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Philosophers, Activists, and Radicals: a story of human rights and other scandals

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Abstract:

Paradoxically, the political success of human rights is often taken to be its philosophical failing. From US interventions to International NGOs to indigenous movements, human rights have found a place in diverse political spaces, while being applied to disparate goals and expressed in a range of practices. This heteronomy is vital to the global appeal of human rights, but for traditional moral and political philosophy it is something of a scandal. This paper is an initial attempt to understand and theorize human rights on the terrain of the social actors who put them to use, particularly radical activists that have a more critical relationship to human rights.

Attempting to avoid the philosophical pathology of demanding that the world reflect our conception of it, we base our reflection on the ambiguous, and potentially un-patterned, texture of human rights practice – taking seriously the idea that human rights express a relationship of power, importantly concerned with its legitimate arrangement and limitation. In both the philosophical literature and human rights activism there seems to be a consensus on basic rights as undeniable moral principles of political legitimacy. This use of human rights is contrasted with radical social movements that reject this conception of rights as ideological and illegitimate, making specific reference to the Zapatista movement (Chiapas, Mexico) and the Landless Peasant Movement of Brazil (MST, from the Portuguese Movimento dos trabalhadores rurais Sem Terra), which are critical of the human rights discourse, but also make strategic use of the idea and offer alternative articulations of political legitimacy.

Keywords: Human Rights, Agonism, Discourse, Activism, EZLN, MST.

"*Not to assert one's right.* –To exercise power costs effort and demands courage. That is why so many fail to assert rights to which they are perfectly entitled –because a right is a kind of *power* but they are too lazy or too cowardly to exercise it. The virtues which cloak these faults are called *patience* and *forbearance*."

– Friedrich Nietzsche, *Human, All Too Human*

1. Introduction

Over a few weeks at the end of 2009, we witnessed the invocation of human rights in the prosecution of Germain Katanga and Mathieu Ngudjolo Chu, in the unabashedly militaristic Nobel Peace Prize acceptance speech of US President Barack Obama, and, surreally, in a deodorant ad, which declared the fundamental rights belonging to our underarm skin.[1] These invocations, ranging from encouraging to

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[1] In the same month that the International Criminal Court began its second prosecution, against Germain Katanga and Mathieu Ngudjolo Chu for human rights abuses committed in the Democratic Republic of Congo (24 November 2009), British television viewers were informed that their underarm skin had three fundamental rights. The commercial in question was for Sanex deodorant, available

disappointing, and to ridiculous, not only reveal the ubiquitous use of rights-talk, but also a troubling question about the practical politics that follows from the international normative architecture that human rights support. Is the spread of human rights a story of the progressive legalization of international politics, powerfully demonstrated by the success of institutions like the International Criminal Court, as Seyla Benhabib hopes (2006)? Is it a tale of liberal decline, in which human rights provide the ideological bulwark for a liberal international order under threat and in need of support? (Charvet & Kaczynska-Nay 2008) Or, perhaps, human rights are simply a fiction (MacIntyre 2007, 63), meaningless at best and pernicious at worst – providing moral pretense to a coercive international politics, illustrated through the invasion of Iraq (justified at least in part as a defence of human rights), the attempted legitimization of torture by the Bush administration, and ongoing debate about the legitimacy of various forms of humanitarian intervention (Douzinas, 2006).

The international human rights regime permeates world politics. Human rights remain an essential foreign policy tool, as Richard Falk (2000, Chapter 3) has noted, while they also support a growing international legal regime that challenges the primacy of the Westphalian state (Falk, 2007). Further, human rights have both justified oppressive international practices and provided inspiration for various resistance movements (Bhambra & Shilliam 2009, 4-7). Given this ambiguity, one could be forgiven for thinking that something has gone badly wrong with the idea of human rights, either in its formulation or the translation of theory into action.

It is in terms of the relationship between theory and practical action, or between morality and politics, that we want to analyze the dominant account of human rights. This account, we contend, is premised upon an unsustainable division between moral philosophy and political action, a division that we argue has negative consequences for how human rights are used in international politics. In both the philosophical literature and much transnational human rights activism there is a consensus on human rights as undeniable moral principles that support a liberal account of political legitimacy. We argue that human rights are inherently political and contested, undermining the role that universal principles play in legitimating the contemporary international order. Our alternative starts from an acknowledgement of the politics of human rights, recognizing that political legitimacy and power are contested when fundamental rights are claimed. This requires that we see morality and politics as inseparable. Rights are reconstructed as a moralized politics (or perhaps politicized morality) in which the meaning of political legitimacy and human dignity are continuously renegotiated, rather than final expressions of the moral law or the progressive unfolding of universal standards of legitimacy. This account of human rights is supported and developed through an examination of radical social movements that reject the dominant international human rights regime as ideological and illegitimate, while making use of the language of human rights and articulating alternative accounts of political legitimacy – we look specifically at the Zapatista

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here: http://www.youtube.com/watch?v=gWw7VCXWHhE&feature=player_embedded. Also, in his Noble Peace Prize acceptance speech President Obama restated the centrality of human rights in US foreign policy, stating 'Agreements among nations. Strong institutions. Support for human rights. Investments in development. All these are vital ingredients in bringing about the evolution that President Kennedy spoke about.' Accessed on 24 January 2010 at http://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize.

movement (Chiapas, Mexico) and the Landless Peasant Movement of Brazil (MST, from the Portuguese *Movimento dos trabalhadores rurais Sem Terra*).

2. Human Rights: a story of many scandals

The success of the international human rights regime reveals a paradox: human rights bolster both the political ends of hegemonic global powers and radical social movements. And, it seems that global diversity undermines the moral consensus necessary to legitimate strong action to protect human rights even while human rights seem ever more pervasive. Further, we have 'all these human rights standards but the bodies keep piling up' (Dunne & Wheeler 1999, 2), raising the question of why better human rights protection has not been achieved. All of these tensions point to vigorous debates in the human rights literature, which we label "scandals", in order to highlight a fundamental problem with how dominant understandings of human rights are understood. Defenders of human rights, generally, respond to these ambiguities as if they were "scandals" calling for more certain responses – certainty of the legitimacy of the liberal international order, certainty of the benefit of a more cosmopolitan legal order, and certainty of the power of universal moral principles to improve world politics. The call for greater certainty in the face of the ambiguity of human rights presumes a particular relationship between morality and politics, one that we analyze and reject in what follows. We then attempt to think about human rights without denying their ambiguity, drawing on both critical philosophers and radical social movements.

In the next section we analyze the dominant response to the scandals that beset human rights with reference to "philosophers" and "activists" – these terms are used both as simplifying generalizations and rhetorical devices intended to provoke critical reflection.[2] We argue that the "philosopher" and the "activist" respond to these scandals in distinct but related ways that reveal the limitations of the relationship between morality and politics that informs dominant accounts of human rights. Further, we argue that this understanding of human rights limits our analysis and critique of world politics by privileging a liberal state-based international order.

Conor Gearty (2006) asks, can human rights survive? Central to his concern for the future of human rights is a worry about their legitimacy, given the spread of human rights through 'international, regional and legal instruments that embed the term in various codes of law' and which makes their misappropriation a very real danger (Gearty 2006, 11-13). Gearty highlights the "philosophical scandal" of human rights: their spread coincides with the failure to establish a rational consensus on their meaning and justification. While Tony Evans (2005) suggests that the political dominance of human rights discourse no longer needs rational foundations and that the philosophy of human rights is now a desiccated simulacrum, looking at current philosophical work on human rights reveals a state of very active distress. Many contemporary philosophers are clearly concerned to 'articulate standards by which the

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[2] We knowingly use these classifications as provocations and anticipate that many who self-identify as philosophers or activists would reject the account of human rights assigned to them. The intention is to spur critique of a dominant account of human rights that, we contend, continues to employ this divide between theory and action, though often in mediated form. We appreciate that other critical perspectives, particularly those inspired by feminist and Marxist thought, may take this as a starting point, but assume that this sharp rhetorical distinction may still prompt important reflection, as it has done for us.

practice of human rights can be judged, standards which will indicate what human rights we have' (Raz 2007, 2), a vital task entailed by a particular understanding of the relationship between morality and politics.

> Gearty (2005) summarizes the "philosopher's" need for justification: This is not ordinary politics, we say, this is morality, this is about right and wrong – and we know, even if you mere mortals don't, which is right and which is wrong, not as a matter of policy but as statement of truth. This is not how most of politics works.

