.\textsuperscript{23} She contrasts this metaphor with the Judeo-Christian snake in the Garden of Eden, which, though also associated with trickery and error, does not represent misperception. Rather, in the Western canon, the trick is externalised onto the snake — the snake itself is portrayed as ‘evil’, complicit in the downfall of humanity and, most importantly, it remains a snake. Or, according to some, it remains Satan. But in both scenarios, it remains a threat and the ‘Other’, for all of eternity.\textsuperscript{24} In contrast, there are no ideas of ‘good’ or ‘evil’ associated with the non-dualist snake, it is just simply not a snake. And it can disappear the very moment that we pause for reflection and realise that it is in fact only a rope.

Kapur uses this metaphor for various different purposes in her book, but one important way is to show how we have mistaken an accumulation of human rights for freedom, just as the perceiver has mistaken a rope for a snake.\textsuperscript{25} This metaphor also helps me to understand the way in which we have mistaken a consensus for a total, or at least widespread, agreement. Yet, as I have discovered through my research, consensus, at least in international law, is almost never that. When the ECtHR speaks of a social consensus in Europe, it provides no evidence for this consensus. There has been no vote or poll; it seems little more than a judicial hunch.\textsuperscript{26} Even when the ECtHR looks for a European legal consensus, which it derives from a comparative analysis of member states’ laws, it is only ever looking for a majority of member states\textsuperscript{27} and is sometimes even happy to call a very thin majority a ‘consensus’.\textsuperscript{28}

The same is true even in relation to consensus decision-making in the confined environment of the international institution. Numerous scholars have shown how, in the absence of a vote, consensus decisions tend to align with the will of those states that wield the most geopolitical power, as they are the ones


\textsuperscript{23} Kapur, \textit{Gender, Alterity and Human Rights} (n 1) 10–12.

\textsuperscript{24} Ibid 11.

\textsuperscript{25} Ibid 153.

\textsuperscript{26} See, eg, \textit{Dudgeon v United Kingdom (Merits)} (1981) 45 Eur Court HR (ser A) 19 [60], in which the ECtHR refers to ‘an increased tolerance, of homosexual behaviour’ in Europe, without providing any evidence for this statement.

\textsuperscript{27} Dżehtsiarou (n 14) 11–12.

\textsuperscript{28} See, eg, \textit{Oliari v Italy} (European Court of Human Rights, Chamber, Application Nos 18766/11 and 36030/11, 21 July 2015) 54 [177]–[178], in which the ECtHR was influenced by a ‘thin majority’ of member states having legislated in favour of same-sex relationship recognition.
who are strong enough to make the consensus process fail. I, therefore, see consensus as another one of liberalism’s illusory concepts; another rope that we have mistaken for a snake.

The third way that Kapur’s book helps me to think about my own research is through her critique of human rights, in which she shows, amongst other things, how human rights law frequently results in calls to surrender alterity and difference. This, she argues, can in turn reinforce existing power structures. One of the clearest illustrations of this is Kapur’s discussion of how the ECtHR has, on numerous occasions, upheld bans on the wearing of the Muslim veil, which Daniela Alaattinoğlu discusses below. In my own work, I trace how the ECtHR has used its interpretive technique of ‘European consensus’ to regulate, exclude and even erase the sexual ‘Other’ in its case law relating to sexuality rights. One of the clearest examples of this can be seen in the case of Stübing v Germany, in which the ECtHR held that the criminalisation of consensual adult incest did not violate the European Convention on Human Rights (‘ECHR’), due to, inter alia, ‘a broad consensus … that sexual relationships between siblings are neither accepted by the legal order nor by society as a whole’. In this case, just as in the Muslim veil cases, we see the ECtHR attempting to quash a different way of being, of being free, on account of it lacking social acceptance.

I understand the fraught relationship between ‘European consensus’ and difference to be a product of the nature of consensus, which, as a concept, emphasises sameness and agreement, and attempts to oust, or at least tame, expressions of alterity and dissent. By combining my research on European consensus with Kapur’s more generalised critique of human rights, it now occurs to me that it is perhaps the narrative of consensus embedded within human rights that may account for its dismissive and sometimes violent encounters with alterity.

