

What Could Human Rights Do? A Decolonial Inquiry

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No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.

—Robert Cover, “Nomos and Narrative”

Abstract

It is one thing to consider what human rights have been and another to inquire into what they could be. In this essay, I present a history of human rights *vis-à-vis* decolonization. I follow the scholarship of Samuel Moyn to suggest that human rights presented a “moral alternative” to political utopias. The question remains how to politicize the moral energy around human rights today. I argue that defending what Édouard Glissant calls a “right to opacity” could politicize the ethical energy around human rights today. Glissant’s right to opacity outlines a blueprint for the praxis of human rights to shift from a “functional model” to a “critical model,” to use Enrique Dussel’s distinction. My ultimate aim is to show how social movements around human rights and decolonization could converge today.

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In this essay, I start from the rhetoric of human rights and consider how justice-oriented actors could shift it—how we can learn from its history so that we can imagine different connotations and practices when we consider not just what human rights have been, but what it could mean to support and defend human rights today. My aim is not to clarify what human rights *are*, nor is it to find a philosophical “ground” for human rights.¹ Rather, I begin from human rights claims in order to show what ought to follow in our practices if we take those claims seriously. I will argue that actors who intend to support human rights should align with ongoing decolonial work. The task of this essay is to show how movements around human rights and decolonization could converge today.

The reason to take human rights movements seriously with a view toward decolonial movements is not because there is a natural or historical alignment between these movements. Indeed, following World War II, the human rights movement began as distinct from efforts toward decolonization. Further, there are conceptual reasons why decolonial theory remains suspicious of human rights discourse. In his 2009 “Who Speaks for the ‘Human’ in Human Rights?,” Walter D. Mignolo gives an answer to his titular question:

From the sixteenth century to the Universal Declaration of Human Rights, He who speaks for the human is an actor embodying the Western ideal of being Christian, being man and being human. In other words, “human” in human rights is an invention of Western imperial knowledge rather than the name of an existing entity to which everyone will have access. (10)

The particularity of human rights, in their origin as a concept, this argument goes, belies their claim to universal application. For Mignolo, human rights exemplify “the provincialism of the universal” (11).

Nelson Maldonado-Torres, in his 2017 “On the Coloniality of Human Rights,” takes a similar line, arguing that the decolonization of human rights requires a decolonization of the human. For him, skepticism toward human rights is part of the decolonial turn’s skepticism toward the colonizer’s historical denial of full humanity to the colonized. Discussing Mignolo as well as Gayatri Spivak, Maldonado-Torres notes that “their common concern is that there is pattern in which the definition of human rights leads to the creation of experts who are designated to speak to the colonized and other marginalized peoples about the rights that they possess” (130). Finally, beyond decolonial theory and in the field of international relations, Neve Gordon and Nicola Perugini have recently shown how the concept of “human rights” has

become an epistemic and moral framework subtending “a culture of *ethical violence* . . . in which human rights, humanitarianism, and domination are intricately tied” (77).

We can see, then, that some leading decolonial, post-colonial, and critical theorists have argued that human rights presuppose an oppressive, hierarchical, and ironically provincial anthropology, operating through paternalistic declaration, designation, and development. We can see that in practice human rights are often a speaking-for more than a standing-with and that human rights are now cited to justify colonial occupations and violence. My inquiry below will be at pains to respond to these objections and limitations.

Despite the above criticisms from prominent decolonial authors with whom the readers of this journal are familiar, I maintain that decolonial theory would do well to re-consider its relationship to human rights, because many people today orient their justice-related concerns around this language. “Human rights culture,” Talal Asad notes in his famous article on what human rights do, “is not simply a persuasive and reasoned language that comes down from a transcendent sphere to protect and redeem individuals. It articulates inequalities in social life everywhere and at all times” (Asad n. pag.). Accordingly, human rights discourse and practice is broad enough to include a multitude of related political pursuits, including decolonial movements. Regarding state violence and exploitative capitalism, José-Manuel Barreto has recently argued that contemporary decolonial movements “have in human rights a powerful discourse to resist them” as well as “to fathom a new world order pervaded by global justice” (499). And Barreto shows that this is a two-way street: human rights discourse has long drawn and gained from knowledge production in the Global South and its diasporas.

My essay proceeds in four parts: (I) a brief retelling of the history of human rights *vis-à-vis* decolonization, leading to (II) how human rights have taken a moral turn instead of a political turn. I then contend (III) that contemporary human rights *praxis* informed by decolonial concerns would shift from a “functional model” to a “critical model,” to use Enrique Dussel’s distinction. Presenting a critical model, I suggest (IV) that Édouard Glissant’s “right to opacity” could alter, and politicize, the moral energy around human rights today. More specifically, I will suggest that Glissant’s line provides a way to shift both the focus and the imaginary of human rights discourse and practice. I read his claim to a “right to opacity,” a solidarity rights claim articulated from the Global South, as a call to elites in the Global North to re-consider their corresponding duties.