With characteristic good humour, Gearty gets at the dominant understanding of rights and the ends they are intended to serve: human rights are moral principles that should direct the flow of politics, they are points of certainty that allow "us" to make out the shape of legitimate authority and moral right at a universal level.[3] This points to the divide between "philosopher" and "activist". This is not the result of philosophical arrogance or the inability of activism to be reflective; rather it is *a consequence of the logic of a particular way of understanding human rights*. When James Griffin (2008, 4) says, 'remedying the indeterminateness of sense, in the logic of human rights, determining the content of human rights, especially in seeing how to resolve conflict between them, the bottom-up approach will have to rise considerably in theoretical abstraction', he is giving voice to a conception of morality as above politics and imbued with a vital measure of certainty. This understanding of human rights reflects a well-established subordination of the political to the moral in contemporary political theory, which is increasingly contested in both domestic and international political theory (Williams 2005; Connolly 1991, 2005; Honig 1993, 2008; Hutchings 1999). Another philosophical understanding of human rights is possible, which questions the separation of politics and morality, and places contestation and ambiguity at the center of human rights; we explore this approach in section 4.

> In contrast, the "activist" is impatient with questions of how human rights campaigning must take account of controversies over the *moral ideal* of human rights. From this perspective, the "scandal" of human rights is that we know what is right but fail to act effectively, or to act at all. The central concern is how to translate the moral truth of human rights into effective action, asking:

> Would it not be better to question less and act more, to avoid reflection on abstract ideas like philosophical foundations and the like but to continue to use the term 'human rights' to do good things in a world in which goodness is in short supply – and where it is a waste of time and effort to spend time trying to explain what goodness actually means? (Gearty 2006, 20)

Much transnational human rights activism does not oppose this understanding of rights: human rights are powerful forces for political change precisely because of their

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[3] A recent trend towards 'political' conceptions of right proves rather than refutes Gearty's point. Drawing inspiration from Rawls' turn to a political rather than metaphysical defense of liberalism, a number of recent thinkers have defended human rights terms of second-order consensus on the principles that make politics possible. While this changes the form of the argument it does little to alter the purpose of human rights as moral principles defining and confining the limits of legitimate political authority. See for example, Joshua Cohen (2004); Kenneth Baynes (2009); and John Rawls (2001).

distance from the contingent world of politics, in which compromise, self-interest and coercion are everyday threats to effective moral action (Hopgood 2006, 105-107, 2009; Kohen 2006). Both the "philosopher" and the "activist" guard their distance from politics, as it is central to their identities and their often-unacknowledged moral authority, which is preserved in the idea that theories of human rights are removed from the conduct of politics as struggle, contest and power, and that human rights activism is a moral practice, not mere political action. The implication of these simplified identities is that "philosophers" and "activists" have little to say to each other, and that for the "activist" the cause of human rights is best served by working to ensure that rights are respected, without reflecting too much on abstract problems that might impair one's ability to act.

But this is, of course, a limited account of activism. In what follows we play on contrasting meanings of activism, juxtaposing the activism of transnational human rights NGOs (specifically Amnesty International and Oxfam) and the radical activism of the Zapatista Liberation Army (Ejército Zapatista de Liberación Nacional - EZLN) and the MST.[4] The professionalized activism characteristic of transnational human rights NGOs is dependent upon the assumed authority of human rights, and critical reflection is often limited to determining what is possible given the current framework of power relations, rather than the ways in which international human rights might be part of the problem. For more radical forms of activism human rights may set certain limits to which campaigners have to mould their banner logos, but they do set the limits of their political imagination. When the activist in the deep jungles of the Lacandona Forest reflects on the meaning of human rights, she is challenging the power relations that has made her life one of poverty and subordination, and for which it might be necessary to give rights new meanings or names. Another "scandal", then, is how the discourse of human rights may provide articulation for certain struggles and demands, while at the same time, limiting the range of demands that groups and individuals are entitled to make.

While drawing on critics of the human rights regime to make our argument, we also want to point to the way in which marginalized groups use human rights, highlighting the danger that rights talk can become a weapon of the weak that limits subjects of power to a particular moralized conception of the state and the international order, but also finding more radical potential in the idea of human rights. The final figure in this story, then, is the "radical", referring to individuals and groups that reconstruct both the practice and idea of human rights in light of their own experience and pursue a surprising variety of ends. This understanding of human rights emerges by connecting critiques of human rights with an emerging literature on the practices of human rights, which documents the way rights are translated, reinterpreted and claimed by persons all too often seen as the passive recipients of human rights protection or the threatened victims of abuse. Paying closer attention to the way human rights are used reconnects the idea of human rights to actual political struggles and social movements in which rights are established, defined and contested, making it difficult to narrate the story of human rights as one of the progressive unfolding of universal rights and to frame the human rights practice as

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[4] The main rationale for focusing on these two groups, rather than other similarly radical groups, is the authors' own experience of being involved in campaigns in support of both the Zapatistas and the MST in Spain, Australia and Brazil.

non-political (Honig 2008). In the end, our goal is not to dictate reforms that "philosophers" and "activists" must make. Instead, we seek to expose the problematic consequences that this way of thinking and acting on human rights generate. In light of this we suggest another way of thinking about human rights that, on one hand, takes contestation, contingency and change more seriously when theorizing, and that looks at social movements, political struggles and the systemic exclusions generated by the political reality of human rights practices.

3. "Philosophers" and "Activists"

The philosophical understanding of human rights that we argue is both currently dominant and conceptually problematic is concerned with establishing universal moral standards that determine legitimate political authority. Moral certainty is the end in view, establishing sufficient certainty to provide for a just political order. The challenges to achieving this end is disagreement, conflict and diversity in moral beliefs and political orders, and while few supporters of human rights speak in terms of the exercise of power or enforcing discipline, the effect of a successful human rights ideal is a limitation of moral and political life. For this reason, defenders of this view of human rights attempt to establish and preserve the moral authority of rights, as well as the moral authority of the guarantors of human rights, whether agents of the state or the international community.

Tony Evans argues (2005, 1053) that the conventional status of human rights leads to a legalized discourse that marginalizes philosophical and political questions. If the primary problem of human rights is one of 'refining, polishing, and elaborating accepted norms and standards, in attempt to make the regime more elegant, sophisticated, imposing, and magisterial', there is little place, or need, for sustained philosophical inquiry (Evans 2005, 1048). Yet, such inquiry continues apace. Evans is right to point out that much philosophical work on human rights is not concerned with radical critique, but the point we want to draw out is that this is as much a result of how human rights are understood as it is about their privileged status in world politics. Philosophers still struggle to legitimate human rights because the truth of rights remains uncertain, and to challenge the truth of universal rights claims puts the political order it sustains into question.

Moral rights are linked to certainty and legislation – these principles provide the foundation for law, which in turn justly limits politics (Williams 2005, 12-17). If political activity feeds into philosophical reflection on rights at all, it is largely negative, raising questions of how to limit illegitimate rights proliferation (see Griffin, 2008, Chapter 11), or how to convince the skeptic that they must acknowledge that universal rights are rationally justified (Raz, 2007, 18-19). In both cases the failure of moral principle to constrain political life becomes a problem to be solved by offering truer accounts of rights.

Framing the question of universal human rights in this way leads to a seemingly irresolvable argument about the truth of rights, leading philosophers to seek different ways of proving or justifying rights as a proposition – as a truth claim. Modeling moral principles upon propositional statements that must be either true or

false tends to lead to either un-provable appeals to universal human nature or apodictic assertions of right or duty.[5] What is lost is the contests and exercise of power that led to the emergence of human rights, an emergence that was not necessary and does not express a coherent progressive practice (Honig, 2008, 95). The philosophical understanding of human rights, as moral rights, draws on static principles separated from political activity. Obscuring the reality that human rights are the result of social struggles that challenge the structures of political power, and conventional morality. The moral standards presented by the "philosopher" are part of historical transformations in which social movements played a central role (Hunt 2007, 22-34; Bhambra & Shilliam 2009, 6-7).[6] Human rights cannot be seen only through the prism of moral authority, but must also be seen as challenges to that authority. This dynamic process is captured in the declarations and covenants of the human rights movement, documents that reveal a history of social contestation that the legislative model of human rights obscures.[7]

We will illustrate these points by looking at two contemporary accounts of human rights, those of James Griffin and Seyla Benhabib, which, for all their sophistication and rigor, preserve the legislative relationship between morality and politics. This relationship not only obscures the disciplinary and coercive aspects of human rights as a form of moral authority, but also limits the possibility of reconstructing (rather than merely reforming) human rights.