The final way that Kapur’s book impacts on my research is through her exploration of different registers of freedom, beyond the liberal fishbowl. Kapur calls for a turn inwards, towards greater self-reflection and discernment, drawing on ideas from non-dualism. This helps me to start thinking of ways to get out of the sticky web that is consensus, to free ourselves from its relentless pursuit of sameness and agreement, and to begin to open up spaces for alterity and queerness to thrive. I now see that the hegemonic effect of a consensus claim can only take hold when we limit our search for meaning to the external world and, in particular, to the views of others. When we continue to mistake a rope for a

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30 Kapur, Gender, Alterity and Human Rights (n 1) 127.
31 Ibid 122–9.
32 Stübing v Germany (European Court of Human Rights, Chamber, Application No 43547/08, 12 April 2012).
33 Ibid 13 [61].
35 See especially Kapur, Gender, Alterity and Human Rights (n 1) chs 6, 7.
snake because, rather than pausing for reflection, we are influenced by an illusory claim that ‘everybody’ thinks it is a snake. Yet, through a process of discernment, we can begin to turn away from any influence that the idea of consensus wields and instead start paving our own pathways to freedom.

III DANIELA ALAATTINOĞLU

For me, Kapur’s book is an invitation to step back and think critically and deeply about the human rights project — its unfulfilled promises to provide us all with a good and happy life and its increasingly visible and disciplinary governance implications. A powerful indictment of the operations of the liberal fishbowl is presented in the fourth chapter, entitled ‘Alterity, Gender Equality and the Veil’. In it, Kapur shows how human rights, as a freedom project, have produced a liberal, (hetero)sexualised, white subject as the paradigm female rights holder, simultaneously excluding one of its subaltern ‘Others’: the veiled Muslim woman.

Looking particularly at the case law of the ECtHR concerning state efforts to regulate the wearing of the Islamic veil — Şahin v Turkey,36 Dahlab v Switzerland37 and SAS v France38 — Kapur demonstrates how a notion of citizenship and rights is enforced whereby the veiled woman is included on the condition that she takes off her veil.39 Importantly, in SAS v France, the most recent of these cases, the ECtHR upholds the French criminal ban on veiling in public spaces by enforcing a principle that is not even recognised in the ECHR — that of ‘living together’ (though it is not unrelated to ‘consensus’).40 The Court’s newly discovered principle of ‘living together’ demonstrates how liberal legal, feminist and republican discourses come together to form a paradigm where the veil symbolises ‘the ultimate subordination of women’,41 where the uncovered body is considered to be free and equal, while the covered body is unfree and unequal. To realise her freedom and equality, the veiled woman must be saved by the operation of human rights law from her ‘oppressive Muslim culture, and from oppressive Muslim men’42 — from her own gendered minority status. Once saved, she will abandon her veil, uncover her face and finally conform to liberal universalist female subjectivity. Broadening the account beyond the ECtHR, Kapur shows how the same liberal narrative of securing the freedom and

36 Şahin v Turkey [2005] XI Eur Court HR 173.
37 Dahlab v Switzerland [2001] V Eur Court HR 447.
38 SAS v France [2014] III Eur Court HR 341 (‘SAS v France’).
40 See especially SAS v France (n 38) 380 [153] (citations omitted):

[T]he Government indicated that it was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of ‘living together’. From that perspective, the respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society.

41 Kapur, Gender, Alterity and Human Rights (n 1) 129.
42 Ibid.
emancipation of veiled Muslim women from their cultural victimhood was used to justify Western military intervention in Afghanistan after the tragedy of 9/11.\textsuperscript{43}

As a result, the veiled woman is faced with an impossible dilemma, where she cannot be a liberal legal subject, a full citizen, a rights holder — as long as she veils. She is not credited with the freedom to choose to veil. Such a choice is unintelligible to the liberal legal order; she is unable to ‘live together’ and so must be removed from public spaces. Narratives of women who have chosen veiling as a form of political resistance are completely disregarded in this fish-bowled imagination of freedom.\textsuperscript{44} Kapur’s discussion of the formation of the liberal subject and her ‘Other’ in the veiling cases provides an account of how, and who, human rights discourses simultaneously include and exclude. The image of the rights holder, accordingly, is always already an exercise in exclusion and alterity.

