

# Human rights: contesting the displacement thesis

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*'You don't roll some unitary boulder of language or justice uphill; you try with others to assist in cutting and laying many stones. †*

## Abstract

*From within the camp of broadly left-wing or progressive critiques of human rights, one of the key objections that has emerged is what will be referred to here as 'the displacement thesis'. In sum, this critique maintains that reliance on the language of human rights by movements for radical social change is problematic, because it tends to crowd out (or displace) other, potentially emancipatory, languages, and as a consequence distract attention from broader, structural causes of injustice and oppression. It is argued here that, while this argument is intuitively appealing, it falls short for a variety of reasons. There are, to be sure, many problems with human rights, but the mobilisation of rights language can nonetheless make an important contribution to movements for radical social change, without displacing or precluding the mobilisation of other emancipatory languages, and the challenging of deeper, structural causes of injustice.*

**Keywords:** human rights; displacement thesis; critique; struggle; emancipatory politics

## 1 Introduction

In the early 1990s Louis Henkin confidently declared that human rights were 'the idea of our time . . . the only political–moral idea that has won universal acceptance'.<sup>1</sup> Much water has passed under the bridge since then, with myriad challenges to and critiques of human rights developing from various points along the political and ideological spectrum.<sup>2</sup>

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† Adrienne Rich, *Arts of the Possible* (WW Norton & Co 2001) 6.

1 Louis Henkin, *The Age of Rights* (Columbia University Press 1990) ix.

2 For summaries of the main critiques of human rights, see: Marie-Bénédicte Dembour, 'Critiques' in D Moeckli, S Shah and S Sivakumaran (eds), *International Human Right Law* (3rd edn, Oxford University Press 2017) 53 and Frédéric Mégret, 'Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes' in J M Beneyto and D Kennedy (eds), *New Approaches to International Law* (Springer 2012) 3.

Notwithstanding this, human rights remain a central concern today,<sup>3</sup> and stand as ‘the *doxa* of our time’.<sup>4</sup> As Balfour and Cadava put it, human rights are now ‘one of the most pressing and intractable matters of political life’.<sup>5</sup> On this intractable terrain, one of the key critiques of human rights, usually voiced from the left/progressive side of the debate, is the apprehension that the language of human rights tends to undermine movements for radical social change by tempering their ambitions and limiting their horizons to a narrow set of legal demands, eliding broader causes of injustice and foreclosing other emancipatory languages: this, in essence, is what might usefully be called the displacement thesis.

The displacement thesis raises important, and pressing, questions about the nature of human rights, and the value, or otherwise, of social movements engaging and mobilising the language of human rights. These are not mere abstract considerations, of concern only to closed systems of recondite academic exchange. Rather, they are pressing and important issues, because all around the world, at a critical historical juncture,<sup>6</sup> social movements are articulating their opposition to the extant social order, often through the language of human rights. This has seen mass movements mobilise behind demands for the right to housing in Spain and South Africa,<sup>7</sup> land in Brazil,<sup>8</sup> racial equality and protest in the USA,<sup>9</sup> water in Ireland,<sup>10</sup> and the right to the city in Turkey and elsewhere,<sup>11</sup> to name but a few. If, then, the displacement thesis holds, and the language of human rights invariably undermines social movements by narrowing their emancipatory horizons, this is a strong argument for jettisoning the language of human rights in these movements and elsewhere.

The argument presented here is that the displacement thesis does not hold, and that movements for radical social change can and do engage the language of human rights without necessarily limiting the emancipatory imagination or ambition of those involved in such movements. The argument unfolds as follows: first I outline the contours of the displacement thesis, drawing in particular on the work of Wendy Brown to illustrate the

3 As Amartya Sen puts it, the ‘rhetoric of human rights is omnipresent in the contemporary world’. Amartya Sen. ‘The Global Reach of Human Rights’ (2012) 29 *Journal of Applied Philosophy* 91, 91.

4 Stefan-Ludwig Hoffmann, ‘Introduction: Genealogies of Human Rights’ in S-L Hoffmann (ed), *Human Rights in the Twentieth Century* (Cambridge University Press 2011)1, 1.

5 Ian Balfour and Eduardo Cadava, ‘The Claims of Human Rights: An Introduction’ (2004) 103 *South Atlantic Quarterly* 277, 277.

6 The stakes of the current historical period – characterised by the general crisis of capitalism – are brought into sharp relief by Immanuel Wallerstein, who argues that: ‘We may think of this period of systemic crisis as an arena of struggle for the successor system . . . We are faced with alternative choices which cannot be spelled out in institutional detail, but may be suggested in broad outline. We can choose collectively a new system that essentially resembles the present one: hierarchical, exploitative and polarizing . . . Alternatively we can choose a radically different system, one that has never previously existed – a system that is relatively democratic and relatively egalitarian.’ Immanuel Wallerstein, ‘Structural Crises’ (2010) 62 *New Left Review* 133, 140–1.

7 On South Africa, see Jackie Dugard, Tshepo Madlingozi and Kate Tissington, ‘Rights Compromised or Rights Savvy? The Use of Rights-based Strategies to Advance Socio-economic Struggles by Abahlali baseMjondolo, the South African Shack-Dwellers’ Movement’ in H A Garcia, K Klare and L Williams (eds), *Social and Economic Rights in Theory and Practice* (Routledge 2015) 23; and on Spain, see Ada Colau and Adrià Alemany, *Mortgaged Lives: From the Housing Bubble to the Right to Housing* (Journal of Aesthetics and Protest 2014).

8 Peter Houzager, ‘The Movement of the Landless (MST), Juridical Field, and Legal Change in Brazil’ in B de Sousa Santos and C A Rodríguez-Garavito (eds), *Law and Globalization from Below* (Cambridge University Press 2005) 218.

9 Fredrick Harris, ‘The Next Civil Rights Movement?’ (2015) 63(3) *Dissent* 34.

10 Daniel Finn, ‘Water Wars in Ireland’ (2015) 95 *New Left Review* 49.

11 Mehmet Baris Kuymulu, ‘Reclaiming the Right to the City: Reflections on the Urban Uprisings in Turkey’ (2013) 17(3) *City* 274; and David Harvey, ‘The Right to the City’ (2008) 53 *New Left Review* 23.

main thrust of the argument; secondly, it is argued that this thesis relies on a truncated, abstract understanding of human rights, and the relationship between rights and social change; the third section argues that the practice(s) of social movements shows that it is possible for movements to engage the language of human rights without losing sight of the broader, structural causes of injustice they confront; the final section then ties the argument together, noting the positive role that human rights can play in movements for fundamental social change. It should be stressed at the outset that the argument presented here is by no means a blanket defence of, or *apologia* for, human rights, nor indeed is it an argument for the necessity of rights language in movements for radical social change. It is, far more modestly, an argument that one apparently radical and intuitively appealing critique of human rights does not quite hold, and that, notwithstanding the many problems with the language of human rights, social movements can mobilise this language as part of broad movements for social change.