Part I: Human Rights and Decolonization in History

With respect to the history of human rights in the context of decolonization, at issue was the status of the universality of human rights. In the 1940s, human rights were an alternative to, and became a substitute for, the 1941 Atlantic Charter, which was a formal expression and not a treaty—it was not even signed. The Atlantic Charter included the promise of self-government, which would allow nations to define their own statehood and political form; “self-government” was a hint at self-determination. This allusion contrasts with the 1948 Universal Declaration of Human Rights (UDHR). The UDHR lacked a line about self-determination. This lack demonstrated that the post-war Allied forces desired to maintain their empires.² In the wake of World War II, then, human rights and decolonization were two separate ideas of international organization, two distinct traditions at the United Nations (UN). The link between these traditions was the tension between universality and cultural particularity.³

The tension between universality and cultural particularity emerged strongly in the 1950s. In 1950 there was a debate around part of a draft covenant on human rights, namely, a “colonial clause.” The colonial clause, as the historian Roland Burke describes in his 2010 *Decolonization and the Evolution of International Human Rights*, “had the potential to exclude colonial territories from the ambit of the covenants, while at the same time allowing their ratification by the metropolitan power” (116). For many leaders of countries in the Global South, this clause was little more than an attempt by colonial powers—Britain, France, and Belgium especially—to avoid challenges of human rights claims regarding their colonial holdings. “The imperial powers would perpetuate the subjugation of colonial peoples under ‘the pretext of respect for their customs,’” Burke explains (120). “It meant nothing less than abandoning the concept of universality for decades to come” (120).⁴ The argument of the colonial powers was that colonies are not yet developed enough to accede to the rules of civilization; therefore, at most, such international rules should be adopted gradually in the colonies.⁵ Of course, there was a lack of dialogue between the career diplomats and the indigenous populations, among others, whom they claimed to be defending. Therefore, the colonizers’ claim that indigenous people would have rights forced upon them unwillingly was unfounded.

Moreover, voices in the Global South, including representatives from Cuba, Chile, the Philippines, Indonesia, and Lebanon, defended universality against the Northern appeal to cultural difference. Believing that human rights were universal, these representatives argued that any new covenant should reflect that scope. There were strategic reasons to maintain

universality. A colonial clause meant not a choice for colonized people but the ability of colonial administrators to grant or deny human rights. For this reason, an inclusion of a colonial clause attempted to avoid human rights gains as an internationalist project. The imperial powers lost. The clause was defeated on 2 November 1950. This meant that, upon the imperial powers' ratification of articles, the reach of human rights included the colonies. Ratification (ostensibly) granted equal treatment no matter one's culture. The "legal contours" for future human rights debates were set in terms more universal than they could have been—and this universality was favored by peoples in the Global South (see Burke 121).

A second important conjuncture regarding human rights and questions around decolonization in the 1950s occurred at the Bandung conference. Bandung's Final Communiqué asserted that self-determination was a *prerequisite* to human rights. This marked a shift. No longer did some leaders in the Global South think it was necessarily inconsistent to link human rights to anticolonial sovereignty, as some did given the lack of a claim to self-determination in the Universal Declaration, not to mention the fact that half the world's population lived under colonial rule at the time of the UDHR's drafting.⁶ Instead, of the twenty-five delegates addressing Bandung at its 18 April, 1955 opening, eleven used the language of human rights.

The 1960s was, as Stephen L.B. Jensen puts it in his 2016 book on human rights and decolonization, "a decade where the colonial, the anticolonial and the postcolonial met and overlapped" (4). Seventeen newly independent states, sixteen from Africa, joined the UN in 1960. Once again questions of universality were preeminent. "The meaning of universality," Jensen writes, "was a dynamic concept around which a larger political, diplomatic and legal history unfolded . . . Universality is the central claim underpinning contemporary human rights" (13). Once again, the Global South took leadership in advancing the universality of human rights. As Jensen rightly notes, this complicates the claim that human rights are simply a European or Eurocentric imposition:

What happened in the 1960s was that the states of Jamaica, Ghana, the Philippines and Liberia and others gave a master class in international human rights diplomacy to both the Eastern and the Western actors embroiled in the Cold War. They were at the vanguard of universality – despite all the contradictions between their international diplomacy and the domestic experiences of independent statehood. It was from this point that human rights much more fully began their trajectory toward becoming a legal, normative, and

ethical concept of universal scope. In this sense, the 1940s was a false start politically—even in the light of the imaginative drafting of the Universal declaration. (277)

It is worth pausing here to restate and summarize the above historical trajectory. Today one often hears the claim that particular Northern interests advanced by appeals to human rights belie the universality of human rights. Indeed, associating human rights and empire is now “an academic commonplace,” but this was not always the case, not even among the self-understanding of recently post-colonial state leaders in the 1950s (Burke 113). As we have seen, in principle many delegates agreed on the universality of human rights at Bandung. While in 1947, before the UDHR was even completed, the American Anthropological Association (AAA) levied a critique based on cultural relativism at the Universal Declaration, neither said critique, nor the sense that human rights were a colonial instrument, was present at the Bandung conference. It was quite the opposite: “[A]t this point in history,” Burke writes, “in the eyes of European, colonial powers, human rights were a threat to their colonial holdings and legacies more than a neocolonial tool” (114).⁷

To sum up the historical debate: contrary to contemporary associations of universality, the Global North, and colonialism, in the early history of human rights and decolonization, the Global South understood universality as a good. An emphasis on cultural particularity was considered limiting to pursuits of international justice.⁸ The importance of cultural particularity was underscored by colonial powers and the AAA, not post-colonial states; human rights were seen by those states as a way to challenge colonial rule, not as another imposition.⁹ To sum up the conceptual debate: the Global South rejected the North’s defense of (cultural) particularity on the grounds that such a defense was a way not to respect particularity but to deny it through colonial means (themselves part of a standardizing, universalizing project); the Global South’s counter-invocation of universality emphasized a right to self-determination, a mode of respecting particularity.