The notion of the excluded, the subaltern, is particularly relevant to my research, which looks at the establishment, abolition and remedy of involuntary sterilisation and castration practices in Finland, Norway and Sweden from the 1930s to the present. Often considered vanguards of human rights, these Nordic countries adopted sterilisation and castration legislation to govern the reproduction and sexuality of the population and to discipline expressions of gender and sexuality — or, more specifically, to control those people whose sexuality, gender expression or reproduction was considered ‘undesirable’. Such projects ranged from eugenic sterilisation laws targeting poor, ‘promiscuous’, minority and racialised — especially Romani — women; castration laws targeting sexual ‘offenders’, including homosexual men; to gender recognition laws for trans people that preconditioned amendment of legally registered gender on sterilisation or castration, which, to some extent, continue to this date.\textsuperscript{45}

Like unveiling, which in Kapur’s account emerges as a condition of access to liberal citizenship for Muslim women, sterilisation and castration have been used as technologies to ‘condition’ the rights of subalterns. They have served as preconditions for access to abortion, to retain custody of children, to be released from institutionalisation, or to obtain legal gender recognition. The interventions have often been carried out in the name of the ‘best interests’ of the subaltern subjects — poor women cannot want more children, sexual deviants cannot want to preserve their sexual drive, and trans people must want genital surgery and

\textsuperscript{43} Ibid 137–8.
\textsuperscript{44} Ibid 141–2. Here, Kapur particularly refers to freedom through veiling, developed in the work of Saba Mahmood by looking at the piety movement in Egypt: Saba Mahmood, \textit{Politics of Piety: The Islamic Revival and the Feminist Subject} (Princeton University Press, 2005).
\textsuperscript{45} Finland still requires infertility for amendment of legally registered gender: \textit{Laki Transseksualin Sakupuolen Vahvistamisesta} [Act on Legal Recognition of the Gender of Transsexuals] (Finland) No 563/2002 s 1(1). The most comprehensive account available in English, to date, focuses on the eugenic and socio-political sterilisations in the Nordic countries: see Gunnar Broberg and Nils Roll-Hansen (eds), \textit{Eugenics and the Welfare State: Sterilization Policy in Denmark, Sweden, Norway, and Finland} (Michigan State University Press, 2005).
cannot want to procreate. Subaltern voices speaking against the recommendations of medico-legal experts are rendered unintelligible.46

Just as the voices of veiled women are silenced in human rights discourse, the voices of the subalterns of my research, the survivors of involuntary sterilisation and castration, have been systematically muzzled. This is true, for example, of national rights debates, where Nordic women’s movements for reproductive health have focused on access to reproductive control and abortion — leaving the experiences of those who have been sterilised, or fear sterilisation, unheard. It is also true that widespread practices of involuntary sterilisation and castration outside of Nazi Germany — such as in Japan, the US, Eastern Europe and the Nordic countries — have only recently been questioned by the international human rights community and are just starting to be framed as rights violations.47 This provides another example of how the human rights regime has excluded subalterns from access to justice and remedies.

Kapur brilliantly demonstrates the failures of the dominant ‘emancipation-and-equality claims’48 of rights discourses, showing that rights do not free, but rather entrap and marginalise, producing failed liberal subjects as abject and ‘undesirable’,49 as less than fully human. Human rights, in other words, offer freedom on conditional terms — and even then, freedom is limited to the confines of the fishbowl.

IV ODETTE MAZEL

In imagining freedom beyond the fishbowl, Kapur both enacts, and encourages through her enactment, parrhesia (or ‘fearless speech’).50 The parrhesiastes says what she knows to be true. Inherent in this act of truth-telling is risk and the danger of upsetting the majority. She must accept the terms of this act. It is her duty and her freedom. In exposing her own life, she takes up a specific relationship with herself (through a turn inward): she risks danger, preferring herself as a ‘truth-teller rather than as a living being who is false’ to herself and to others.51 It is an act for the common good.

In the final three chapters of her book, Kapur moves from addressing precarious desires and critiquing the limits of recognition and inclusion within the normative frame of present-day human rights, to take seriously the need to seek freedom through alternative registers. She explores the act of looking inward to find ‘another way of being in the world, where freedom is addressed

48 Kapur, Gender, Alterity and Human Rights (n 1) 146.
49 Ibid.
50 See generally Michel Foucault, Fearless Speech, ed Joseph Pearson (Semiotext(e), 2001) 11–20 (‘Fearless Speech’).
51 Ibid 17.
not as an explicit, imposed process but as a modality of self-transformation that functions as a catalyst for external emancipation’.  