## 2 The displacement thesis

Human rights have, of course, long since come in for criticism: from Jeremy Bentham's dismissal of rights as nonsense on stilts,<sup>12</sup> to Karl Marx's radical critique of the limitations of bourgeois rights under capitalism.<sup>13</sup> Throughout the late twentieth century, as the language of rights came to play a more prominent role, critiques of rights became more pronounced. In particular the Critical Legal Studies (CLS) movement launched a variety of scathing critiques of 'rights talk' and practice,<sup>14</sup> with particular emphasis on the US constitutional tradition.<sup>15</sup> Within this milieu various rights critiques emerged, some of the main claims being that rights and 'rights talk' tended: (i) to insulate and valorise subordination in the private sphere; (ii) to legitimate, perpetuate and conceal greater injustice than they addressed; and (iii) that the language of rights tended to be atomistic and to alienate people from one another.<sup>16</sup>

For present purposes, it is a variation on the second of these arguments that is of most interest. The basic idea is captured well by Morton Horowitz, who wrote that:

. . . the vindication of rights is set in an exclusively legal and individual specific framework, drawing energy and imagination away from structural change. Indeed, framing issues of social justice in terms of individual rights has the additional effect of denying equal legitimacy to claims that the overall social distribution of wealth and power is unjust.<sup>17</sup>

In other words, mobilising the language of human rights tends to distract us from broader, structural causes of injustice, and to undermine, or displace, other languages or

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12 Jeremy Bentham, 'Nonsense upon Stilts' in P Schofield, C Pease-Watkin and C Blamires (eds), *Rights, Representation and Reform: Nonsense upon Stilts and Other Writings on the French Revolution* (Oxford University Press 2002) 317.

13 Karl Marx, 'On the Jewish Question' in R C Tucker (ed), *The Marx-Engels Reader* (2nd edn, WW Norton & Co 1978) 26.

14 For useful overviews of the CLS movement, see Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Verso 2015); and Alan Hunt, 'The Theory of Critical Legal Studies' (1986) 6 *Oxford Journal of Legal Studies* 1.

15 Duncan Kennedy, 'The Critique of Rights in Critical Legal Studies' in W Brown and J Halley (eds), *Left Legalism/Left Critique* (Duke University Press 2002) 178.

16 See Robin West, 'Tragic Rights: The Rights Critique in the Age of Obama' (2011) 53 *William and Mary Law Review* 713, 716; and Anthony Chase, 'The Left on Rights: An Introduction' (1984) 62 *Texas Law Review* 1541.

17 Morton Horowitz, 'Rights' (1988) 23 *Harvard Civil Rights—Civil Liberties Law Review* 393, 400.

ways of seeing,<sup>18</sup> that might better allow us to get to the root causes of injustice and denial of human rights. By framing matters in this way, Horowitz captures the essence of the displacement thesis, and anticipates, in outline, the key elements of an argument that has, in due course, become central to critiques of human rights.

More recently, a fuller account of this argument has been advanced by Wendy Brown. In a well-known essay, in which she convincingly dispatches Michael Ignatieff's liberal defence of human rights,<sup>19</sup> Brown registers a number of concerns that arise from 'human rights assuming centre stage as . . . *the international justice project*'.<sup>20</sup> While Brown rehearses a number of well-established critiques of human rights, the central aspect of her argument, for present purposes, is the concern that:

Human rights activism is a moral-political project and *if it displaces, competes with, refuses, or rejects other political projects, including those also aimed at producing justice*, then it is not merely a tactic but a particular form of political power carrying a particular image of justice, and it will behoove us to inspect, evaluate and judge it as such.<sup>21</sup>

Brown goes on to argue that in light of the renewed vigour of US imperialism and the suffering it occasions, perhaps instead of human rights, support for anti-imperialist struggles and indigenous movements in post-colonial societies, or other political/justice projects, would be more efficacious in resisting the depredations of the global imperial order.<sup>22</sup>

Having argued that mobilising the language of human rights tends to crowd out other, possibly more efficacious frameworks (or 'justice projects'), Brown then calls on us to recognise 'the difficulty of trying to engage in both kinds of projects simultaneously'.<sup>23</sup> In other words, if we mobilise human rights, we will most likely have jettisoned alternative languages and perspectives on the injustice we oppose. Brown concludes by arguing that human rights discourse:

. . . is a politics and it organizes political space, often with the aim of monopolizing it. It also stands as a critique of dissonant political projects, converges neatly with the requisites of liberal imperialism and global free trade, and legitimates both as well.<sup>24</sup>

In place of this, Brown argues that we should broaden our horizons and, instead, foreground 'other kinds of political projects, including other international justice projects' which directly address the structural character of global capitalism and hyper imperialism. The argument, in sum, is that the language of human rights cannot 'articulate or address the conditions producing' violations of human rights,<sup>25</sup> and even more problematically, mobilising the language of human rights tends to distract us from the broader, structural causes of suffering and injustice.

18 In this way, the argument chimes with a concern among critical commentators that 'reliance on rights in political struggles and by political movements invites a kind of legal imperialism, in which courts and lawyers take on an unhealthy prominence'. Austin Sarat and Thomas Kearns, 'Editorial Introduction' in A Sarat and T Kearns (eds), *Identities, Politics and Rights* (University of Michigan Press 1997) 1, 4–5.

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

20 Wendy Brown, "'The Most We Can Hope for . . .': Human Rights and the Politics of Fatalism' (2004) 103 *South Atlantic Quarterly* 451, 453 (original emphasis).

21 *Ibid* (emphasis added).

22 *Ibid* 460.

23 *Ibid*.

24 *Ibid* 461.

25 Wendy Brown, 'Suffering Rights as Paradoxes' (2000) 7 *Constellations* 230, 239.

In Brown's work, then, we find a very clear articulation of the essential elements of the displacement thesis. However, it is possible to discern the same basic argument in the work of a number of critical scholars. David Kennedy, for example, argues that even 'very broad social movements' will tend to 'have their vision blinkered by the promise of recognition in the vocabulary and institutional apparatus of human rights', and as such 'will be led away from the economy and toward the state, away from political/social conditions and toward the forms of legal recognition'.<sup>26</sup> Likewise Robin West warns that reliance upon the language of human rights will 'distract our critical gaze, thereby legitimating larger injustices'.<sup>27</sup> In a similar vein Conor Gearty and Costas Douzinas argue that 'human rights stop us talking about bigger questions, those of power, justice and poverty'.<sup>28</sup> Each of these statements is a different way of articulating the same general displacement thesis put forth most clearly by Brown. If the thrust of the displacement thesis was confined to the practices of mainstream human rights organisations, and formal, liberal legalism, then, in certain key respects, it would be a valuable and incontrovertible addition to how we think about and critically engage with human rights. If the target was simply the 'global human rights industry',<sup>29</sup> and mainstream scholarship, there would be little to contest in the displacement thesis.