As leaders in the Global South appealed to human rights against colonial powers in the 1950s and 1960s, so did radical voices in its diasporas. I will cite only a few illustrative examples of an extended and internally contested tradition. In 1951 the Civil Rights Congress (CRC) delivered a petition, *We Charge Genocide: The Crime of Government Against the Negro People*, to the United Nations. From the Introduction of the petition, William Patterson places the CRC as a “defender of constitutional liberties, human rights, and of peace,” emphasizing that it is the

“implacable enemy” of any social system that “denies democratic rights or one iota of human dignity to any human being because of color, creed, nationality, or political belief” (xxvii). Patterson personally flew to Paris to submit the petition, and upon his return to the US, the state revoked his passport (like many signatories to the petition, Patterson was a Communist).¹⁰ In his 1964 “The Ballot or the Bullet” speech, Malcolm X commented on “the civil rights struggle,” noting “we intend to expand it from the level of civil rights to the level of human rights” (see X n. pag.). He said about the US government, “You don’t take your case to the criminal, you take your criminal to the court.” Joy James summarizes, and continues, this Black radical tradition in her 1996 *Resisting State Violence*. “To consider law not as innocent but as useful to progressive policies,” she writes, “requires going beyond the limitations of national law into the potential benefits of international law” (56).

As I have traced the early history of human rights and decolonization, it is important to underscore that, for obvious strategic reasons, the sovereignty-maintaining sense of decolonial human rights advanced by the Global South in the 1950s and 1960s was different from the sovereignty-challenging (and still decolonial) sense advanced by radicals in its diasporas and that many hear in the term today. In the post-war period, the Global South’s anti-colonialism demanded the autonomy of new nation-states, not the subordination of the nation-state’s sovereignty to international law.¹¹ “If decolonization advanced human rights,” the historian Samuel Moyn notes, “it did so in a distinctive, and for some regressive, sense of the installation of sovereignty across the world, in a period of historically unparalleled triumph for the concept and its practices” (*Last Utopia* 117). For the purposes of this essay, Bandung notwithstanding, it is crucial to maintain a distinction between the post-war decolonization movements and today’s human rights movements. As Moyn summarizes: “Their relationship is one of displacement, rather than one of succession and fulfillment”; indeed, human rights became “a widespread moral vernacular after decolonization not during it” (*Last Utopia* 116, 117). In sum, in beginning from the history of human rights *vis-à-vis* decolonization, and in noting that the human rights movement displaced rather than succeeded anticolonial efforts, we are left wondering as to the nature of this displacement—that is, we are left wondering just how human rights and decolonization took different turns. And we are left wondering if and how they could converge today.

Part II: The Moral Turn of Human Rights

I follow Moyn in suggesting that human rights became a moral alternative to political action. During and after decolonization in the 1960s, given how some post-colonial leaders doubled down on their own sovereignty at the expense of norms around international law, many international lawyers looked to an alternative to the complicated and often corrupt elements in political action. It is in this context that human rights became a preferred concept. Moyn puts it this way: “The disavowal of earlier utopias took place in part out of the aspiration to achieve through a moral critique of politics the sense of a pure cause that had once been sought in politics itself” (*Last Utopia* 171). Revolutionary politics are complicated, raising questions such as the relevance of “violence” and the need for new hierarchies. By maintaining structures at play, justice-oriented actors advancing human rights attempted to avoid the moral messiness of other political approaches.

This move to morality is also a move from maximal to minimal demands. To many powerful (colonizing) countries, human rights were tolerable because they did not demand as much as previous political utopias. Crucially, appeals to human rights did not require—and still do usually not demand—the transformations that previous maximal political struggles demanded, often through violence or revolution. As Antonio Vásquez-Arroyo has argued, an ethical turn is in fact “an eminently political strategy” in that it functions toward “neutralization and pacification” (29). And in her illuminating recent *Morals of the Market*, Jessica Whyte has shown that the moral vocabulary of human rights is part and parcel of a neoliberal strategy that militates against radical political action. The turn to morals in human rights discourse, a turn to political minimalism, came at a great practical cost. After the push for political utopias waned, human rights survived in a suprapolitical form in the concept of a moral utopia. Accordingly, as Moyn explains, “human rights were compelled to define the good life and offer a plan for bringing it about precisely when they were ill-equipped by the fact of their suprapolitical birth to do so” (*Last Utopia* 214).¹² And in attempting to bring about their plans, the position or location of human rights became more settled: “Human rights were forced to move not simply from morality to politics, but also from charisma to bureaucracy” (*Last Utopia* 219).

The supra-political function of human rights and their related bureaucratization militate against their connection to decolonial work today. A history of human rights discourse shows not just anti-colonial sentiment at Bandung but also more recent consonance and complicity with colonial projects. Moyn observes that in recent US administrations, human rights have been

mobilized “in the name of neoconservative ‘democracy prevention’” and used to justify “liberal warfare and ‘intervention’” (*Uses* 18, 100). Against decolonial pursuits, then, human rights have “serve[d] as the brand name for diverse schemes of global governance in which vulnerability and inequality persist” (*Uses* 84). “To be members of a shared Humanity with universal Human Rights in the world,” Jayan Nayar has recently and poignantly articulated regarding questions of migration and a right to movement, “is not, we understand (for the ‘wretcheds of the earth’), to have the ‘right’ to share the same places of the world” (287).¹³ These criticisms resonate with Mignolo’s and Maldonado-Torres’s skepticism toward human rights that I invoked in the introduction.