In his recent book on human rights James Griffin (2008) attempts to provide a rationalist justification of rights based on a universal interest in rational agency, and while his work has many virtues, we will use it here as an illustration of the limits of the "philosopher's" traditional approach to human rights (Raz, 2007, 4-5). At the center of Griffin's inquiry is the need to resolve disagreement about human rights and to provide a justification for them as vital protections of what is morally significant about our shared human status (2008, 32-33). Griffin argues that what is of primary importance is our agency, which he analyzes in terms of individual autonomy and liberty, and that human rights should be limited to those rights necessary to protect human agency (2008, 33-37). While granting the importance of particular circumstances in determining the exact form of human rights, he defends the central importance of agency in both justifying and defining human rights. He suggests that 17th and 18th century accounts of rights remain for us the last major development of the idea itself (Griffin, 13) – while it might be plausible that a particular tradition of philosophical reflection has not advanced much in that time, it is an unconvincing claim regarding the theoretical and political evolution of human rights.[8]

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[5] This mirrors the debate between interest and will theories of rights. See, Vittorio Bufacchi (2008).

[6] Lynn Hunt (2007) documents the political and social changes that gave specificity and meaning to the idea of self-evident rights in both the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen.

[7] Paul Gilroy (1993) has argued that the concept of 'human rights' was first used as part of slaves' struggles in North America advocating for the abolition of slavery. Further, Magubane (2005, 101) has shown that the Haitian revolution helped foster the French Revolution, in which the 'Rights of Men' so ingrained became in the history of rights.

[8] Recent historical work on human rights illustrates this ongoing evolution: Ishay (2004) and Lauren (2003) both provide broad accounts, but even work with a more skeptical historiography illustrates the continued development of human rights, for an excellent and thorough account see Afshari (2007).

Griffin (2008, 191-209) criticizes the international human rights regime, particularly the breadth of rights listed in the Universal Declaration of Human Rights, and seeks to limit rights proliferation in order to maintain the importance of 'true' human rights. In reducing human rights to the protection of agency Griffin seems to miss what is important about many well-established rights and to occlude many other important values that could be seen to justify human rights (Tasioulas, 2002; Raz, 2007, 4-8). This critique of Griffin is limited as it only points to his reductionism – making autonomy and liberty the central values that protect an essentially Enlightenment-inspired account of human rights – rather than to his appeal to a universal essence that defines our human status. While such essentialist appeals can be objected to on purely practical ground, as finding agreement on such universals is exceedingly difficult, a more principled criticism is that appeals to an essential human nature cannot take account of the social construction, and ongoing contestation, of human nature and ethical values. Griffin's essentialism is paradigmatic of the traditional understanding of human rights, which prioritizes some value or feature of human individuality as having moral priority, missing the political function of human rights as a distinctive form of moral right (Raz, 2007, 7-9).

It is, therefore, not surprising that Griffin makes no connection between the spread of market economies or powerful bureaucratic states and the construction of a supposedly universal form of rational agency (Robinson 1998), as exposing the contingent and political nature of the values of autonomy and liberty would undermine the moral authority of human rights. Further, his efforts to establish rights as protections for an essential moral agency are defined by the desire to make political structures conform to moral principle, which obscures not only the contingency of human rights values but also denies the persistence of moral contestation and that 'the application of any such set of historical constructions also does violence to those to whom it is applied' (Connolly 1991, 12) We do not want to suggest that Griffin is merely defending an ideological form of liberal agency, the values he points to are real enough – being able to envision a life for oneself and having the freedom to pursue that vision are real goods – but in pursuing a legislative form of political moralism his account is not only reductive but fundamentally disconnected from social and political practice.[9]

Griffin's defense of human rights hardly exhausts the potential of this legislative way of thinking about the relationship of morality and politics. Raz contrasts Griffin's traditional approach with what he terms the political approach, which he himself defends (2007, 8-9). Kenneth Baynes reviews this emerging defense of rights, which justifies human rights as special rights held based on particular forms of association (2009, 374). A political justification can be more or less substantive. Some have argued for a *minimal* set of human rights as protections necessary for any political society (Ignatieff 2003; Rawls 2001, 78-81). While other argue that human rights are not just the minimal requirements for legitimate political authority, but provide a more substantive account of the good of membership in political society, which may not reflect an achieved consensus but gives reasonable grounds for further debate and eventual convergence (Cohen 2008, Beitz 2003). This move avoids the essentialism that undermines Griffin's argument and rightly places human rights in a

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[9] We take the phrase 'political moralism' from Williams (2005, 1-17), who uses it to identify views that make the moral prior to the political.

distinctly international context by conceiving of human rights as limitations on state sovereignty. Yet, it still conceives of the function of rights in a distinctly apolitical way: either suggesting that except for the commission of certain grievous wrongs, the actions of the nation-state, and the state-system, should be accepted as legitimate, in the case of minimal accounts; or that a distinctly liberal (whether nationalist or cosmopolitan) order provides the moral standard for state legitimacy, in the more substantive accounts. Or as Benhabib asks, 'Are we caught between the Scylla of moral imperialism and the Charybdis of moral indifference?' (2008, 98) This political account reveals the tension between tolerating political diversity and the justification of universal norms, a tension that these accounts attempt to mediate with appeals to "public reason", arguing that certain norms rationally follow from the shared nature of political morality. Before articulating our alternative understanding of rights we do want to consider Benhabib's defense of human rights, as it both takes political critiques of human rights more seriously and is more self-conscious of the danger that deploying rational moral principles may limit diversity in unacceptable ways.[10]

Benhabib's defense of human rights is based upon the relationship between universal rights and democratic sovereignty, a relationship that may seem antagonistic, but which she suggests is complementary. Following Jürgen Habermas, she defends human rights as universal moral norms that express the necessary conditions of seeking moral consensus (Habermas, 1992, 1998; Benhabib, 2008, 102). The legal expression of these norms is found in the defining traditions of liberalism and republicanism, such that rights both protect individuals and empower them as members of a political society – ensuring both individual liberty and collective self-determination – as matters of moral principle (Habermas, 1994, 1998). The apparent contradiction, then, is that the universal political norms expressed through human rights actually undermine democratic sovereignty.

For both thinkers the spread of human rights norms requires the expansion of democracy beyond the nation-state. Benhabib does this by looking to the way in which international human rights norms are actually worked out through democratic iterations in which human rights are made 'elements in the public culture of democratic peoples through their own process of interpretation articulation, and iteration.' (2009, 696) This implies that human rights, as universal moral principles, entail general protections for individuals and rights to democratic participation, but that the exact form that these principles will take depends upon the particular situation in which they are worked out. This has drastic implications for international order, such that a cosmopolitan one should replace the state-centric order, as it is not enough to protect the individual liberties of all individuals, which could possibly be done in a such a system, because individual also have a right to self-determination that requires the expansion of democratic participation.

Her account highlights the necessity of democratic sovereignty beyond the nation-state in calls for a global constitutionalism, insists upon the protection of social and economic rights that counter the power of global capitalism and cautions against the idea of a right to intervention (2009, 692-695). Although this allows for some

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[10] Benhabib's appeal to communicative reason is distinct from, and we think more challenging than, the Rawlsian inspired account of public reason, for this reason we forgo a direct engagement with the Rawlsian approach here.

contestation, the degree of contestation and difference is constrained, as it is only when moral principles are upheld can it be said that there 'is legitimate "unity and diversity" in human rights among well-ordered polities.' (Benhabib, 2008, 100) So, even as democratic iterations lead to diversity, they also lead to convergence, because the moral principles that provide the foundation of rights cannot be contradictory or ambiguous. As Honig suggests, the 'assumption in Habermas and Benhabib of linear time secures what I call a chrono-logic in relation to which they assess new rights: new rights-claims are judged in terms of the rights' amenability to being subsumed under existing constitutional or universal categories (2008, 90). Despite the attempt to mediate the legislative relationship between morality and politics, Benhabib's defense of human rights cannot 'see how new rights-claims do not necessarily demand mere inclusion in a previously stabilized order. They may. But they may also demand a new world. They may unsettle previously existing categories of right.' (Honig, 2008, 90) This is a result of the role that moral principles, derived from Habermas' account of communicative reason, play in limiting contestation and imposing order upon ethical and political life. Kimberly Hutchings clearly articulates the limitations of this approach: if 'one accepts this, then clearly one has again returned to a version of liberal universalism which always already knows its moral superiority' (Hutchings, 2005, 162).