But, it goes far beyond this. The various articulations of the displacement thesis are framed in imperative terms; the issue is not liberal legalism or mainstream human rights discourse, but human rights *as such*. As Gearty and Douzinas put it above, human rights, as such, stop us seeing the bigger issues of power, justice and poverty. Likewise, Brown concludes her piece – from which the key lines of the displacement thesis have been sketched above – by arguing that according centrality to human rights reflects a high degree of pessimism and fatalism on behalf of 'progressives', in general, and urging that if 'others have not yet arrived at this degree of fatalism, then we would do well to take the measure of whether and how the centrality of human rights discourse might render . . . other political possibilities more faint'.<sup>30</sup> In sum, the displacement thesis is one specific strand of a more generalised critique and dismissal of human rights.<sup>31</sup> In the next section, it will be argued that while, as a critique of liberal legalism, the displacement thesis is appealing, it is fundamentally unsustainable as a broader critique of human rights as such.

### 3 Contesting the displacement thesis

The virtue of the displacement thesis is that it points up some of the key shortcomings of mainstream human rights practice and discourse. Certainly, there are sufficient historical examples, drawn in particular from the US constitutional tradition, to demonstrate how an over-reliance – perhaps a naive faith – in the language of rights has facilitated the co-optation of social movements, and led to fundamental structures of

26 David Kennedy, 'The International Human Rights Movement: Part of the Problem' (2002) 15 *Harvard Human Rights Journal* 101, 110.

27 West (n 16) 721.

28 Conor Gearty and Costas Douzinas, 'Introduction' in C Gearty and C Douzinas (eds), *The Cambridge Companion to Human Rights Law* (Cambridge University Press 2012) 1, 14. Though it should be noted that both Douzinas and Gearty have, to varying degrees, written in support of human rights, see Costas Douzinas, *Human Rights and Empire* (Routledge-Cavendish 2007); and Conor Gearty, *Can Human Rights Survive?* (Oxford University Press 2005).

29 Neil Stammers, *Human Rights and Social Movements* (Pluto Press 2009) 19.

30 Brown (n 20) 462.

31 Slavoj Žižek, 'Against Human Rights' (2005) 34 *New Left Review* 115; and Jarret Zigon, 'Human Rights as Moral Progress? A Critique' (2013) 28 *Cultural Anthropology* 716.

oppression being left unchecked.<sup>32</sup> The problem with the displacement thesis is that it moves from this useful insight to an overbroad claim about the nature of human rights as such. Two of the important reasons for this leap from correct premises to incorrect conclusions are that: (i) the displacement thesis, articulated by scholars within a critical-liberal tradition, gives too much autonomy to language and ideas (in particular the dominant rendering of ideas); and (ii) pays far too little attention to the actual practices of social movements and human agency in articulating human rights claims. This section unpacks both of these issues, which, taken together, constitute key theoretical and methodological shortcomings of the displacement thesis and other strands of left-liberal critique of human rights, namely the privileging of language and ideas abstracted from concrete social conditions and struggles.

In *The German Ideology*, Marx and Engels argued that ‘neither thoughts nor language in themselves form a realm of their own . . . they are only manifestations of actual life’.<sup>33</sup> In contrast to this insight, an implicit premise of the displacement thesis is that the discourse of human rights operates with a logic of its own. Human rights appear to have the power to distract our gaze, to stop us from seeing bigger issues of power, and to displace other, emancipatory, languages and perspectives. In this way, proponents of the displacement thesis become preoccupied with contesting ideas abstracted from concrete struggles and lose sight of the fact that ‘categories of thought are expressions of the social relations that underlie them’.<sup>34</sup> The displacement thesis takes as its object of critique the idea of human rights, rather than the concrete relationships that underlie any given struggle over human rights.

Even more problematically, those who articulate the displacement thesis take for granted the dominant rendering of human rights (liberal-legalist) and uncritically make it the subject of their critique. This reflects a broader trend in various strands of late twentieth and early twenty-first-century critique. As John Holloway, writing about some variants of Marxist critique, notes:

What we see first . . . is the dominant moment of the antagonistic unity. And something awful happens. Our critique degenerates into a theory of domination. Marxism becomes a theory of capitalist domination. Reactionary claptrap, in other words – a theory that encloses us in the enclosure that it pretends to criticise. A theory of Cassandra, a theory that separates the analysis of capitalism from the movement of struggle.<sup>35</sup>

The positive aspect of the displacement thesis, recognition of the inherent limits of liberal-legalist rights talk, is undermined by the fact that it remains myopically focused on this dominant rendering of human rights. The overemphasis on how human rights are and have been used to sustain and legitimate the status quo morphs into a deterministic understanding of the nature of human rights as such. Because the focus is on how the great and the good engage with human rights, all that can be seen is the negative aspect of human rights. A failure to understand human rights as grounded in antagonistic social struggles and, as such, reflecting such antagonisms, results in a one-sided, negative understanding of human rights, and leads, readily, to their dismissal.

32 West (n 16); and Gavin Anderson, *Constitutional Rights After Globalisation* (Hart 2005) 79–99.

33 Karl Marx and Frederick Engels, ‘The German Ideology’ in *Marx–Engels Collected Works*, vol 5 (Lawrence & Wishart 2010) 447.

34 John Holloway, ‘Crisis and Critique’ (2012) 36(3) *Capital and Class* 515, 516.

35 *Ibid.*

This privileging of ideas/language abstracted from concrete social struggles and relationships also leads to the idea, central to the displacement thesis, that there are other languages or perspectives for comprehending and challenging injustice that avoid the pitfalls of human rights. But this contention is simply not borne out: one need only look at how in recent years neoliberalism weaponised the emancipatory concept of individual freedom/liberty,<sup>36</sup> or how late capitalism appropriates, as it hollows out, the idea of democracy,<sup>37</sup> to understand that in a system of global capitalism there is no language or discourse that is not, in some way, compromised, or undermined by the social reproductive processes of the extant order.<sup>38</sup> As Prabhat Patnaik argues, just as democracy and equality are impoverished under capitalism, so too are human rights, but this is no reason to abandon any of these emancipatory languages.<sup>39</sup> There is no pure, silver-bullet argument or perspective that allows us to engage and confront the injustices of the existing capitalist order.<sup>40</sup> Once this is grasped then the generalised critique and rejection of human rights grounded on the displacement thesis loses much of its lustre.

Another important reason why proponents of the displacement thesis reach their generalised conclusions is because their analyses tend to neglect, or undervalue, the role of social struggles in articulating and contesting formulations of human rights. While Douzinas, who with Gearty (as noted above) espouses a version of the displacement thesis, has elsewhere acknowledged that human rights ‘started their lives as the principle of liberation from oppression and domination, the rallying cry of the homeless and the dispossessed, the political program of revolutionaries and dissidents’,<sup>41</sup> he, along with others, abandons the perspective of social struggle in thinking about human rights today and gives priority to critiquing the dominant, institutionalised form and practices of human rights. Much like the triumphant bourgeois thinkers of the eighteenth and nineteenth centuries, such critics seem to declare that there has been history, but there is no more. This stance, however, is fundamentally mistaken. For, while the global human rights industry (of lawyers, international organisations, NGOs, academics and more) certainly provides us with a dominant discourse of human rights, the history and contemporary relevance of human rights are unintelligible without foregrounding the role of social struggle.