But Moyn also reminds us of the political potential of human rights: “Human rights norms and organizations remain the chief source of idealistic passion in the world—at least among its well-meaning cosmopolitan elites,” such that a key question is “what to do with the progressive moral energy to which human rights have been tethered in their short career. Is the order of the day to reinvest it or to redirect it?” (*Uses* 101). We can ask: How might this moral energy be pushed, opened up, or altered such that it harnesses the energy of the elite in different directions? For it is the elite, economic and political, after all, who are responsible for maintaining patterns and re-installations of colonialism today, what some are theorizing under the rubric of “coloniality.”¹⁴ Hence the question that guides the remainder of this essay: How to build on the moral energy of human rights but not repeat, or shore up, patterns of coloniality? This construction requires addressing human rights in regard to their position and model.

Part III: From a Functional to a Critical Model of Human Rights

A strength of decolonial theory is its attention to the location of concepts. Mignolo has described theoretical position in terms of the “locus of enunciation” (*Darker Side* 5). While “locus” can sound esoteric in English, the Spanish of the original conceptualization is more basic: *lugar*, meaning “place,” “space,” “site,” or “scene.” The locus of enunciation, then, is the place from which one speaks or acts, including the prestige or poverty, status or struggle, associations and ambivalences, connoted in that place. The locus of human rights has long been the United Nations. This position has differentiated human rights from humanitarianism: whereas humanitarian causes were advanced in a variety of ways, such as states and international organizations, human rights advocacy made the UN the primary “location of interest, action,

and reform” (*Last Utopia* 125). From the beginning, human rights were tied to the United Nations; they were not initially part of a “larger popular language” (*Last Utopia* 47).

The UN’s elite origins are illustrated historically and anecdotally. “Not a ‘colored’ man was among the US delegates who signed the Charter,” Patterson reflects on the signing of the UN Charter (xix-xx). “Not a member of the working class was there” (xx). Later on, when Western delegates traveled to the Tehran conference that marked the twentieth anniversary of the UDHR, they sent cables to investigate the best hotels. Burke sums this up nicely: “Western representatives notionally meant to defend the values of a constitutional government ensured they were at least comfortable while attending a human rights conference in an autocratic state” (96). More recently, and anecdotally, I have spoken to economists, among others, who understand their work to be in defense of human rights, and who stay in four-star hotels while doing this work in Africa.

Before I begin my criticism of the traditional positioning of human rights, it is helpful—to bring into relief further how human rights have contributed to colonial patterns, and thus to consider the strongest objections to my inquiry—to compare human rights to humanitarianism. Human rights and humanitarianism have separate histories, what Moyn describes as an “historic independence” (*Last Utopia* 220). Indeed, humanitarianism did not initially articulate itself in the language of rights. He charts the history this way:

The amazingly belated integration of genocide consciousness as a human rights concern is only one dimension of a far larger shift: the slow amalgamation of humanitarian concern for suffering with human rights as both a utopian idea and a practical movement. Humanitarianism, with its origins in Christian pity and Enlightenment sympathy through its high era of imperialist entanglement in the nineteenth century, had developed in historical independence of rights talk. (*Last Utopia* 220)

For instance, practitioners at Oxfam, the Red Cross, or Amnesty International did not originally understand their work in terms of making claims to rights. But today human rights and humanitarianism are “fused enterprises, with the former incorporating the latter and the latter justified in terms of the former” (*Last Utopia* 221).

An illustration of this imbrication is seen in Amnesty International’s work on human rights. Amnesty International (AI) began as a humanitarian organization. Its advocacy “forever transformed what it meant to agitate for humane causes, and spawned a new brand and age of

internationalist citizen advocacy” (*Last Utopia* 4). Much credit goes to AI for increasing the public profile of human rights. AI emerged from a tradition of Christian advocacy. Prefiguring the moral turn, it understood itself as intervening idealistically in the Cold War in strictly non-political ways. “This,” Moyn writes, “was to be a recipe of tremendous power: in the face of soiled utopias in politics, a nonpartisan morality existed outside and above them” (*Last Utopia* 132). But again, this moral turn begs the instrumental or practical question of how to bring about its own goals. Some prominent figures in human rights have recently addressed this question, even speaking in ways that suggest a politicization of human rights with a view toward decolonial pursuits.

Under recent leadership, AI has taken much more seriously concerns of the Global South and even questions of decolonization. On 22 May 2018, Salil Shetty, the Secretary General of Amnesty International, gave a speech at the London School of Economics (LSE) entitled “Decolonising Human Rights.” I will read his claims carefully before proposing, by way of conclusion, an alternative vision of human rights through Glissant’s “right to opacity.” Shetty describes human rights as follows: “I see human rights as the struggles of ordinary people to hold those in power to account—particularly power that is abused by those in government or corporations” (Shetty n. pag.). He repeats: “Human rights are about the ongoing struggle of marginalised and oppressed peoples and individuals against abuse, distortion, and excess of power” (Shetty n. pag.). By describing human rights in terms of struggle, he is then able to link human rights to decolonization: “The essence of human rights and decolonisation are basically the same thing: the struggle for freedom against the abuse of power” (Shetty n. pag.). To begin to respond to Shetty’s claims, I will raise two questions.

A first question is conceptual: Is this to equate human rights and struggle? If human rights essentially means a struggle against power, then actors lose something to which they can appeal when suffering injustices, violations, and abuses. I think it is a stronger position to present the essence of human rights as a *conceptual justification* of struggles against (abuses of) power. That is, the claim to human rights allows actors to articulate why power is to be resisted, namely, because it violates rights. This returns us to the original universality-particularity issue. Human rights, as the justification for ongoing struggle, make a universal claim. For this reason, they can serve as a justification, across the world, for struggles, including those that support cultural particularity in the face of standardizing forces. Accordingly, human rights claims are not the struggles themselves, nor is their articulation the decolonial work itself.