Acknowledging the politics of human rights as moral principles, however, is paradoxical – once we deny privilege to any moral perspective, insisting that contestation, exclusion and power be exposed, the logic of the legislative account of rights becomes untenable. While we defend an alternative understanding of human rights below – one defined by an affirmation of 'the reality of perpetual contest, even within an ordered setting, and [a commitment] to identify the dimensions of contestation' (Honig 1993, 15) – for the moment we turn to the figure of the "activist" and the way in which practices of transnational human rights activists depend upon the separation of moral principle and political action.

The second figure that plays an opposing though related role in the conception of human rights we have been criticizing is the "activist" – in particular the transnational human rights activist. Our focus will not be the function of NGOs in the human rights regime, but instead the way that NGOs "activists" conceptualize human rights. In looking at the figures of the "philosopher" and the "activist" we are ignoring international lawyers and human rights workers within national governments and international organizations, this is done not because these figures are unimportant. In focusing on transnational activists and NGOs we are looking to those engaged in the politics of human rights while deploying the *moral* authority of human rights. The lawyer and bureaucrat are less dependent upon this moral authority.

Stephen Hopgood's (2009, 231-233) work is among the first to examine the way that human rights NGOs use and understand the moral principles that are central to their work. What is most surprising is the quasi-religious role that human rights play, both in terms of individual commitment and in sociological terms.[11] Hopgood suggests that human rights – his research specifically looks at Amnesty International (AI) – act as a transcendent form of moral authority that is otherwise impossible in a contemporary international context in which religious belief is marginalized. For all

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[11] This point is well made by Jenna Reinbold (2011) in this special issue.

the power of constructivist work on human rights NGOs and transnational advocacy networks, what is not examined is how activists understand human rights or how ideas about those rights evolve through practical political activity. Thomas Risse and Stephen Ropp (1999, 234-235) suggest that 'it is one thing to argue that there is a global human rights polity composed of international regimes, organizations, and supportive advocacy coalitions. It is quite another to claim that *these global norms* made a real difference in the daily practices of national governments toward their citizens [emphasis added].' Yet the goal of determining the effectiveness of human rights norms begs the question of what *these global norms* actually are. As Hopgood (2009, 230) points out, in the absence 'of a shared identity of lifeworld, the background conditions for the claim "good people do X" do not exist.' Leading him to document the importance of the sacred to human rights advocacy. His work on AI demonstrates the way in which the moral authority deployed by the organization is maintained though its separation from the "political" as a sphere of contest, interest and power. The "activist" working selflessly and in the name of morality for the realization of human rights has no need for a critical praxis, as the moral law, in the form of human rights, is there to be carried out.

We argue that the assumption that there are stable and easily knowable global norms depends upon the legislative conception of human rights critiqued above. Where we differ from Hopgood is in examining alternative conceptions of moral authority and radical forms of political advocacy. In much of the work on transnational human rights networks the content of liberal human rights norms is assumed, and the effect of moral norms mobilized by transnational actors on state-centric political structures is documented without analyzing what is actually said and who speaks (Robinson 2003). It is this closure of the reflective process, the lack of praxis, which we find problematic. It is not that reflection is not happening in tandem with political action – in fact below we draw on a number of scholars that analyze this process – what we are suggesting is that the dominant understanding of human rights, as philosophy and political action, continues to ignore this rich world of praxis.

For the "activist" the central question is how to ensure that human rights are enforced. There is a sense of impatience with philosophical reflection when people are suffering human rights abuses – there are too many people being killed, tortured, starved, imprisoned and abused to devote our energies to the endless pondering of the meaning of human rights. This is not to suggest that this ideal figure is fanatical, but rather inclined towards action and skeptical of a concern for philosophical debate in a world with so many problems. Hopgood (2006, 7) points to the relative anonymity of John Rawls within AI, suggesting that 'we might ask what all those students of political philosophy are doing if their work has no impact on the world? They certainly are not providing a ground for human rights activists.' The understanding of human rights for the "activist" is determinate, and while sharing the "philosopher's" understanding of the relation between morality and politics, it expresses greater confidence in an achieved consensus on human rights, and the power of legalization and institutionalization to take that work forward. The "activist's" reflection is constrained by the framing of morality and politics written into the universal human rights norms she embraces – the "activist's" practice, but not her moral principles, are open for reflection.

In drawing the "activist" perspective we are primarily concerned with distinctively international NGOs, those that are self-consciously cosmopolitan and see the defense of human rights as a global project. This is not a restatement of the global/local divide but it does point to the difference between groups working in localized polities while taking part in a global discourse, and those engaged in a global politics with localized campaigns. If we take the activism of big human rights NGOs, in particular AI and Oxfam, we see the both repeated evocations of the moral authority of human rights and a practical approach to furthering the human rights regime.

AI (2010a), for instance, advocates 'for internationally recognized human rights for all', declaring that their members are 'outraged by human rights abuses but inspired by hope for a better world' and that they 'work to improve human rights through campaigning and international solidarity.' The human rights expressed in international human rights documents provide the means for AI to meet its moral aspirations. In achieving these rights they see the best hope for the betterment of people around the world, and so of the world as a whole. Having traditionally focused on civil and political rights, in 2001 AI (2010b) incorporated economic, cultural and social rights into its mandate, affirming a comprehensive and increasingly mainstream account of international human rights. The key strategies of AI are petitioning governments to respect rights, mobilizing public opinion and building international solidarity around human rights. These activities not only depend upon a depoliticized moral authority, but they also exclude the reflections of those directly affected by human rights abuses. This means that human rights discourse structures particular abuses as human rights abuses, but particular abuses do not in turn inform human rights standards (Jackson 2007). 'Victims must, therefore, be vulnerable and suffering bodies rather than political persons' (Merry 2007, 198). This is also seen in mainstream human rights NGOs' unwillingness to challenge the dominance of the nation-state or the global hegemony of free-market liberalism – it becomes an article of faith that human rights can be protected if the state system and the market work properly[12] because the conventional rights holder is a particular type of citizen and property owner (Leve 2007, 98-99). What escapes notice are the ways in which certain groups are excluded and the kind of political claims that go unacknowledged despite the use of human rights as an idea and discourse in these movements, which we illustrate below by looking at the Zapatistas and MST.

Unlike AI, Oxfam's campaigning is more focused on economic rights, even as they recognize and support both first and second-generation human rights. There are two possible and indeed simultaneous readings of their position. On the one hand they affirm that 'respect for human rights will help lift people out of poverty and injustice, allow them to assert their dignity and guarantee sustainable development' (Oxfam 2010). In this statement there seems to be a higher end: the end of poverty, powerlessness and inequality so that people can have control over their lives and live sustainably and free from want. In this way human rights are seen as instruments

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[12] The key fault line of debate here is whether the current international political and economic order is part of a progressive liberal process of modernization or if human rights amount to little more than an ideology for contemporary constellations of social power. This debate can be traced in the exchange between Paul O'Connoll and Rhoda E. Howard-Hassmann. See, Howard-Hassmann (2005), O'Connell (2007); and their exchange in Howard-Hassmann (2009) and O'Connell (2009).

towards a higher moral aim. On the other hand, Oxfam (1996) claims that they are demanding basic human rights, based on essential needs that must be met. In this way, human rights themselves are an important aspiration even as they are part of a broader vision of global justice.

Their commitment to human rights as a campaigning framework has provided Oxfam with a mainstream appeal and a nominally impartial agenda. Even when they claim that there are structural problems that cause poverty, they do not offer a critique of capitalism, or the international power structure. In a statement for the G-20 meeting in London 2009, Oxfam (2008, para.2) claimed:

> Aid is urgently needed to address the immediate threat to poor people posed by higher food prices but money is not enough. World leaders must take this opportunity to address structural problems such as under-investment in agriculture and unfair trade rules, which are exacerbating the problem.

The demands placed on world leaders gives us a few hints of what it means to campaign for human rights. Firstly, there is an acknowledgement that human rights are granted by governments and therefore they are responsible for protecting and providing them. Secondly, Oxfam maintains an un-threatening impartial position in the eyes of powerful 'world leaders' by acknowledging their power and capacity to realize these rights. There is no questioning, as we see from the more radical groups discussed below, of the willingness of governments to grant rights, of the limitations of those very rights, or the implications of demanding certain rights and not others. The image of human rights organizations as impartial and apolitical against the image of other groups as agenda-driven and ideological is a key feature of human rights NGOs and transnational activists.