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36 David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2007).

37 Peter Mair, *Ruling the Void* (Verso 2013); and Samir Amin, *The Liberal Virus* (Pluto Press 2004).

38 Thinking otherwise is to engage in what Hunt refers to as ‘a form of “Leftism” whose inescapable error lies in the fact that it imagines a terrain of struggle in which social movements can, by an act of will, step outside the terrain on which [social] struggle is constituted’. Alan Hunt, ‘Rights and Social Movements: Counter-Hegemonic Strategies’ (1990) 17 *Journal of Law and Society* 309, 320.

39 As Patnaik puts it: ‘just as “democracy” in a bourgeois society serves to camouflage exploitation, just as “equality” in a bourgeois society is only the equality of commodity-owners in the marketplace, underlying which is the reality of exploitation, likewise “rights” in a bourgeois society are meant only to sustain a structure of exploitation. But this does not make “rights” meaningless, no more than it makes “democracy” or “equality” meaningless. On the contrary, just as “democracy” and “equality” can get realised only in a society transcending capitalism, i.e., in a socialist society, likewise “rights” too become meaningful only in a socialist society, which is why the left must struggle over “rights” in a bourgeois society, as it struggles over “democracy” and “equality”’. Prabhat Patnaik, ‘A Left Approach to Development’ (2010) 45 (30) *Economic and Political Weekly* 33, 36–7.

40 In this regard Martha McCluskey is right to warn that ‘left activists’ who strive for political purity ‘are likely to end up divided, exhausted, and immobilised’. Martha McCluskey, ‘Thinking with Wolves: Left Legal Theory after the Right’s Rise’ (2006) 54 *Buffalo Law Review* 1191, 1200.

41 Costas Douzinas, ‘The End(s) of Human Rights’ (2002) 26 *Melbourne University Law Review* 445, 445.

This point is well made by Neil Stammers, who argues that ‘ordinary people – working together in social movements – have always been the key originating source of human rights’.<sup>42</sup> In a similar vein Makau Mutua has recently argued that ‘popular mass struggles by marginalized groups and colonized peoples were the key catalyst in giving content to the postwar human rights movement’.<sup>43</sup> While not claiming that social movements and struggles are the only factors of concern in the study of human rights, Stammers insists that ‘the historical emergence and development of human rights needs to be understood and analysed in the context of social movement struggles against extant relations and structures of power’.<sup>44</sup> Stammers notes that, in due course, the institutionalisation of human rights, in one form or another, necessarily generates a set of contradictions about how rights are encountered and engaged.<sup>45</sup> However, he is critical of accounts of human rights that are ‘fixated upon existing institutional and legal frameworks’ and ignore the ‘social processes’ that led to the establishment of such frameworks and shape their continued contestation.<sup>46</sup> He is also critical of human rights critiques and critics that overemphasise the autonomy of discourse, warning that they can signal ‘a return to forms of . . . structural determinism and the elimination of the possibility of social actors being able to engage in any form of meaningful agency’.<sup>47</sup>

To avoid committing either of these errors, we should instead foreground the concrete struggles of groups, communities and movements in advancing and articulating human rights claims, as part of broader movements for radical social change. In place of a myopic focus on dominant structures, or the implicit quietism of discourse critique, our understanding of, and engagement with, human rights should be one which begins from an understanding that ‘the history of human rights can and should be seen as a history of social struggle over very real matters of power, resources, and political voice’.<sup>48</sup> Groups and movements engaged in concrete struggles over power, resources and contested relationships do not, as the displacement thesis implies, engage in a sort of emancipatory monolingualism. Instead, they routinely frame their claims for justice, equality and social transformation in a range of dialects. If it were otherwise, then the partisans of the French Revolution would have confined themselves to inscribing on their banners Freedom, Justice, or Equality, not all three.

Of particular importance, for present purposes, is the fact that in an era of crisis-ridden neoliberal capitalism, social movements all around the world are framing their opposition to the extant order and their embryonic visions of an alternative, in large part, through the language of human rights. As Armaline and his colleagues note, human rights struggles ‘are increasingly shaped by and targeted toward systems of privilege and oppression and their social and ecological effects – neoliberal economic globalization (capitalism) in particular’.<sup>49</sup> In the next section we will look at concrete instances of

42 Stammers (n 29) 1. Similarly, William Armaline and his colleagues argue that ‘human rights have been and continue to be defined and realised primarily through bottom-up power struggles and social movements’. William Armaline, Davita Silfen Glasberg and Bandana Purkayastha, *The Human Rights Enterprise* (Polity Press 2015) 115.

43 Makau Mutua, *Human Rights Standards: Hegemony, Law and Politics* (State University of New York Press 2016) 14.

44 Stammers (n 29) 2; see also Kate Nash, *The Political Sociology of Human Rights* (Cambridge University Press 2015) 19–40.

45 Ibid 102–30.

46 Ibid 22.

47 Ibid 17.

48 Armaline et al (n 42) 4.

49 Ibid 10.



contemporary social struggles that mobilise the language of human rights, alongside broader narratives about justice, democracy and social transformation, to illustrate how an alternative starting point in thinking about human rights can lead us to very different conclusions to those sketched out by proponents of the displacement thesis.

#### 4 Social movements and human rights

At its best, the displacement thesis recalls Audre Lorde's cutting insight that the 'master's tools will never dismantle the master's house'.<sup>50</sup> Where it falls short, however, is in failing to appreciate that a 'different future has to be the future of this particular present. And most of the present is made up of the past. We have nothing with which to fashion a future other than the few, inadequate tools we have inherited from history.'<sup>51</sup> In this section the focus is on how two contemporary social movements have mobilised the language of human rights to challenge specific injustices, but have done so in a way that brings in other languages and perspectives that broaden their struggles out into a more thorough critique of the extant social order. While accepting completely that two swallows do not make a spring, these examples show that social movements can and do mobilise the language of human rights in a way which remains attentive to broader structural causes of injustice. It also shows that social movements routinely engage in a sort of emancipatory or critical multilingualism, which mobilises democracy, equality, race, gender and class alongside human rights claims. In this way protagonists in social movements routinely understand, as Audre Lorde did, that they cannot 'afford the luxury of fighting one form of oppression only'.<sup>52</sup> The two examples considered here are the struggle for housing carried on by Focus E15 in London and the struggle against domestic water charges in Ireland.