In my research, I am examining lesbian, gay, bisexual, trans and queer (‘LGBTQ’) people’s responses to the recent enactment of same-sex marriage legislation in Australia53 and what this tells us about the current relationship between law, praxis and lived experience — investigating the tensions involved in navigating the desire for equal rights and advocating social change, whilst holding on to a more radical queer imaginary. Through an empirical approach, I am making visible the narratives, or personal stories, of LGBTQ people and activists — as stories of law, exploring how, why and when they have worked with the law to bring about change, how the law responded, and what the impacts or the implications of this approach are. How do we navigate the entanglement of pragmatic practices and emancipatory ideals? Kapur’s work encourages me to think fearlessly — extending my inquiry beyond the limits of what is made available within existing legal, social and political constructs, to interrogate the real meaning of freedom and emancipation for LGBTQ people, and the courageous acts, and inward turns, that this might entail.

In chapter 5, Kapur explores the fear and reluctance of critical legal scholarship to turn away from the human rights project and reiterates the limits of the coercive logic of the liberal universe in which freedom is understood ‘as a linear, evolutionary march through time’ for the liberal individual.54 She shows us that a reinvestment in rights in the name of freedom is futile, for while rights provide some disenfranchised people the privilege of moving into a space of recognition and legibility, new norms inevitably emerge, creating new boundaries of inclusion and exclusion, leaving intact the unending struggle for legitimation.55 The desire then, for ‘freedom and meaningful happiness’ for all, can never be met.56 Whilst the incorporation of the resistive subject might produce moments of disruption, ultimately, Kapur suggests, they will find themselves within the ‘parameters of a regulatory apparatus’, mourning the aspects of selfhood that they let die in the name of recognition and social safety.57

Searching beyond the damaged authority of critique as paranoid and unproductive, Kapur looks to feminist and queer affect theory as sources for exposing the intimate experiences of subaltern subjects, and the ways they continue to ‘live on’ through self-affirmation, when the promise of freedom remains elusive. Whilst providing ‘a rich tapestry of how daily life is lived, endured and sustained’,58 Kapur sees that the reparative turn toward ‘affect’59 still falls short of providing a recipe for freedom — limited by its focus on the

52 Kapur, Gender, Alterity and Human Rights (n 1) 239.
53 Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth).
54 Kapur, Gender, Alterity and Human Rights (n 1) 182.
55 Ibid 239.
56 Ibid 163.
57 Ibid 250.
58 Ibid 229.
‘granular dimensions of daily existence’.

Her question then remains: ‘What epistemic terrain might present itself to the critical gaze when we undertake a complete turn away from human rights as the primary mechanism for securing freedom?’

Kapur is very clear that we cannot, and should not, abandon human rights advocacy altogether. It is, she says, necessary — even crucial — for the possibility of social justice and progressive politics. We must, instead, see it for what it has become, and ‘engage with human rights, not as a universalized freedom project, but primarily as a governance project that is wholly implicated in structures and hierarchies of power’. Human rights, she contends, has failed on its promise for genuine transformation and must be uncoupled — delinked — from the aspiration of freedom.

In taking seriously the need for productive resolutions, she suggests that we acknowledge the philosophical and spiritual worlds beyond the fishbowl and embrace their already existing modalities and enunciations of freedom that operate as inclusive paradigms for ‘rendering and keeping the human subject affirmed and freed’. In doing so, as Dianne Otto has noted, Kapur reflects on the later work of Sedgwick and Foucault who engage with Mahayana Buddhism and Shi‘ism respectively. Both traditions point to the potential of ‘being’ through attention to self-concepts and practices of self-care — seeing these as not only revolutionary acts, but integrally connected to meaningful freedom. ‘[J]uridical formulations concerning subjective freedom’, in which freedom is a ‘ready-made region’ and the property of the individual subject, is thus wholly rejected as a path to delivering true freedom.