Two important features of the "activist" perspective are, first, the move from humanitarian to human rights oriented international NGOs, and, second, a trend of transnational activists working with governments. The political constraints of the Cold War effectively stifled human rights as an international political project and the work of many NGOs was framed in limited humanitarian terms. It was the sudden end of the ideological and military contest between the superpowers that not only increased the space for human rights groups but also facilitated collaboration between powerful states and NGOs (Chandler 2001). As US hegemony was increasingly justified, in part, through human rights discourse the moral power drawn upon by human rights activists became inseparable, and in many cases subservient, to dominant political forces. It is this marriage of human rights morality and liberal hegemony that critics of human rights accuse of being both unreflective and coercive, but it also enables the moralism of both the "philosopher" defending rational agency and the "activist" seeking to institutionalize liberal rights at the international level.

The development of human rights as ideology is furthered by human rights activism that reinforces the power of the state. Keck and Sikkink, for instance, while challenging the realist idea that states are the only actors in international relations that matter, actually remain committed to the state. They explain that when the channels of negotiation between domestic groups and the government are blocked, these groups, especially NGOs, search for support from other states and international organizations

that then apply pressure on the offending state (Keck & Sikkink 1998). Transnational networks challenge the authority of particular states, mobilizing transnational NGOs, international organizations and interested states, but in the process redeem the state (in general) as the appropriate and necessary defender of human rights (Risse, Ropp, & Sikkink 1999). Human rights standards reinforce "good" states by disciplining "bad" ones. Further, the success of transnational human rights advocacy is assessed on its ability to reform states, a standard that precludes many types of advocacy – such as in the examples below, where groups affirm violent resistance to the state and challenge the legitimacy of legal property ownership. By staying within the dominant framework of human rights, we are not able to understand important aspects of human rights practice. Not only can they be used to justify the liberal international order, but they also support relationships of power (particularly between state and subject, and global economy and producer/consumer) that, for many, are the cause of human rights abuses. To see beyond this conceptualization of human rights and to challenge the politics it reinforces, we need to engage with radical critics and activists in their rejection of hegemonic accounts of human rights and their articulation of different notions of political legitimacy and order.

4. Radical Critique and Activism

Thus far, we have argued that the way human rights are understood keeps moral reflection and political action separate. Further, we suggest that this separation results from a problematic understanding of the relationship between politics and morality, and legitimates a coercive international order. We share these criticisms with many others, but we seek to move beyond critique and try to see the work of human rights differently, arguing that a focus on the activities of translation and reconstruction of human rights as they are put to use in diverse ways can transform the always present 'danger' of human rights escaping the control of powerful actors and 'working in a genuinely emancipatory way' (Merry 2006, 231) into an alternative understanding of human rights.

Critics of human rights have identified the divide between morality and politics as a key point of contention. For Evans (2005; 1998, 17) the imposition of an essentially liberal universalism not only excludes moral principle from serious contestation but also makes morality a technical legal problem. In a similar vein Costas Douzinas (2006) points to the way human rights, as the moral principle underlying the liberal international order, obscures the sovereign power that makes this possible. This results not only in imposition of a particular vision of morality and humanity as a cosmopolitan universal, but also justifies policies that knowingly lead to economic deprivation and inequality and various forms of legalized violence, such as bombing campaigns, humanitarian wars and economic sanctions. Human rights are criticized for perpetuating an image of the civilized West that must educate the savage colonial "other" – not only does this feed on lingering racism but it points to the imposition of cosmopolitan ideals of secularism, individuality, and universalism (Mutua 2002, Rana 2007). Yet critique often ends with calls for a global ethic that allows for greater diversity, whether this comes about by way of revising the human rights regime or turning to some alternative ethics.

We argue that looking to the reality of social struggles, especially those not sanctioned by mainstream human rights bodies, provides important insight for

reconstructing rights. This praxis becomes possible when we abandon the understanding of rights as a moral law that legislates universally – whether in the form of the "good state" or some universal sovereign (Pagden, 2003). A move made possible by reconnecting the moral and the political, which allows us to acknowledge that declaring moral values is an expression of power, but not one that can only result in an authoritarian politics. Understanding human rights in this way requires us to embrace the agonism at the heart of moral and political life – the contestation of values is ongoing and the central question is how do we make contestation bearable and productive. Connolly (2005, 122), provides an initial formulation claiming that the

> virtues commended [agonistic respect and critical responsiveness] here do not take politics out of ethics, nor do they rise above politics... They speak to a world in which people draw upon different final sources of ethical sustenance and bring those sources with them into politics.

Acknowledging the persistence, and even productivity, of moral contestation does not make a distinction between good and bad politics impossible, but it does undermine the moral authority of final rational principles and the forms of political order they support.

Beginning with this revised understanding of moral authority, acknowledging it as an expression of power and affirming its contestability, reframes the story we tell about human rights. Firstly, this reframing unearths the politics of human rights, which are defined by a certain type of moral demand upon social and political structures. The American and French revolutions are usually cast as important moments in the evolution of human rights, but what we want to emphasize is the connection between these supposedly self-evident rights and political movements to achieve them. Secondly, to claim rights are possessed because one is "human" is a challenge to the existing order, as the referent category is ambiguous and open to contestation by anyone, even those not recognized in the social order. This is evident in the way in which oppressed groups in America and France picked up the rhetoric of rights immediately; women, Jews, and slaves recognized their own humanity, even if their oppressors did not, and made their *own* claims to be recognized as human, claims not only for inclusion but claims that contested the meaning of "human," or more accurately: *man* (Hunt 2007, 146-175; Grovogui 2009). We can continue to tell this history as the tragedy of universal values unable to overcome social oppression, but we feel it is far more productive, especially in our current age of human rights dominance, to look to the contests that are always present when the ambiguous human category is invoked.

Neil Stammers (1999, 2009) has developed this idea of human rights, in which the claim to social power is made through the ambiguous category of "humanity," and both recasts the international human rights movement and reveals potentials for opposition and counter-hegemonic ideas. This account is based on an understanding of rights as moral claims that define the legitimacy of an existing political order, and human rights become, potentially, the most radical and coercive type of rights claims. The category of humanity is ambiguous because it can be taken up by anyone. The logic of human rights empower everyone to challenge any existing constellation of

power, but they likewise enable the imposition of a new or expanded power over everyone (Van Den Hemel 2008).

Human rights are contingent expressions and products of the social struggles in which they arose, leaving many issues unaddressed. Article 4 of the UDHR, prohibiting slavery, is not the product of the enlightened reason of the delegates in 1948, but principally, the result of slaves' resistance and anti-slavery campaigners fighting to destroy the moral legitimacy of a shameful trade. Still, for the Sub-Saharan Africans growing tropical fruits in the hot houses in Southern Spain, slavery has not finished and it is only part of market *illogic*. By connecting human rights to social movements and seeing the claim of these rights as an effort to disrupt the social order, the central figure becomes the "radical". This final figure is defined both by an embrace of praxis and an activism explicitly aimed at challenging and changing the established political order.[13]

Increasingly, scholars have turned to the practices of human rights.[14] The implication of this work is that human rights are not static claims; even in the legalized form of international law documents, human rights undergo 'vernacularization' as they are put to use (Merry 2006a, 2006b). In this process institutions and interpretations of human rights are developed within a context of existing meanings, practices and political struggles. This perspective also recasts the transnational hierarchy that gives rise to analyses of the diffusion of norms from the global to the local (Goodale 2007, 10-23). Not only are human rights put to use in a diversity of ways, but practices and meanings transfer among groups horizontally and at times from local to the global. Explicitly connecting this understanding of human rights practice to an agonistic ethic of human rights provides new opportunities for analyzing the ways that human rights practices enable and constrain individuals and groups to effect their social and political environment, and promotes an ethic that is critically responsive[15] to those actors resisting and contesting to hegemonic structures and identities (Connolly 2005, 126) – such as the neo-liberal state, as we will examine in the case of the Zapatistas, or the possessive individual, in the case of MST.

One of the main differences between the "activist" understanding of human right (so to speak) and the understanding of the "radical" is the difference between what Richard Day (2005) calls the 'politics of demand' against the 'politics of the act'. If the big NGOs have been professionalized in order to create an extensive infrastructure that has the capacity to demand and negotiate with governments for the realization of rights as they have been granted and are expressed in different covenants; radical movements emphasize their capacity to empower themselves, to

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[13] Feminist work on human rights, as both practice and ethics, has been at the forefront of efforts to connect human right theory to activism. This rich contribution is not directly drawn on here for practical reasons of space and focus. See Ackerly (2008), Reilly (2007), and Merry (2006b).