##### 4.1 FOCUS E15 AND THE RIGHT TO HOUSING

One of the more pronounced crises in the UK today is the lack of affordable or adequate housing for large sections of the population. This crisis has its origins in shifts, from the 1980s onwards, towards privatisation of the social-housing stock,<sup>53</sup> the model of financialised accumulation characteristic of the last three decades of neoliberal capitalism,<sup>54</sup> and more recently the impact of austerity on social welfare provision.<sup>55</sup> All of this has combined to make the housing issue one of the central concerns in modern Britain. For a variety of reasons, this general crisis takes on a more acute character in London. As Michael Edwards has argued, London experiences 'extreme forms' of the general problems associated with the housing crisis (social-housing waiting-lists, rising rents and house prices, insecure tenancies, overcrowding, declining quality of properties),<sup>56</sup> but precisely because of this London is also the site of many noteworthy, albeit 'embryonic and fragmented', movements of resistance in response to the housing crisis.<sup>57</sup>

50 Audre Lorde, *Sister Outsider: Essays and Speeches* (Ten Speed Press 2013) 112.

51 Terry Eagleton, *Why Marx Was Right* (Yale University Press 2011) 71.

52 Audre Lord, 'There is No Hierarchy of Oppressions' (1983) 14 *Bulletin: Homophobia and Education* 9.

53 Mary Robertson, 'The Great British Housing Crisis' (2017) 41 *Capital and Class* 195, 196.

54 Michael Edwards, 'The Housing Crisis and London' (2016) 20 *City* 222.

55 Steve Tombs, 'Undoing Social Protection' in V Cooper and D Whyte (eds), *The Violence of Austerity* (Pluto 2017) 133.

56 Just Fair, *Protecting the Right to Housing in England: A Context of Crisis* (Just Fair 2015).

57 Edwards (n 54) 222.

One of these movements of resistance is Focus E15, which was formed in September 2013 by a group of young working-class mothers to oppose their eviction from a local council-run supported housing unit in Newham, East London.<sup>58</sup> Using a variety of tactics, from weekly street stalls, to petitions, occupations and marches, the Focus E15 campaigners successfully resisted their eviction and ‘then went onto campaign for the housing and urban rights of ordinary Londoners’.<sup>59</sup> The Focus E15 movement frames its campaign around the emblematic slogan of ‘social housing not social cleansing’ and understands it as being a ‘battle for everybody’s basic human rights and equality’.<sup>60</sup> In particular, and unsurprisingly, the campaign sees its struggle as part of a broader ‘fight for the right to decent, affordable, secure housing’.<sup>61</sup> The language of human rights, in particular the right to housing, is therefore central to the Focus E15 campaign.

However, alongside this, and as a matter of course, the Focus E15 campaigners mobilise the language of class, gender and race, and situate their campaign, explicitly, in the broader context of neoliberal capitalism and opposition to the logic of commodification inherent in that system of social reproduction. As one of the campaigners put it:

The way I see it, it seems like London is turning into a place that is just for purely rich people and investors, bankers, they are all coming into London . . . and all working-class people are being pushed out, and like eventually it’s going to turn into like we will be living in the slums, we will be living in houses that are falling apart, that they are not getting anything done to them, because we are the poor people, we are the poor side, they are the rich side.<sup>62</sup>

The Focus E15 campaigners consistently and clearly articulate their struggle for the right to housing as part of a broader dynamic of working-class opposition to the depredations of neoliberal capitalism. Most of them having been newly politicised by their initial campaign to prevent their eviction now understand that the local council had underestimated ‘the strength of working class mothers coming together and demanding their right to safe and decent housing in London’.<sup>63</sup>

The multiple, overlapping languages mobilised by Focus E15 include human rights but also ‘class, place, gender . . . motherhood . . . generation and race’.<sup>64</sup> One manifestation of this is that, when the campaign successfully obtained some funding to support organisational/office space, the campaigners promptly declared their new premises ‘Sylvia’s Corner’ in homage to the ‘militant suffragette and socialist’ Sylvia Pankhurst, who had been active in East London in the early twentieth century. The campaigners chose this name for their premises to ‘directly [link] the current struggles led by today[’s] militant women to the inspiring revolutionary struggles of the past’.<sup>65</sup> As well as understanding

58 Paul Watt, ‘A Nomadic War Machine in the Metropolis: En/countering London’s 21st Century Housing Crisis with Focus E15’ (2016) 20 *City* 297; and Focus E15, ‘3 Years of Resistance: How We Did It’ (23 September 2016) <<https://focuse15.org/2016/09/23/3-years-of-resistance-how-we-did-it>>.

59 Watt (n 58) 298.

60 Focus E15, ‘Statement by Jasmine and Sam, Focus E15 Campaign’ (15 October 2014) <<https://focuse15.org/2014/10/15/statement-by-jasmin-and-sam-focus-e15-campaign>>.

61 Focus E15, ‘The Housing Bill, Civil Disobedience and the Mothers of Argentina’ (18 January 2016) <<https://focuse15.org/2016/01/18/the-housing-bill-civil-disobedience-and-the-mothers-of-argentina>>.

62 Quoted in Watt (n 58) 302.

63 Focus E15 (n 58).

64 Watt (n 58) 316.

65 Focus E15, ‘Militant Suffragette Sylvia Pankhurst Inspires Housing Campaigners’ (2 June 2016) <<https://focuse15.org/2016/06/02/militant-suffragette-sylvia-pankhurst-inspires-housing-campaigners>>.

its campaign for the right to housing as being embedded in relations of class, gender and race, the campaign connects its struggle with international campaigns for the right to housing, and understands the current crisis in housing as a consequence of the extant system of neoliberal capitalism. As the group put it in a recent statement, the 'whole of Europe is in the grip of a capitalist crisis, a neo-liberal disaster and we must ensure that we continue to fight for our human right to have decent homes'.<sup>66</sup> In the same statement, the Focus E15 campaigners explicitly articulate their struggle for the right to housing as being against the financialised, commodified system of housing provision.

The Focus E15 campaign is one of a number of groups working to challenge the acute housing crisis in London, and, while it is a relatively small group, it is one of the more inspirational and integral elements of the broader movement for decent housing in London today. What the above survey of Focus E15's activities and the ways in which it articulates its analysis and claims shows is that social movements engaged in concrete struggles can and do mobilise the language of human rights, without necessarily losing sight of the broader causes of the injustices they oppose. As Watt notes, the Focus E15 campaign has 'demonstrated an unerring capacity to discursively crystallise the political economic and social contradictions underpinning London's housing crisis'.<sup>67</sup> One way in which the campaigners have crystallised their response to this crisis is through demands for the human right to housing. But, crucially, this has not been done through an appeal to liberal-legalist notions of human rights. Rather, it has seen the language of the right to housing mobilised in a way which situates it at the intersection of class, race and gender and is attentive to the structural causes of the housing crisis which the campaigners confront.<sup>68</sup>

#### 4.2. IRELAND AND THE RIGHT2WATER

Throughout the world, the last twenty years have seen a series of intense, sometimes protracted, struggles over access to water. These struggles have emerged and been fought out in the context of a period of neoliberal hegemony, and the consequent commodification and financialisation of this most basic of human needs.<sup>69</sup> One such struggle has unfolded in Ireland since 2014, where successive centre-right governments have sought to introduce individualised metering and domestic water charges, against which a mass movement has arisen asserting the right to water.<sup>70</sup> The Irish 'water war', as some have dubbed it, erupted after a six-year period of austerity budgets, which saw cuts to public spending, social welfare, the downgrading of public services and rising taxes for low and middle-income households. All of which led to one-third of the Irish

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66 Focus E15, 'The Privatisation of Housing Means Misery for European Working Class' (7 June 2017) <<https://focuse15.org/2017/07/07/the-privatisation-of-housing-means-misery-for-european-working-class>>.