The modern era’s ‘separation of philosophy from spirituality’, Foucault suggests, as a result of the ‘Cartesian moment’, has led to the reification of the activity of knowing, and the thinking subject, without the need for self-transformation or alteration. However, knowledge, in and of itself, can never provide access to the truth or to freedom — this must come about through transformative practices of self-inquiry that have implications beyond the individual. Kapur expands this intellectual and personal commitment to other ways of thinking and being, ‘grounded in the modality of evolving self-awareness’. It is a shift away from a preoccupation, as she says, in reference to Foucault, with the ‘technologies of domination’, to the ‘technologies of the

60 Kapur, Gender, Alterity and Human Rights (n 1) 153.
61 Ibid 183.
62 Ibid 175.
63 Ibid 152.
66 Kapur, Gender, Alterity and Human Rights (n 1) 193, citing Foucault, The Hermeneutics of the Subject (n 64) 14.
67 Kapur, Gender, Alterity and Human Rights (n 1) 194.
68 Ibid 180.
self” and a theorisation of ethics as the foundation for new forms of resistance to power. She draws on Advaita, or non-dualism, a subcontinental philosophical tradition that radically re-inscribes conventional understandings of time, subjectivity and freedom — in which everything in the phenomenal world is understood as transient; where there is no subject–object or mind–body distinction; in which freedom is associated with transcendence ‘being within oneself and with others’. Freedom in this alternate register is beyond the realm of legal discourse, juridical process and human rights.

Homi Bhabha has said that artists negotiate ‘systems of social exchange’ through material production, and Kapur provides us with a number of metaphors, artworks, narratives and stories, as Claerwen has stated, in order to help us think with, between and beyond. In order to make this radical epistemic shift, to move from understanding to embodying, she provides us the creative tools with which to access freedom in a different register.

In undertaking my own project, I am compelled to explore the traditions that exist beyond the fishbowl, in my own place, and recall the role of the Mimi spirit in Aboriginal culture in order to open the horizons and possibilities outside the frame of liberalism and human rights. Aboriginal Mimi spirits are genderless and operate by subversion. They are tall and thin and, with their magic powers and trickster antics, it is believed that they ‘mimicked human form and taught [the] ancestors to hunt, cook and paint’. They are the knowledge holders — their ‘ace card’ is their understanding that ‘any authoritative discourse is a contingency not a law of nature or object of truth’. ‘[T]he trickster is chance and freedom’. As a semiotic figure, it is ‘imagined in narrative voices, a communal rein to the unconscious’. It ‘is agnostic imagination and aggressive liberation, a “doing” … outside the imposed structures’.

Mikhail Bakhtin, in his examination of trickster discourse, sees the trickster as a comedic trope, providing a chance separation in a narrative. There are, he says, events that, in principle, cannot unfold on the plane of a single and unified consciousness, but presuppose two consciousnesses that do not fuse; they are events whose essential and constitutive element is the relation of a consciousness to another consciousness, precisely because it is other. Such are all events that are creatively productive, innovative, unique, and irreversible.

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69 Ibid 194.
70 Ibid 193.
71 Ibid 201.
76 Ibid.
77 Ibid.
78 Tzvetan Todorov, Mikhail Bakhtin: The Dialogical Principle, tr Wlad Godzich (University of Minnesota Press, 1984) 99–100 (emphasis in original) (citations omitted).
Bakhtin further states that ‘[t]ruth is not born nor is it to be found inside the head of an individual person, it is born between people collectively searching for truth, in the process of their dialogic interaction’. 79 Gerald Vizenor, again, in reference to trickster discourse, suggests that truth and freedom are found ‘not by completion and similarity but by suggestion and difference’. 80 Kapur similarly encourages us to seek out alternative understandings of freedom by engaging with the ‘Other’ — by ‘drawing upon non-liberal epistemologies’ to locate ‘lasting freedom in freedom from the transcendental liberal subject through a self-reflective turn inwards’. 81 ‘In parrhesia, the speaker uses [her] freedom and chooses frankness instead of persuasion, truth instead of falsehood’, risk instead of security, and ‘moral duty instead of self-interest and moral apathy’. 82 Kapur offers us, through her insights, an emancipation, a chance separation in the narrative, through which, upon deep contemplation, we might discover more productive enquiries in pursuit of freedom for all.

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79 Mikhail Bakhtin, Problems of Dostoevsky’s Poetics, ed and tr Caryl Emerson (University of Minnesota Press, 1984) 110 (emphasis in original).
80 Vizenor (n 75) 278.
81 Kapur, Gender, Alterity and Human Rights (n 1) 180.
82 Foucault, Fearless Speech (n 50) 19–20.
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