[14] Very significantly and close to the kind of claims we are making in this article is the work from critical anthropology on the translation of human rights from one cultural context to another (Eg. Goodale 2006; Graebber 2009)

[15] Connolly defines critical responsiveness as 'the form of *careful listening and presumptive generosity* to constituencies struggling to move from an obscure or degraded subsistence below the field of recognitions, justice, obligation, rights, or legitimacy to a place on one or more of those registers. When a place is created new terms of contrast and similarity become available and the entire register is altered to some degree' (2005, 126).

create their own rights, to reinvent power relations and take what they think belongs *rightfully* to them. This is illustrated, with different levels of intensity, by examining two Latin American movements: the Zapatistas and the MST. We will first consider them separately, to see where they are coming from and to more clearly analyze their similarities and differences.

The 'Zapatistas', as identification, is an inexact term. It refers to a large movement that now includes not only the original group that in 1994 took up arms against the Mexican government, the EZLN, but also a extensive world wide network of solidarity under the rubric of 'La Zezta'.[16] Since the uprising of 1994, which lasted barely twelve days, the Zapatistas have been working towards the self-management of their communities and creating new forms of political community. As Subcomandante Marcos stated,

> Zapatismo is not an ideology… it is… an intuition… Zapatismo poses the question: "What is it that has excluded me?" "What is it that has isolated me?"… In each place the response is different. Zapatismo simply states the question and stipulates that the response is plural, that the response is inclusive… (Subcomandante Marcos cited in Carrigan 2001, 440)

Graffiti in San Cristobal de las Casas put it succinctly: 'We Are Not Guerrillas. We are Revolutionaries' (Carrigan 2001, 440). This also means that the Zapatistas are not an armed group attempting to take control of the government or separatists with the intention of controlling a part of the country. In fact, since those few days in 1994, the EZLN has only used arms to protect their communities against the army and paramilitary groups. A communiqué drafted in response to a statement from armed Spanish separatist group Euskadi Ta Askatasuna (ETA), that dismissed the EZLN as not revolutionary, made clear many of their political positions and especially their approach to armed struggle:

> Our struggle has an honor code, inherited from our warrior ancestors and that entails, amongst other things, the respect for the life of civilians... not to resort to crime to attain our aims… and not to respond with fire to words… Our enemies (who are many and not in Mexico alone) wish that we resorted to those aims. Nothing would be better for them than that the EZLN turned into an indigenous Mexican version of ETA. Unfortunately for them, it is not like that, and it will not be… Maybe it is already obvious, but I should emphasize: I shit on all revolutionary vanguards of this planet. (EZLN – Subcomandante Marcos 2003)[17]

Their identity is explicitly tied to the history of Mexico and its indigenous heritage. However, it also has other more recent political connections.

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[16] La Zezta conflates the Sixth Declaration (shorten to 'la sexta' in Spanish) and the 'Z' of Zapatista. This declaration put conditions to those supporting the Zapatistas, declaring that they did not want the support, in fact, they were opposed, to political parties, reformist unions and all those organizations that did not truly worked for changing the world and for the end of neoliberalism.

[17] All Spanish language citations have been translated by the authors.

The name, Zapatistas, comes from collectivist anarchist Emiliano Zapata, who led an indigenous-peasant revolution together with Pancho-Villa against the dictator Porfirio Díaz under a common cry of 'land and freedom'. The Zapatistas' immediate background is the 1950s, when indigenous people and peasants attempted to organize community structures of self-government in the rural areas of East Chiapas (Stahler-Sholk 2005, 35). This created a conflict, sometimes violent, between the peasant-indigenous movement and landowners, which the government was not resolving (Wickham-Crowley 1987, 481). Later in the 1970s, this incipient movement developed into a small guerrilla movement, attempting to provide protection for peasants and indigenous communities from the landowners. It was not, however, until the 1990s when the groups, emerging from these series of processes, took the name of Zapatistas or EZLN, simultaneously expanding their activities to include the fostering of community-controlled services, such as vaccination campaigns and rural schools (Carrigan 2001, 426).

Another landmark in the history of the Zapatistas was the transformation of the ideological basis of the Mexican state in the 1970s, when Mexico's Revolutionary Institutional Party (PRI), after more than seven decades in power with a populist turned to a neo-liberalism one (PRI 2010; Oliver Costilla, Barragán Alvarez and Pérez 2000). However, it was the 1982 debt crisis, when the International Monetary Fund, the World Bank, the US Treasury and the new Mexican president Miguel de la Madrid joined forces to introduce emergency economic reforms to get Mexico out of the crisis, that precipitated the full turn to neo-liberalism. These measures included broad privatizations, 'opening internal markets to foreign capital, lower tariffs and a more flexible labour market.' (Harvey 2005, 99 – 100) Mexico then joined GATT, reorganized its economy around foreign business interests and introduced laws to foster land privatization, all of which clashed with the claims of indigenous peoples who wanted more autonomy and self-government of their communal lands and resources.

On the 1st January 1994 the EZLN broke into seven cities in Chiapas at the same time, declaring war against the Mexican government. This brief war caught the world's attention and pushed the human rights of indigenous communities into the spotlight. In the Declaration of Motivations and Principles of the EZLN, they declared that they did not aim to take power, but to draw attention to the need to review the political system in Mexico and to the situation of poverty, marginalization and abuse of human rights experienced by thousands of indigenous people (EZLN 1993, 1994). They demanded a democratic regime for Mexico, the recognition of all indigenous peoples of Mexico and the participation of all people in ruling the country.

In this First declaration they did not demand *human* rights. Instead, they appealed to the Mexican constitution, declared that as belligerent combatants the laws of the Geneva Conventions and international humanitarian law bound them and stated their adherence to constitutional rights and universal principles of justice and equality (EZLN 1993, para.8). They specified their demands by calling for the cessation of the 'genocidal war' against indigenous peoples in Mexico, as well as for 'jobs, land, housing, food, health, education, independence, freedom, democracy, justice and peace' (Ibid, para.16). Finally, they declared that they would not stop fighting until those basic demands were fulfilled 'by forming a free and democratic government' (Ibid). This is similar to the set of rights established in the UDHR, but it is at the same

time a radical take on these ideas. Here the important thing to note is that while the Zapatistas might actually appeal to sovereign bodies, or recognise and abide by international law and even 'universal' principles of justice, they act upon their own understanding of their rights and responsibilities.

The Zapatistas use the notion of rights in a way that challenges many of the assumptions infused in the International Bill of rights. In 1994, justifying and clarifying the EZLN uprising they stated,

> Our path of fire sprang out of the impossibility of struggling peacefully for our elemental rights as human beings. The most valuable of these rights is the right to decide, freely and democratically, what form the government will take (EZLN 1994a, para.26).

At least three crucial concepts come out of this statement. Firstly, the emphasis on their humanity, secondly the emphasis is not on the realization of rights granted by the state, but rather on the collective control over political life in which rights can be achieved, finally, the idea of challenging the meanings of democracy, justice and freedom as both a way of reinterpreting them and as a confrontation of the injustices they suffer. Let us examine these more closely.

Their emphasis on humanity is a way of critiquing neo-liberalism and capitalism as dehumanizing forces. Speaking of Chiapas, they regretted that 'everyday… they take away the petroleum and gas and, in exchange, leave behind the mark of capitalism: ecological destruction, agricultural plunder, hyperinflation, alcoholism, prostitution, and poverty' (EZLN cited in Ponce de León 2001, 124). The Zapatistas declare their opposition to neo-liberalism because it symbolizes death, wars, weapons, dictatorships, repression, poverty, corruption, patriarchy, racism, crime, environmental destruction, ignorance, manipulation and injustice (cited in Ponce de León 2001, 124).[18] On the contrary, they affirm an 'international order of hope, new politics, democracy, dignified work, full rights for women, respect for elders, defense and protection of the environment, intelligence, culture, education, truth, freedom… for remembrance, and concluded: for humanity' (Ibid). That is, the appeal to humanity is not a way of essentializing the human being across the world, but to defend humanity, in its full diversity, with its potential for creativity, its connection to the environment and its social, political and rational needs as a different set of values from that of the universalized capitalist logic of competitiveness, consumerism and accumulation.