67 Watt (n 58) 316.

68 This is an instance in which claiming the right to housing represents 'a demand for profound social change, giving communities power to alter patterns of ownership and provides housing as a right rather than a commodity'. Joe Hoover, 'The Human Rights to Housing and Community Empowerment: Home Occupation, Eviction Defence and Community Land Trusts' (2015) 36 *Third World Quarterly* 1092, 1095.

69 Manuel Couret Branco and Pedro Damião Henriques, 'The Political Economy of the Human Right to Water' (2010) 42 *Review of Radical Political Economics* 142; Oriol Miroso and Leila Harris, 'Human Rights to Water: Contemporary Challenges and Contours of a Global Debate' (2012) 44 *Antipode* 832; and Kate Bayliss, 'The Financialization of Water' (2014) 46 *Review of Radical Political Economics* 292.

70 Finn (n 10); Rory Hearne, 'The Irish Water War' (2015) 7 *Interface* 309; and William Wall, 'Water and its (Dis)Contents' (2015) 5 *Studi irlandesi* 209.

population living in deprivation, the highest net emigration figures in the Organisation for Economic Co-operation and Development (OECD) and the decimation of living standards for individuals and working-class communities.<sup>71</sup> In large part this austerity was imposed in the context of a memorandum of understanding (MoU) agreed between the Irish state and the Troika (EU, International Monetary Fund and European Central Bank), which has seen Ireland pay back a disproportionate share of the Eurozone banking crisis.<sup>72</sup> One of the elements of this MoU was that Ireland would establish a new water utility and introduce water charges.

In late 2013 the then government set up a semi-state body, Irish Water, and began the process of installing water meters in residential properties. Almost immediately this policy ran into opposition, with local communities, particularly in working-class areas in Dublin and Cork, mobilising to prevent the installation of water meters. The burgeoning opposition to the charges led to the establishment of a national campaign group in 2014, Right2Water, made up of community groups, trade unionists and broadly left-wing political parties. Right2Water, as the name implies, was ‘established as a broad-based campaign with one key belief and one key objective – that water is a human right and that water charges should be abolished’.<sup>73</sup> The campaign mobilised hundreds of thousands of people at national days of protest, while newly politicised and galvanised communities continued their tactics of preventing meter installation, boycotting the water charges, and protesting against government ministers.

All of this has combined to extract concessions from the government, and indeed the issue of water charges was a key factor in bringing down one government and decimating the Irish Labour Party, which was seen by many-working class people as having betrayed them on the issue of water charges. While these represent definite achievements for the anti-water charges campaign, the issue has not yet been resolved, and it is probable – if not likely – that some form of domestic water charge will be introduced in the near future.<sup>74</sup> Notwithstanding this, the Right2Water movement in Ireland remains ‘one of the largest and broadest, and most sustained, social movements in Ireland since independence in 1921’.<sup>75</sup>

For present purposes our concern, as with the case of the Focus E15 campaign, is with how the Right2Water movement in Ireland engaged the language of human rights alongside other frames of reference, and connected the specific rights struggle its protagonists were engaged in with broader causes of injustice. In this regard one of the striking things about the Right2Water campaign is that it was, from the very beginning, a campaign which conceived of the right to water as a basic social good, in direct opposition to the logic of commodification, privatisation and austerity.<sup>76</sup> From the outset the Right2Water campaign articulated its defence of the right to water alongside an explicit understanding that rights ‘cannot be guaranteed if they are subject to market

71 Hearne (n 70) 309.

72 Finn (n 10) 51.

73 Right2Water, ‘Right2Water – Strategy, Tactics, Unity’ (2015) <[www.right2water.ie/blog/right2water-%E2%80%93-strategy-tactics-unity](http://www.right2water.ie/blog/right2water-%E2%80%93-strategy-tactics-unity)>.

74 Right2Water, ‘The Right2Water Battle Continues and It’ll Never End’ (2017) <[www.right2water.ie/blog/right2water-battle-continues-and-it%E2%80%99ll-never-end](http://www.right2water.ie/blog/right2water-battle-continues-and-it%E2%80%99ll-never-end)>.

75 Hearne (n 70) 312.

76 With good cause, for as Branco and Henriques note, the ‘commodification of society . . . is contradictory with a society whose purpose is to enhance human rights’. Branco and Henriques (n 69) 154.

forces'.<sup>77</sup> The campaign also situated the struggle for the right to water in the context of the much broader political malaise of the Irish state, calling for the need to break with a political system founded on a 'a profit driven orgy of greed', in order to deliver 'real change' and 'create a Republic which puts the great mass of the people before it's [sic] self serving elites'.<sup>78</sup>

These views are echoed by the grassroots community protesters who made up the backbone of the Right2Water campaign; as Hearn notes, these protesters were 'motivated by a range of factors' including the 'impacts of austerity (which was the most cited reason for protesting)' and by the 'belief that the . . . government have . . . put the interests of the banks, Europe, and the bondholders before the needs of the Irish people, and that . . . working, poor and middle income people have paid an unfair burden of austerity'.<sup>79</sup> As one of the many protestors put it: 'I want a fair society for all not just the rich'.<sup>80</sup> In this way the campaign for the right to water in Ireland, and the mobilisation of the language of human rights, forms part of a broader campaign against austerity, neoliberalism and the perceived degradation of democracy, with human rights claims articulated at the intersection of class, national sovereignty and economic justice.<sup>81</sup> It is noteworthy that the Right2Water campaign led, in due course, to the establishment of the Right2Change campaign, which articulated a set of policy proposals (centred around ten core rights, including rights to housing, decent jobs, democratic reform, natural resources and others) and called on political parties at the 2016 general election to commit to these policies, in exchange for support from the campaign's members.<sup>82</sup> While the platform did not have the electoral impact desired, it again demonstrated how a social movement engaged in concrete struggles can conceive and mobilise the language of human rights in a way which addresses itself to broader, structural causes of injustice.