A second question is geographic or, even, strategic: Where does this struggle for human rights occur? While Burke and Moyn have shown that the UN has been the principal site of human rights advocacy, Shetty wants to tell a different story: “The whole purpose of human rights demands that our vantage point is not top-down, but bottom-up” (Shetty n. pag.). Perhaps in this point he is linking his view to the grassroots, localized history of AI campaigns. It would be hard, however—and this is in part why I spent so much time above giving a history of human rights and decolonization—to make the case that human rights demands have historically been bottom-up in terms of their vantage point.¹⁵ Indeed, the protean term “human rights” has come to soak up all sorts of meanings retrospectively—meanings that it never carried in the 40s, 50s, and 60s. To be fair, a claim to the grassroots history of human rights is not Shetty’s claim; he is making a teleological or purpose-based claim, not an historical claim. Let us consider what he means by a bottom-up vantage point.

In a move I find insightful, Shetty sees the purpose of human rights not only in grassroots efforts that inform bureaucratic tasks, but also in a South that informs the North: “When our power, money and decision-making comes from the North, we send a message about the moral authority of the North; and we lose our organic connection with struggles in other parts of the world” (Shetty n. pag.). I read this line as an important critique of the elite history of human rights as well as of contemporary habits of global political elites. Shetty is at his best in emphasizing what the North misses in its analysis of separate civil, political, economic, and social rights: “People do not experience their lives in these terms. What is political is economic, what is civil is social” (Shetty n. pag.) Quite simply, experience is not compartmentalized in this way, especially not when we consider the particularities of experience in different places. “This distinction has never made sense in the South” (Shetty n. pag.).

Returning to the earlier quotation, let us consider his wording. What is the “organic connection with struggles” he describes? To be more provocative: How are we to take seriously an organic connection between struggles in the Global South and a keynote speech at the London School of Economics? Shetty indicates what he thinks this “organic connection” can look like: “Unless our posture is standing shoulder to shoulder with people in their struggles, unless our movement of people reflects the composition of societies we hope to influence, and unless we are calibrated for the dynamics of local struggles, we cannot truly hope to bring lasting change” (Shetty n. pag.). Read through Mignolo’s concept of the locus of enunciation, this claim can be said to be situated in an elite position (running an international NGO), at a prestigious

place (LSE), and amidst a scene of power (the political elite of London). Is Shetty's hope, then, that such an insight will somehow be carried by the elite listeners of the speech to their own countries and constituencies? Or, can we hear this as a more radical call, where the "organic connection" suggests working physically with others in fields and on the ground, where "standing shoulder to shoulder" can be understood literally? Is Shetty's call thus something *à la* liberation theology—a call to abandon social and political class in favor of radical solidarity and witnessing? If I have gone too far in my suggestion, we must at least concede that the power of the image of standing shoulder to shoulder trades on its evocation of working-together solidarity.

I have spent extended time considering Shetty's "bottom-up" claim because I think it illustrates the imaginary of human rights today. Too often, the praise of standing shoulder to shoulder gives the do-gooders a kind of credit, a kind of social capital, even when they fail to address larger forces or structures at play—the very capital that caused the need for human rights work in the first place. The risk of this failure to address what causes the crises human rights and humanitarian actors claim to be addressing is especially high given the moral turn in human rights: failing to address causal forces risks giving actors the purpose of an ethical life while they fail to realize its basic goals. "Whether or not such activism made a difference on the ground, or in the larger process of constructing international norms," Moyn notes perceptively of Amnesty International, "it succeeded first of all in giving meaning... to engaged lives" (*Last Utopia* 148).

For decolonial thinkers and actors, the consequentialist's question remains important—especially in a context of continued colonial patterns, including steps of sympathy, but not solidarity, in human rights work. Put differently, I think it is worth asking what, more than meaning, is gained by contemporary human rights and humanitarian work. Of course, we could enumerate the examples in our answer: refugees gain food, migrants gain shelter, and so on. If these are the gains of the moral turn, what are the losses? By my lights, the losses include not only a gradualist conditioning of the human rights imaginary, but also a lack of a political path that provides a robust challenge to the forces at play that caused the need for the food, shelters, and camps in the first place: patterns of capital and investment, where the lines of environmental destruction fall, and so on. What I am trying to draw attention to is that the moral turn of human rights does very little to challenge political economy and coloniality.

Because of his locus of enunciation, I think Shetty asks the wrong question: "[T]he same old question remains for the contemporary human rights project: how do we place power in the hands of those left behind, to hold to account those who abuse their power?" (Shetty n. pag.).

The “placing power” of this “old question” relies on a traditional, benevolent model of humanitarianism—a *paternalistic model*. As I see it, the promise of thinking with decolonial theory, with respect to human rights, is that it gives us a *critical model*. We can skip the paternalism of somehow placing power in the hands of the dispossessed—and how would this function?—and instead work on holding the powerful accountable, and indeed challenging that power, through mobilizations of different kinds. I will address this “critical model” or “critical turn” in the remainder of this essay.