Their radical emphasis on self-determination is not a way of seceding from the state, but a conviction that they need to be in control of their own affairs, because they have a fundamental right to decide their own form of government. Ever since the 1994 uprising, the Zapatistas have been focused on self-managing their communities and after 16 years they are implanted in over 40 municipalities, which they administer following their own political principles.[19] For them, a good government is one that

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[18] For the full elaboration of these categories see Ponce de León (2001, 124).
[19] This does not mean a full administration or a complete implantation but sometimes a presence and a juxtaposition of difference authorities together with government representatives. The Zapatista municipalities are federated into five Assemblies of Good Government (Juntas de Buen Gobierno).

'commands obeying', a sort of Aristotelian concept of ruling and being ruled; decisions are taken collectively in directly democratic assemblies; and the economy is driven by a collective desire to live with dignity and sustainably.[20] They emphasize their capacity to rule over their own affairs, which is in itself how they see the realization of justice and the only framework for their rights – this should be distinguished from other movements for indigenous political autonomy based on multicultural grounds and inclusion in a distinctive culture identity.

A quick example of a recent event can exemplify this more clearly. On November 25, 2009, the newspaper La Jornada published an article detailing how the Chiapas Congress had agreed to discuss in parliament a claim placed by the Zapatistas to be recognized by the government. Throughout the following day all five Zapatistas Assemblies of Good Government (Oventik, La Garrucha, Morelia, La Realidad y Roberto Barrios) responded that this was absolutely false, that they are recognized by the people that support them and that they will never ask to be recognized by 'bad governments'. They argued that they would never authorize the 'bad government of Mexico to make/impose laws over our rights and indigenous culture' (Junta de Buen Gobierno 2009). They see their rights and culture as deeper political and ethical commitments and not as granted by a particular contingent government. Therefore, it is a way of saying that they do not believe that the government is the one granting them rights nor that they have to wait for the government to recognize their rights, they create them.

This refusal to seek state recognition is something that separates the Zapatistas from many other radical social movements. For instance the MST follows a tactic of direct action in regards to their land claims, but they still seek recognition from the government to secure a legal and final acquisition of land. They assert their right to land based on their socially productive use of it rather than on private ownership. They occupy the land and then demand the government provide a legal entitlement that legalizes ownership of the land for the working families. Still, the contestability of rights is present as the MST uses the language of human rights to make demands of the government, to denounce the activities of big agro-corporations and other actors they campaign against.

The MST was established in 1984 out of the struggles of rural workers in the 1970s, an opening of Brazil's economy in the aftermath of the military dictatorship, and the germination of Liberation Theology (Gutiérrez 1974).[21] Its origins and present activities are based on the struggle for meaningful agrarian reform, which seeks to distribute land amongst landless rural workers. The MST claims to have grown to be 'the largest social movement in Latin America with an estimated 1.5 million landless members organized in 23 of 27 states' (MST 2010a, para.1).[22] According to Wolford

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[20] Dignity for the Zapatistas seems to be a sense of satisfaction, pride in being rebellious and control of one's own life in community with those around you. This is an important principle in the Zapatista communities, which are organized around the principle of participation and collective horizontal decision-making processes. Their economic organization follows ideas of sustainability, satisfying the needs of the community in a way that is environmentally sustainable. This has been sometimes called 'social ecology' See Toledo 1999 and Harvey 2005.

[21] Liberation Theology is based on the premise that poverty is a sin and that Christians must work towards a society of justice and solidarity.

[22] All Portuguese language citations have been translated by the authors.

and Wright, the MST is a story of 'more than a million people [who] by organizing peaceful protests have forced the Brazilian government to redistribute twenty million acres of agricultural land to 350.000 families and to assist them further in creating new livelihoods' (2003, xiii). For the MST, the access to land is the realization of justice in that it has the capacity to improve levels of wealth distribution, reduce poverty and empower working families.

Brazil is a country of immense resource wealth but also dramatic inequalities. This is why land, as the primary resource for agriculture, is the target. In Brazil, not only does 'one per cent of the population have 13 per cent of the total household income', but also regarding land distribution, 'the percentage of the total area occupied' by the top deciles of properties 'is approximately 78 percent' (Beghin 2008, 1). However, the redistribution of land clashes with the biggest industries in Brazil: agriculture, cattle, bio-fuels, paper and pharmaceuticals. All of these industries are based on mono-crops, land clearing and more so, they carry out their business on big land extensions, concentrating wealth in the hands of a few. Monsanto, one of the biggest multinational companies[23] in Brazil, is, for the MST, a symbol of what they are against: big land owners, concentration of land in a few hands, and in foreign agro-business imposing on farmers the purchase of Monsanto seeds that do not produce seeds. Not surprisingly, MST members on more than a few occasions have targeted Monsanto (BBC 2003).

In opposition to this vivid example, the MST communities grow organic crops and distribute the harvest equally amongst members of the communities.[24] They attempt to apply, in the settlements, the ideals of empowering all members of the settlement, putting emphasis on equal participation, gender equality and raising political consciousness, as well as providing education for everyone (not just basic education but also political education). However, the practice of land occupation and land collectivization entails dramatic risks, including repression, prison and even murder. This is why the MST recently created a human rights commission that is part of every federated division within the organization (MST 2009a, 2010b). The MST human rights commission attempts to carry out not just campaigning but actually take abuses of human rights to court. The occupying workers receive constant death threats from different fronts including corporations, landowners and government security forces (MST 2001). For example, the commission heard about a recent threat to the workers occupying land in Alagoas, part of the municipal locality of Belo Monte in which a number of men with guns, supposedly linked to the owner of the land, threatened to kill the workers and force them off of the property (2009b). The report about it on the MST website was under the title 'Disrespect for human rights in Alagoas.'

So although the MST sees their human rights as being served better by pushing the boundaries of legality, they do not completely reject the state framework of human rights, but rather make a strategic use of it to demand accountability from the government, demanding both security and redistribution, but while occupying land "illegally" and demanding radical changes to the economic order. Additionally, it is through language such as 'disrespect for human rights in Alagoas' that they have a

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[23] Monsanto (2009, 4) declared reported profit sales for a value of $6.762 million in 2009.
[24] For a more detailed and deeper background see for example Dias Martins 2006.

more international appeal, using a common international discourse. The MST might not be, as David Graebber observes, entirely 'rejecting a politics which appeals to governments to modify their behavior' but they are still 'in favor of physical intervention against state power in a form that itself prefigures an alternative' (cited in Day 2005, 19).

The relationship between the big NGOs and radical groups deserves some mention, as it clarifies the different approaches to human rights. AI is very careful not to show direct support or sympathy for the Zapatista struggle. The way that AI (2000) reports on this is to focus on the victims as a 'third party', describing villagers or indigenous communities that innocently find themselves in between the EZLN and the paramilitary or government forces. Yet, while they would never support the EZLN's right to forcefully defend their rights, they are happy to call on the government (usually a human rights violator in the region) to protect these communities. The case scenario in Brazil is different and AI (1999, 2009) has produced communiqués demanding protection for MST members - whereas the case of the Zapatistas is not mentioned in the latest AI (2007, 2008, 2009) reports. However, the human rights violations reported focused on threats to the security and life of the peasants but nothing was said in support of their claims to land. Oxfam has been working in Chiapas for a while, and continues to do so by supporting local organizations and projects that work in the area, specifically with economic programs broadly related to development and gender issues. Although they have written extensively on the negative impact of the NAFTA on peoples of Chiapas, they also emphasize that they help 'communities' in Chiapas, whether Zapatistas or not (Oxfam 2006). The point here is not to assert which party is right; it is just to say that upholding the human rights flag is not a neutral or non-political act.