Much like the Focus E15 campaigners, the Right2Water protagonists in Ireland do not see themselves constrained by the narrow horizon of liberal–legalism. While Ireland is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to water, as such, is not a formally recognised right in Ireland.<sup>83</sup> This, of course, did not matter to the campaigners. Their demands were not for benevolent largesse, but rather the articulation, through the language of rights, of demands for a radically different sort of economic, political and social system. A central impulse of neoliberal

77 Right2Water, 'Water Rights and Wrongs: The European Experience' (2014) <[www.right2water.ie/blog/water-rights-and-wrongs-european-experience](http://www.right2water.ie/blog/water-rights-and-wrongs-european-experience)>.

78 Right2Water, '2015 – The Year We Change Ireland' (2015) <[www.right2water.ie/blog/2015-year-we-change-ireland](http://www.right2water.ie/blog/2015-year-we-change-ireland)>.

79 Hearn (n 70) 317; and Rory Hearn, *The Irish Water War, Austerity and the 'Risen People'* (Department of Geography, Maynooth University April 2015).

80 Quoted in Hearne (n 70) 319.

81 Paul O'Connell, 'Demanding the Future: The Right2Water and Another Ireland' *Critical Legal Thinking* (29 September 2014) <<http://criticallegalthinking.com/2014/09/29/demanding-future-right2water-another-ireland>>.

82 Right2Water, 'Irish People Have a Right2Change Say Right2Water Unions as Well Over 80,000 Take to the Streets' (2016) <[www.right2water.ie/blog/irish-people-have-right2change-say-right2water-unions-well-over-80000-take-streets](http://www.right2water.ie/blog/irish-people-have-right2change-say-right2water-unions-well-over-80000-take-streets)>.

83 Although the possibility of a constitutional right to have access to safe water was hinted at in the seminal case of *Ryan v Attorney General* [1965] IR 294, this possibility was never fully developed. Given the trajectory of Irish Supreme Court jurisprudence in relation to socio-economic rights in recent years, such a development now seems highly unlikely; see Paul O'Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences* (Routledge 2012) 138–67.

capitalism is the commodification of the entire life course:<sup>84</sup> by insisting that certain things are too important to be surrendered to the market, the struggle for the right to water represents an embryonic rejection of the extant social order.<sup>85</sup> As William Wall argues, behind the rejection of water charges, and the assertion of the right to water, lies a general rejection of the ‘neoliberal state’ and ‘while the subject of water . . . resonates strongly with the protestors it is also only no more than the symbol of other disaffections, discontentments and dissonances’.<sup>86</sup> For the Right2Water campaign and Focus E15 the language of human rights is an important shorthand, a way of giving crystallised expression to the specific injustice they are confronting *and* to the broader structures which produce it. Both of these movements demonstrate, clearly, that there is no necessary trade-off for social movements, that they can and do mobilise the language of human rights without displacing other critical frameworks of analysis or becoming inattentive to the structural causes of the injustices they confront.

### 5 Human rights and social change

As stated above, the aim of this article is not to mount a general defence of human rights, even less so of the dominant, liberal rendering of human rights that holds sway in most institutional settings and mainstream scholarship.<sup>87</sup> Much more modestly, the objective here has been to highlight and make explicit the terms of the displacement thesis, and to show that, as a generalised critique of human rights, it does not hold. With that done, in this final section I want to bring together some implications of this discussion for how social movements, and socially engaged scholars, should engage with the question of human rights. In this regard, there are three important, and overlapping, points that need to be made: (i) the first is that human rights, as such, will not and cannot solve the fundamental problems and injustices that confront the vast majority of people in the world today; (ii) notwithstanding this, human rights can, and in certain circumstances should, form part of the arsenal of movements for radical social change; (iii) and, crucially, it is essential to supplement the language of human rights with a broader political and theoretical perspective.

In relation to the first point, it is beyond doubt that human rights are no *panacea* for all social ills, and in and of themselves will not and cannot address the fundamental property question that defines the contemporary world order.<sup>88</sup> Put simply, the fundamental causes of inequality and injustice in various forms are embedded in the structural logic of the system of global capitalism, predicated on the concentration of property in the hands of a few and the consequent exploitation and impoverishment of the many – human rights can never transcend and fundamentally alter this state of affairs.<sup>89</sup> As such, human rights can never deliver the utopia promised by liberal–legalism and therein lies the kernel of truth at the heart of various left-liberal critiques of human

84 Robin Blackburn, ‘Crisis 2.0’ (2011) 72 *New Left Review* 33, 35.

85 Patnaik (n 39) 35, for example, argues that struggles for the recognition of socio-economic rights, such as the right to water, can form part ‘of a series of measures that constitute a dialectics of subversion of the logic of capital’.

86 Wall (n 70) 221.

87 For an excellent recent critique of the dominant human rights regime, see Mutua (n 43).

88 As Robin Blackburn puts it, the ‘plight of billions can be represented as a lack of effective rights, but it is the “property question” – the fact that the world is owned by a tiny elite of expropriators – that is constitutive of that plight. The slogan of rights takes us some way along the path; but it alone cannot pose the property question relevant to the 21st century.’ Robin Blackburn, ‘Reclaiming Human Rights’ (2011) 69 *New Left Review* 126, 137–8.

89 Karl Marx, ‘Critique of the Gotha Program’ in Tucker (ed) (n 13) 525, 530–1.

rights. However, while many critiques move swiftly from the recognition that human rights routinely serve ‘great power ends’,<sup>90</sup> to the conclusion that human rights must therefore be jettisoned,<sup>91</sup> we do better to understand the necessarily contradictory nature of human rights, and what reliance on the language of human rights tells us about the broader, structural context.

On the latter point, it is useful to recall Marx’s observations on the Young Hegelians and their critique of religion in the early nineteenth century. Reflecting on this debate Marx made the important point that the critique of religion was, in truth, a critique of the social conditions which call forth religion, as he put the demand ‘to give up illusions about the existing state of affairs is the demand to give up a state of affairs that requires illusions. The criticism of religion is therefor in embryo the criticism of the vale of tears.’<sup>92</sup> In other words, our focus should not be on the language (whether religious or human rights), but on the conditions which call forth the language. The conditions and context in which we engage human rights today is, as Wolfgang Streeck puts it, one of capitalist crisis and a ‘lasting interregnum’.<sup>93</sup> As Antonio Gramsci long ago warned us, in such an interregnum ‘morbid phenomena of the most varied kind come to pass’.<sup>94</sup> The coming to power of Donald Trump in the USA and the emergence of various forms of authoritarian statism around the world,<sup>95</sup> coupled with the prolonging of the life cycle of neoliberalism through the mantra of austerity,<sup>96</sup> speak to the prescience of Gramsci’s warning. In these circumstances, as living standards are squeezed and basic civil rights rolled back, we are likely to see even more social movements mobilise the language of human rights in their campaigns and struggles.

