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The emergence of human rights in the North: Towards historical re-evaluation

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**'... without the fact of oppression, there can be no practice of
resistance and no notion of rights.'**

Mamdani, cited in Nyamu-Musembi 2002

Introduction

Most contributions to this volume work from a perspective that is able to incorporate the insight from Mamdani above. In contrast, the dominant discourses on human rights effectively block such considerations by failing to give proper analytical weight to the link between social movement struggles and the historical emergence of human rights. In my view, the very dominance of such accounts has led to important conceptual difficulties and incapacity to assess properly the potentials and limits of human rights.

What I want to do in this chapter, therefore, is to demonstrate the necessity for a proper re-evaluation of the historical praxis through which human rights emerged in the North. The argument that follows is illustrative and provisional since it will range over a 350-year time span and select issues and examples from both European and American history. My task here is not to provide a new substantive historical account of the Northern history of human rights, rather simply to show that such an alternative historical account is possible. That said, illustrative and provisional though it is, the evidence presented here (drawn largely from authoritative historical scholarship) is already sufficient to raise serious questions regarding the accuracy of the standard accounts from both proponents and critics of human rights.

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Social movement struggles against power: a history obscured

The mainstream literature on human rights does not explicitly deny a connection between human rights and social movement struggles. Indeed, on occasion, the existence of such a link has been acknowledged (for example, Weston 1992). Yet the dominant discourses from both proponents and critics are not analytically equipped to grasp the way in which human rights have been socially constructed in the context of social movement challenges to extant relations and structures of power. This analytical closure arises from a range of embedded assumptions in the academic disciplines and theoretical perspectives from which the vast bulk of the literature on human rights arises.

In a previous paper (Stammers 1999) I identified four such perspectives, labelled 'metaphysical abstraction', 'legal positivism', 'strong particularism' and 'structuralism'. The first two of these are deeply embedded in the discourses from proponents of human rights, while the latter two are crucial elements of discourses from critics of human rights.

The problem with metaphysical abstraction lies quite simply in attempts to construct supposedly timeless and universal understandings of human rights that are entirely independent of social context and thus social movement struggles. Associated in disciplinary terms with philosophy and political theory, variations of metaphysical abstraction lie at the heart of virtually all liberal and social democratic attempts to justify and ground the concept of human rights theoretically.

The term 'legal positivism' is not to be understood here in its technical sense. Rather, it signals the intent and ambition of what might be termed the global 'human rights industry'. There is an enormous literature arising from this industry: a literature overwhelmingly concerned with the establishment, implementation and enforcement of human rights as state and international public law. In this perspective, it is not that social movement struggles are unrecognized – they would probably be acknowledged as having provoked important recent debates on human rights. Yet they are not considered to have any analytic value because these approaches focus on the institutionalization and legal codification of human rights. Thus, this perspective precludes any serious consideration of the non-legal or pre-legal dimensions of human rights. While obviously associated with the discipline of law, such approaches also represent the 'realist'¹ orientation of these state and non-state actors: those international agencies and organizations who are in the business of 'doing' human rights in an institutionalized context.

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Approaches grouped under the heading of 'strong particularism' emphasize the particularities of the social construction of human rights. But they do so in an overly homogenized way. This perspective fails to grasp the full extent to which relations and structures of power are multifaceted and necessarily operate both within and between what are assumed to be (or assumed should be) sealed and homogenized cultural formations and political communities. Associated most obviously with the discipline of anthropology, strong particularist perspectives are also derived from elements of post-structuralist and post-modernist thought, and have been utilized by a range of politicians and activists in the South to resist the encroachment or imposition of 'Western' values.²

Structuralist approaches see human rights as a 'product' or an 'effect' of what are believed to be more fundamental structural dynamics within social relations. While rightly grasping the importance of structure in shaping social relations, such approaches then typically rely on overly simplistic monocausal models to explain social change, while at the same time denying the capacity for human action to constitute meaningful agency. Unsurprisingly, advocates of this perspective see little or no positive potential in social movement struggles for human rights. Structuralist explanations can be found in a range of academic disciplines, but here they are probably more usefully understood as specific strands within broader schools of social and political thought such as Marxism and post-structuralism.

Despite their very significant differences, all these perspectives share an important characteristic. Each for their own reason fails to take proper account of historical praxis and processes. In each case, *a priori* assumptions take the place of concrete historical analysis. Such assumptions result in arguments from proponents and critics tending to mirror and contest each other, rather than making any effective connection to history and social reality. We can see this at work in three areas of debate crucial to contemporary debates on human rights. These are the relationships between:

- civil and political rights on one hand, and economic and social rights on the other;
- individual rights and collective rights;
- universal and particular dimensions of human rights.

While there are signs of an increasing stress on complexity and interdependence (for example, Mahoney and Mahoney 1993; Pollis and Schwab 2000), much of the specialist literature on human rights over the last 50 years or so has focused on claimed fundamental differences