How does looking at the Zapatistas and MST challenge the understanding of human rights that we have been developing here? There are at least two sets of challenges in answering this question. One relates to the relationship between the theorist and the activist; the other one pertains to the idea and practice of human rights. Regarding the first challenge, as Adam David Morton suggests, analyzing radical social movements needs to lead us to the questioning of the figure of the intellectual and the limits of intellectual activity (2002, 30). Following Nugent, Morton highlights that 'our intellectual activity function[s] as a critical instrument, as a challenge to ruling ideologies, maybe as a guide to political action' (cited in Morton 2002, 30). Thus, although it might be clear for the philosopher what the benefits of entering a conversation with radicals are, it is less clear the other way around, unless, as Morton suggests, theory enters the political process in solidarity (2002, 30). For the second challenge, that links directly to the notion of human rights, both the MST and the Zapatistas illustrate that any attempts to expand the meaning of rights or to construct different relationships on which those rights can have further meaning meets with resistance from established power. What these movements also show is that human rights depend upon a relationship with power in which, at times, government and the state apparatus are simultaneously protectors and transgressors. In the case of the Chiapas or Brazil, for example, the government allows the use of the environment and resources for the benefit of a foreign multinational corporation, meaning that the best the international human rights regime can offer is a low-paid job and consumer opportunities. In this situation one could still demand alternative ideas of human rights, but this challenge will antagonize the government, and this antagonism meets

with repression and marginalization. Human rights, as they have been legislated, establish that there must be a legitimate authority that protects those rights, but nothing is said about what to do when these rights are not met, much less when those rights are inadequate, other than to appeal to further state-centric international institutions. Far from human rights acknowledging the asymmetrical hierarchical relationships between actors, they attempt to set a standard of justice that can be embraced by those left disempowered. Anthony Anghie (2005, 133) argues that the human rights architecture recreated the idea of god and the sovereign king as the guarantor and source of justice in the modern state. This relationship of king-subject, whether that has been transformed into one of government-citizen or not, is the one that radical groups question.

This setting of the standards of morality and justice is what is fundamentally challenged when rather than demanding, we act (Day 2005).[25] The contemporary human rights regime allows individuals to organize opposition parties, to march in protest, and choose someone else for the job of governing. What the conventional understandings of human rights makes it difficult to do is alter the basic structures of sovereignty, representative government, and economic decision making in ways that challenge a narrow liberal and state-centric ideal. Because *this* ideal eschews deeper critiques of political and social power relations (including those that make the ideal possible), human rights do not make space to imagine and create more participatory forms of politics, where we can contest, and possibly upset, established social structures, and participate more fully in decision making and political action.[26] The problem is not just having the protector and primary violator of human rights in the same institution; it is also that there is not space to contest the ideal of human rights, both of in terms of the individual and political community entailed.

Our understanding of rights needs to be open to the process of social contestation and alive to the dangers of political moralism. The consecration of power via the protection of human rights runs counter to the spirit of the social movements that lead to, and perpetuate, the rights discourse – including democratic revolutions, slave rebellions, workers' and women's movements and decolonization – and, we conclude, should be challenged. The practice of human rights is recast by radical groups in terms of changing the social world, in terms of what Connolly (2005, 121-122) terms the 'politics of becoming.' The contextualizing of rights or of rights abuses then is not about this or that government, but about how power relations are constructed. For Holloway, this has been the fundamental challenge posed by the Zapatistas: 'The Zapatistas have said that they want to make the world anew, to create a world of dignity, a world of humanity, but without taking power' (Holloway 2005, 21). This leads to a theory and practice of rights that seeks to reconstruct social and political community on site through the practices of the everyday, without seeking to authoritatively control the instruments of government for others – one that is 'not understood in the first instance to be *derived* from apodictic recognition of its law like

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[25] Note that behind Day's idea of the 'politics of the act' is Lacan's 'passage à l'act' (take action upon a sense of anxiety and simply 'exit' the kind of power network that generated that anxiety. See Lacan (1991)) as well as that of direct action (Rocker 1938).
[26] This is not to suggest that the ideal described here simply needs to replace the conventional account of human rights, but to emphasize that the consolidation of any human rights ideal closes off others and creates exclusions and silences that are rendered natural or reasonable by the disciplining of political life by moral principle.

form but rather taken to *be inspired* in the first instance by a love of the world or attachment to the complexity of being that infuses it' (Connolly 2005, 116). What this rather obscure language points to is that 'Connolly urges us to assess emergent claims as democratic theorists and activists should: by imagining and assessing a world, the world that might be open by this new right… Here, rights and goods meet.' (Honig 2008, 105)

In many ways, the Zapatistas go a step further than the MST, for the MST does not have a critique of the state as such, for instance, they saw in president Lula a way towards their desired agrarian reform. For the Zapatistas, the diffusion of power in autonomous communities and a vision of rights emanating from, and protected through, the everyday interactions of their immediate community is a substantive improvement over giving away their rights to a powerful, historically oppressive state structure that is beyond their control. Yet, these two groups have similar ways of acting upon rights – they create them and they act on them – but two different understandings of the implications of their actions and two different frameworks of action. This relates back to the contours of their own political imagination. Radical groups push the boundaries of what documented human rights allow and take what they need, what they consider to be fair and just. In the case of both the Zapatistas and MST they do this collectively, contextualizing the notions of justice and re-negotiating the limits in the name of a clearly defined political community. It is also in this sense that for them it is more powerful to claim rights as indigenous people, as Mexicans or as Brazilian peasants than *only* as members of humanity. It is not that they do not want those rights for everyone or do not refer to their humanity as justification, it is that they do not conceive of a specific list of rights that are claimed by all humans – the rights they claim are born of the conditions of their lives and the ways they have been victimized in a specific context.

The more extreme case is seen in the Zapatistas' rejection of the Mexican government as it is structured and conceived within a global neo-liberal context. They see governments as corrupt and democracy as having lost its real sense. However, as Richard Day (2005) observes, we would be misled if we read this as counter hegemony. Radicals are not attempting to construct themselves as the new power, the new government, the new representation of the state, 'instead, they are driven by an orientation to meeting individual/group/community needs by direct action' (Day 2005, 45). This orientation informs an alternative conception of human rights, one that recognizes that claiming rights is also a claim to remake social structures and redistribute political power – not only do radical movements show the limits of the established human rights regime, they suggest one way it is possible to think of human rights through a prism of plurality and ongoing contestation.

5. Conclusion

Human rights should be seen, we have argued, as the result of a temporary settlement of social contestation in which both moral principle and social conditions have been challenged. Disconnecting human rights, and moral authority generally, from their history, in which political boundaries have been challenged and altered, leads to two problematic assumptions. Firstly, that there is a human essence to which rights can be ascribed. Secondly, that the enjoyment of such rights entails being permanently subject to an authority with the capacity to protect them. The risk of

asserting human rights this way and detaching them from historical conditions is to reify human rights, as we know them now, into something truthful, eternal, and good beyond dispute.

As a result, looking at the social struggles of radical movements, at how they push the boundaries of the rights discourse puts human rights in a relative but also agonistic light. While human rights still serve as a language amongst the less powerful, while human rights are recognized as victories of previous struggles, and while for some, their enjoyment would truly mean better conditions of life, these radical movements also see the limitations in demanding only what is written because they see the limitations of the given. They do not just protest that their governments are not complying with their obligations; they are stating that the nature of the political and economic structure is not conducive to the enjoyment of such rights and that established rights are inadequate.

We can extract two important conclusions regarding the theory and practice of human rights. On the one hand, that the 'politics of demand' are limited and the articulation of more critical claims requires a 'passage à l'act', the reconstruction and creation of rights, the pushing of political boundaries, the denunciation of the weaknesses and injustices in the framework in which human rights are embedded. On the other hand, that one of the most fundamental flaws of *this* theory and practice of human rights is the division of politics from morality. Identifying an alternative social logic to human rights, one based in an ethic of agonism rather than a morality of legislation, carries its own commitments. Importantly, it takes uncertainty and ambiguity as potentially productive conditions for ethics, while privileging certain values – two of which are of particular importance. First, human rights should protect those marginalized and disempowered by existing politics. Further, human rights should be linked to a democratic ethos that does not demand uniform processes of state building, but instead supports efforts to establish more participatory and plural forms of democratic government in order to combat the tendency of universal claims to become coercive and exclusionary.

These commitments are intended to preserve the agonistic element of human rights and to resist the temptations of imposition or antagonism. But, importantly, these values reflect a politics of their own, but one we think fruitfully enabled by human rights discourse. In addition, these commitments have real political consequences – human rights, we argue, are tools put to work to achieve particular social ends (Langlois 2002), and while they also help to generate a human politics that is increasingly important in an interconnected world, human rights should be allowed greater plurality both in meaning and institution. The connection between theory and practice is of great importance here; if human rights can serve the goal of inclusion and make our human politics more democratic the "radical" combining political action and philosophical reflection is a key figure. Finally, in linking human rights to social movements and calling for greater plurality we open the door to alternative political and economic orders that will challenge current powers. Not only should the state and free-market be open to challenge, but also the way in which social conflicts play out may not always be peaceful. Those willing to consider humanitarian war to protect human rights should not be too quick to oppose the use of violence by other social movements in extreme circumstances.

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