My concluding argument relies on Enrique Dussel’s distinction between functional and critical approaches. Whereas functional models aim at “the ‘efficacious’ fulfillment, in formal and instrumental terms (means-end), of the dominant system,” critical models have a “negative” aim, namely, “the hermeneutic understanding [or] explanation . . . of the *causes* of the alienation of the victims” of that system (331). Human rights as a universal concept allow for the identification of “the victims”; the victims are those who suffer human rights abuses. The question of struggle is the question of responding to human rights claims. Whereas functional models respond to dominant “bourgeois communities” and institutions, critical approaches heed the call of the victims “to collaborate responsibly in the scientific *critique* of the system that oppresses them” (331, 326). The history of human rights advocacy falls on the side of a functional approach. An alignment of human rights and decolonial work today requires a move toward a critical approach. How might we think about this critical collaboration; and how is it different from the “standing shoulder to shoulder” that I criticized above? To begin, what if the decolonization of human rights were less about paternalistically placing power among the powerless and more about responding to alternative rights claims?

Part IV. The Right to Opacity as a Critical Turn

“There is a strong need,” Jensen observes, “for more imaginative approaches to the study of human rights—past and present—as their evolution has too often been narrated from a Western perspective or based on a certain construct of what the West represents” (278). My attempt to provide a more imaginative approach to human rights begins from considering rights claims from the Global South. Édouard Glissant, in his 1981 *Le discours antillais*, writes:

The attempt to approach a reality so often hidden from view cannot be organized in terms of a series of clarifications. We demand the right to opacity. Through which our extent to have a full existence becomes part of the universal drama of

relation: the creativity of marginalized peoples who today confront the ideal of transparent universality, imposed by the West . . . Such a process is spectacular everywhere in the world where murders, shameless acts of genocide, tactics of terror, try to crush the precarious resistance of various peoples. (14/*Caribbean Discourse* 2, translation modified)

Glissant is critical of a particular kind of universalism, namely, a “transparent” one—one in which there is a desire to know, comprehend, grasp, and enclose ways of life alternative to a globalized Western standard. These life-denying forces of standardization are not colonial legacies (as if colonialism is in the past), but tactics that perpetuate and re-install colonial patterns of labor.¹⁶ Consider how the best agricultural items of countries in the Global South are exported, while what makes up substantial parts of the diet in these countries is imported. “I am struck by the fate of flowers,” Glissant writes in a memorable line later on in the text (*Caribbean Discourse* 52). “The flowers that are grown today are cultivated for export,” but “[t]he land has lost its smells,” as it has “almost everywhere” (52).

What Glissant has the power to draw our attention to, by connecting more insidious impositions with more visible violences, is the banality of human rights violations. We can read his line back into the UDHR. Article 3: “Everyone has the right to life, liberty and security of person” (The United Nations, art. 3). Security of person? In days spent cutting flowers for export, without health insurance, and lacking enough of a wage to keep your children in school, while living under the threat of being fired at any time for any reason—in this case there is not much security of person. Article 13, part one: “Everyone has the right to freedom of movement and residence within the borders of each state” (The United Nations, art. 13). What does this right mean, substantially, if your days are spent selling knickknacks to tourists by the beach, meaning you lack the income required for sufficient food, not to mention bus or train tickets? Article 27, part 1: “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits” (The United Nations, art. 27). What does this participation look like if your days are spent studying English in order to cater to the global market? What kind of cultural life are you participating in? If I am right, in following Glissant, to note the banal human rights violations that are connected to the sale of flowers in Martinique, then purchasing imported flowers in the US, or travelling as a tourist and speaking English, are quotidian actions that contribute to human rights violations. We can enumerate the examples: swiping a Visa card while speaking English in Mexico or gassing

up your car with fuel pumped from the Keystone XL or Dakota Access pipeline would be to participate in what Lindsey Kingston has recently called “cultural genocide” (63ff.) If we agree that these actions contribute to human rights violations, then the politics that follows is one of boycott—a refusal, for instance, to promote global English as a tourist or to own a car.¹⁷ Boycott presents a negative politics. Let us also consider Glissant’s right to opacity in terms of its positive implications.

All rights require a corresponding duty or obligation. Onora O’Neill presents this argument:

Unfortunately much writing and rhetoric on rights heedlessly proclaims universal rights to goods and services, and in particular “welfare rights,” as well as to other social, economic and cultural rights that are prominent in international Charters and Declarations, without showing what connects each presumed right-holder to some specific obligation-bearer(s), which leaves the content of these supposed rights wholly obscure . . . Some advocates of universal economic, social and cultural rights go no further than to emphasize that they *can* be institutionalized, which is true. But the point of difference is that they *must* be institutionalized: if they are not there is no right. (131-32)

I am reading the right to opacity because I think it provides answer for politicizing human rights, though perhaps not in the direction that would be assumed. The method of institutionalization I have in mind differs from O’Neill’s. I want to stress that I think the burden of the right to opacity, the obligation of bearing its corresponding duty, does not rest upon those who articulate it, nor does it find its home on the shoulders of the nation-state. To be clear: I understand the right to opacity as a third-generation or solidarity rights claim for Indigenous people as well as people in the Global South and its diasporas to develop their cultures on their own terms. I suggest that the primary obligation-bearers of the right to opacity are elite actors in the Global North, who tend to express their highest ethical and political goals in terms of human rights, but whose patterns of consumption in practice treat Indigenous land and the Global South as little more than sites for resource extraction and playgrounds for relaxing vacations, thus consistently violating the right to opacity.