This should neither surprise or alarm us. The mobilisation of human rights by social movements, as shown above, need not mean they will be led down a political or strategic blind alley. What is important in this context is understanding clearly the strengths and limitations of human rights, and their necessarily contradictory nature. Human rights are not, as Brown argued elsewhere, paradoxical in the sense of being some puzzle of formal logic.<sup>97</sup> Rather they are contradictory, in the way that all real things are.<sup>98</sup> The potentially progressive and emancipatory aspect of human rights exists side by side with the conservative aspect. As Ed Sparer put it, ‘the potential contribution of human rights . . . coexists with their negative potential’,<sup>99</sup> and as ‘much as rights are instruments of legitimizing oppression, they are also affirmations of human values. As often as they are used to frustrate social movement, they are also among the basic tools of social

90 Blackburn (n 88).

91 Žizek (n 31)

92 Karl Marx, ‘Contribution to the Critique of Hegel’s Philosophy of Law’ in *Marx–Engels Collected Works*, vol 3 (Lawrence & Wishart 2010) 176.

93 Wolfgang Streeck, *How Will Capitalism End?* (Verso 2016) 13.

94 Antonio Gramsci, *Prison Notebooks*, vol II, J Buttigieg (ed/trans) (Columbia University Press 2011) 33.

95 Philip Alston, ‘The Populist Challenge to Human Rights’ (2017) 9 *Journal of Human Rights Practice* 1.

96 Bob Jessop argues that the current period involves ‘a *politics* of austerity, not just austerity *policies* . . . a politics orientated towards reorganizing the balance of forces in favor of capital’. Mikkel Flohr and Yannick Harrison, ‘Reading the Conjuncture: State, Austerity, and Social Movements, an Interview with Bob Jessop’ (2016) 28 *Rethinking Marxism* 306, 312 (original emphasis).

97 Brown (n 25).

98 Sean Sayers, ‘The Marxist Dialectic’ (1976) 14 *Radical Philosophy* 9, 11–15.

99 Ed Sparer, ‘Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement’ (1984) 36 *Stanford Law Review* 509, 519.

movement.<sup>100</sup> This is the case not just with human rights, but with any emancipatory discourse that we might seek to mobilise, and it has ever been thus. As George Lichtheim notes (and without wanting to carry the religious metaphor too far), in earlier historical periods and social orders, the language of scripture was routinely mobilised to both challenge and defend the extant order.<sup>101</sup>

The language of human rights, divorced from the limitations of liberal–legalism or a purely litigation-focused strategy, can with all of its limitations and shortcomings form a significant ‘component of counter-hegemonic strategies’ and a ‘potentially fruitful approach to the prosecution of transformatory political practice’.<sup>102</sup> As the examples discussed above (and others abound) show, it can do so without displacing other frameworks of critique, or losing sight of deeper, structural causes of injustice. However, it is even more likely that both activism and scholarship on human rights will develop along these lines if they are grounded in a theoretical perspective which understands the structural character of the extant system, foreground the active role of people in transforming their circumstances, and bring a nuanced understanding to the contradictory nature of rights, social struggles and more. Marxism provides such a framework,<sup>103</sup> as David Fasenfest recently argued: ‘Marxism provides the language of and mechanisms for resistance to neoliberal agendas that strip human rights, and promotes common cause with all who struggle for human rights.’<sup>104</sup> This is just one possibility, but, unlike liberal accounts of human rights, those which draw on the resources of the Marxist tradition are unlikely to succumb to the siren call of liberal–legalism, or lose sight of the structural causes that result in the denial of human rights.

## 6 Conclusion

Only time will tell how movements will engage the language of human rights in the years to come, but what is clear from the above discussion is that such movements can mobilise this language without displacing other critical frames of reference or losing sight of the power relations and structural causes that undermine human rights. It is also clear from the above discussion that some contemporary social movements are – albeit in contradictory and uneven ways – reaching conclusions that fundamentally question and challenge the existing system of social relations. The positing of certain human needs, housing, water etc., as rights that should not be subject to the logic of the market, is a denial of the basic impulse of capital accumulation. In this way, the language of human rights is mobilised in a manner which calls into question, whether implicitly or explicitly, the bigger issues of power, poverty, inequality and so on that human rights are supposed to blind us to. As such, the displacement thesis looks singularly unconvincing.

100 Ibid 555.

101 ‘In a primitive community, religion is the principle source of social morality; hence religious faith can be invoked as the legitimation of demands for “justice” – meaning equal or at least equitable treatment. This has frequently been done, but it has always run into the same obstacle: conservatives no less than radicals can cite these religious precepts . . . Religion has thus traditionally served to sanctify the existing state of affairs, while furnishing a respectable form of protest for the oppressed by legitimizing their complaints against inequality and injustice.’ George Lichtheim, *A Short History of Socialism* (Fontana 1975) 10–11.

102 Hunt (n 38) 326.

103 As Jacques Bidet notes, Marxism provides us with ‘interpretive perspectives’ for comprehending the totality of the changing world we inhabit, and for that reason can be ‘mobilised wherever social and popular struggles unfold against economic or bureaucratic domination, male domination, imperial power and commodification’. Jacques Bidet, ‘A Key to the Critical Companion to Contemporary Marxism’ in J Bidet and S Kouvelakis (eds), *Critical Companion to Contemporary Marxism* (Haymarket Books 2009) 3, 6.

104 David Fasenfest, ‘Marx, Marxism and Human Rights’ (2016) 42 *Critical Sociology* 777, 779.



With all of that said, Upendra Baxi is correct when he argues that it remains ‘important to stress that while human rights languages provide a striking arena for questioning the barbarity of power and domination, these at the same moment do not exhaust the range of normative politics’.<sup>105</sup> Social movements can and do mobilise the language of human rights as a crystallised shorthand for their complex, often partially articulated, opposition to prevailing social conditions.<sup>106</sup> But it is, of course, the broader context that is crucial in all of this. It is never the mobilisation or reliance on the language of human rights that is determinative in the success or failure of a given social movement,<sup>107</sup> but the broader, structural context. Situating our understanding of human rights within a theoretical framework that explains the nature of the social order we struggle in and against will be crucial in allowing us to both understand and change it.

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105 Upendra Baxi, *The Future of Human Rights* (3rd edn, Oxford University Press 2008) xi.

106 It is interesting in this regard to recall Marx’s comments on calls for the right to work during a tumultuous period of revolution and counter-revolution in mid-nineteenth-century France: ‘The right to work is, in the bourgeois sense, nonsense, a wretched, pious wish. But behind the right to work stands power over capital, behind power over capital the appropriation of the means of production, their subjection to the associated working class, that is, the abolition of wage labour, capital and their mutual relationship.’ Karl Marx, ‘The Class Struggles in France: 1848–1850’ in Karl Marx, *Surveys from Exile: Political Writings*, vol 2 (Verso 2010) 35, 69–70.

107 As Sparer puts it, it ‘[will] not be rights theory that stands as the obstacle to new, decentralized, participatory power but those real people whose class, institutional, and social interests are opposed to such a reordering and who use rights theory to protect their existing privileges’. Sparer (n 99) 520.