I see the following as implications to my pinning the duties of the right to opacity to elite actors in the Global North. If forces of standardization—such as a US-driven model of politics and justice, US restaurants, US and European fashions, US- and Europe-driven commodity

extraction, and US and European tourism—suppress and negate local cultures and the flourishing of their peoples in favor of a world of McDonald's, English, and “democracy,” while keeping many poor via a global division of labor, then human rights around culture, education, work, freedom of thought, movement, and security are being violated. My wager is that, if one is serious about challenging the forces of standardization and transparency, such that peoples maintain their cultural rights, then one would work not to address specific bad actors or specific instances of human rights failures. Instead, one would address the forces that cause the need for a rights claim to be articulated in the first place, joining a larger internationalist and radical tradition. For elite actors in the Global North, this includes changing their desires, affiliations, and sense of what it means to live a good life.¹⁸

By framing global standardization as a human rights issue, I am attempting to show how the moral energy around human rights can be utilized for needed political movements today. My reading of the right to opacity shifts the focus of human rights. “[T]he African continent,” Moyn writes, “is now the privileged site of human rights concern” (*Last Utopia* 222-23). And as Talal Asad reminds, “[F]ar more attention is given to human rights violations in the non-Western world than in Euro-America” (Asad n. pag.). But perhaps the privileged site of human rights concerns could become United States? Rather than always looking somewhere else, people in the Global North sensitive to appeals to human rights could be effective as activists who work to disrupt, undermine, and alter the local conditions that make such activism necessary in the first place. What a right to opacity gives us is not only a belief in protecting the difference of others through groups such as Survival International; it is also orienting for elites, moving the focus away from thinking human rights struggles are about mission trips or study abroad or some sort of intercultural understanding. Rather, the orientation becomes about recognizing the opacity of others by challenging, in turn, the more insidious forces at play in our own countries that deny that opacity (through military occupation, standardization of forms of life, and other means). This reverses the colonial trajectory. The student who is occupying a bank in a direct action is doing more for international human rights than the student who “aids” a Mayan community in Guatemala.¹⁹

A shift in imaginary would give a new image of what it means to work in human rights. If you were asked to present a photo of someone working toward human rights, whom would you select? An international lawyer or career diplomat? An aid worker or Peace Corps volunteer? I want to shift away from both of these extremes—the courtroom and the camp—in order to

draw attention to the everydayness of human rights issues, that human rights can be considered as less about international law and more about the world in which we live. Any re-configuration of human rights toward decolonial work will rely on a social movements: “It is impossible,” Moyn writes, “to isolate the path of the law from its intersections with social action. Human rights, like other similar norms, depended on a rising social movement to be canonized by lawyers, certainly as a professional idea and priority” (*Last Utopia* 210). I consider this shift to the quotidian as part of a “critical model” because the focus is no longer aiding those far away but on calling into question the forces that cause the need for aid in the first place. The new image of human rights practices looks like participating locally in social movements.

More specifically, and to conclude, human rights-oriented actors in the US should link the *praxis* of human rights to activist work around land here and now. Human rights work connected to decolonial movements would demand honoring treaty rights, repatriating land, and providing reparations. In this way, human rights work becomes not about designating and delegating power, but about building power in the face of ongoing state violence. “Resistance presupposes power,” Joy James writes, and “[t]hose who differentiate between power and domination in order to link power to communal goals for social and cultural freedoms, economic sufficiency, and radical democracy,” she continues, “posit a vision of political community as the context for human development” (243). This is the promise of human rights work today, James teaches: to build power in “risk-taking commitments” that affirm a decolonial vision for the world in which we live (243).

Notes

¹ The Enlightenment project of grounding the concept of human rights has been undertaken by James Griffin in *On Human Rights*. It is a project criticized on many fronts, including that securing foundations is a much less fruitful approach to the actual goals of human rights than attending to political practices, as Susan Mendes has suggested in “Rights in Political Theory.” In this essay, I follow Mendes’s suggestion by studying and attempting to inform practices around the language of human rights, particularly as they relate to decolonization.

² These empires would be maintained in insidious ways: independence through self-determination occurred through the logic of *uti possidetis*, which, the historian Jörg Fisch writes, was “developed in the context of the independence of the Ibero-American states and appropriated in the twentieth century above all in the decolonization of Africa as well as in the dissolutions of the Soviet Union and Yugoslavia. Here the internal and external borders existing at the time of independence are adopted as the borders between the new independent states, and the people who live within these borders are designated as peoples” (35). Self-determination meant a world of nation-states according to a colonial geography.

³ On 30 November 1948, ten days before its adoption, the UDHR was still called the International Declaration of Human Rights. “The change of one word,” Steven L.B. Jensen writes, “carried, quite literally, a world of meaning” (29).

⁴ In addition to allowing for continued colonialism, the colonial clause also addressed Cold War tensions. Burke explains: “Such a clause would also allow the Western colonial powers to use the covenant against the Soviets while retaining their colonial possessions, thus resolving a key tension in their foreign policies” (116).

⁵ To frame colonies in terms of potential development is part of what Joseph Slaughter has called “human rights literacy” (216). The debate around the colonial clause maintains the sense of paternalistic responsibility advanced in the Wilsonian logic of the UN Charter, which, Slaughter writes, implicitly recognized “the international legal personality of ‘non-self-governing’ peoples by acknowledging their potential for development and self-determination. In this sense, contemporary human rights law articulates self-determination according to the paradoxical logic of enabling fictions... a people must be presupposed to be self-determinative for them to be legally recognized as a people, but they acquire such legal capacity for self-determination only at the moment that they coalesce as a recognizable people” (220). Fisch puts Slaughter’s narrativ point in historical terms: “Like the League of Nations Covenant, The UN Charter was informed by a model of development and tutelage: Decolonization and self-determination were to be granted when the colonial peoples had reached a sufficient level of maturity. Provisionally, they would have to be prepared for, or prepare themselves for, decolonization and the exercise of self-determination. And only the UN could decide when a people had reached that point of maturity” (196).

⁶ As Jessica Whyte writes, the orientation of colonial powers during the drafting of the UDHR focused on questions of sovereignty: “As long as the colonies were deprived of sovereignty, and so susceptible to profound and transformative interventions, the colonial powers had nothing to be gained from accepting a right of intervention into their own affairs in the name of human rights” (“Human Rights” 145).

⁷ This would change, of course. Burke comments that “Universality, unimpeachably anticolonial in the 1950s, was rendered deeply suspect by the 1980s” (4).

⁸ Moyn specifies: “There was a truncated principle that decolonization universalized. But it was that of collective liberation, not human rights” (*Last Utopia* 86).

⁹ Of course, states have used the language of human rights in conducting colonial violence. See e.g. “Limiting Indigenous Autonomy in Chiapas, Mexico: The State Government’s Use of Human Rights.” *Human Rights Quarterly*, vol. 22, 2000, pp. 877-905.

¹⁰ For an extended discussion of US repression in the face of resonant rights claims, see Charisse Burden-Stelly, “Constructing Deportable Subjectivity.”

¹¹ Burke describes how decolonization changed the UN in this period: “Decolonization transformed the UN into a body with an unprecedented willingness to question state sovereignty, yet Third World diplomats often stipulated exceedingly narrow limits for when sovereignty could be breached, and a slender selection of states which were subject to such procedures” (59). He goes as far as to claim that “[d]ecolonization was the most powerful shaping influence on the human rights program between 1950 and 1979” (148). Moyn adds two accusations early human rights lawyers faced: “One was that they had no authority to improve the world as they found it, the other that they stuck so close to state power as to foreclose other, and better, moral dreams. Their idolatry of state sovereignty as the basic unit of international order lent considerable credence to this last charge” (*Last Utopia* 177-178). This was only challenged by decolonization: “One might go so far as to claim that it was not World War II and genocide, but anticolonialism and decolonization, that really broke international lawyers’ long-term apologia for the state and its

projects” (195). Jensen notes that the UN Charter itself works in favor of sovereignty over and against potential challenges of human rights advocates because of the claims to domestic jurisdiction in Article 2, which contradicts the claims to human rights in Article 55. In a nice phrase, Jensen writes of human rights in the UN Charter, “It was proclamation and denial all in one” (27).

¹² “If it draws authority from its appeal to morality, the other, utopian version of human rights easily becomes a recipe for the displacement of politics, forcing aspirations for change to present themselves as less controversial than they really are, as if humanity were not still confused and divided about how to bring about individual and collective freedom in a deeply unjust world” (*Last Utopia* 226-227).

¹³ He then issues this damning definition of human rights: “The point that I wish to stress is that responsiveness and adaptability to manage and re-settle the distribution of names and emplacements is precisely the work of Human Rights as a *technology of containment* to do; the contingent inscriptions of subject-beingness operate within regimes of naming that define the parameters and scope for renegotiation, for re-counting the present of those present and those absented” (287).

¹⁴ Nelson Maldonado-Torres puts the distinction this way: “Colonialism denotes a political and economic relation in which the sovereignty of a nation or a people rests on the power of another nation, which makes such nation an empire. Coloniality, instead, refers to long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administrations. Thus, coloniality survives colonialism. It is maintained alive in books, in the criteria for academic performance, in cultural patterns, in common sense, in the self-image of peoples, in aspirations of self, and so many other aspects of our modern experience. In a way, as modern subjects we breath coloniality all the time and everyday” (“On the Coloniality of Being” 243).

¹⁵ In his influential book on human rights, Griffin describes a “bottom-up” including only elite actors—“various politicians, lawyers, social campaigners, as well as theorists of various sorts” (29). His imaginary fails to extend to grassroots activists.

¹⁶ A key objection here, though one beyond the scope of this article, is whether human rights are themselves part of this standardization. As Asad writes, “Human rights discourse is also about undermining styles of life by means of the law as well as by means of a wider culture that sustains and motivates the law” (Asad n. pag.).

¹⁷ See Benjamin P. Davis, “The Politics of Édouard Glissant’s ‘Right to Opacity.’”

¹⁸ Griffin’s distinction between primary and secondary duties is helpful here. “The content of a right defines the content of its correlative duties: to put it roughly, what one person has a right to demand, some other agent has a duty to supply. I called these the primary duties correlative to rights. But there are also secondary duties: duties to promote human rights, duties to monitor their observance, and duties to ensure compliance with them, when that is indeed feasible. Certain of these secondary duties are so close to their related primary duties as to be treatable, for all practical purposes, as one. The primary duty to follow fair procedures in taking decisions about people’s life, liberty, and property is, in our actual circumstances, indistinguishable from the secondary duty to create and maintain a fair judicial system. . . . That some secondary duties merge in this way with their primary duties undermines the belief that there are purely negative rights” (167). The primary duties following from the right to opacity include not settling on Indigenous land and repatriation of that land where settlement has occurred. The secondary duties include a variety of actions—how human rights-oriented actors travel or act locally, consume or boycott—sufficient to merit a re-examination of our way of life in the Global North in its entirety.

¹⁹ In terms of theorizing rights, the way I am reading Glissant’s “right to opacity” paradoxically places it more in the tradition of a power- or consciousness-oriented approach than of a rights-based approach, to use the distinction from Critical Legal Studies. See Gabel and Harris.

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