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Neil Stammers

Dans Revue interdisciplinaire d'études juridiques 2015/2 Volume 75 , pages 67 à 89
Éditions Presses de l'Université Saint-Louis

ISSN 0770-2310

DOI 10.3917/riej.075.0067

Date de mise en ligne : 04/02/2016

R.I.E.J., 2015.75

Human Rights and Social Movements: Theoretical Perspectives

Neil STAMMERS[1]
Honorary Research Fellow, University of Sussex

Abstract

This article draws from and develops themes from my earlier work on human rights and social movements. It is organised in three main parts. The first looks at the socio-historical links between human rights and social movements, critiquing the dominant literature and examining the complex and ambiguous relationship between human rights and power. The second explores the implications of my analysis for issues in social theory, pointing towards the need for reconstructing a non-Eurocentric historical sociology that has a concept of creative agency from below at its core. The third part briefly considers some largely unexplored links between human rights, social movements and democratic praxis asking whether social movements, as particular forms of human association, have specific roles to play in embedding and deepening democratic praxis. A brief conclusion reflects on the main themes of the article.

Résumé

Cet article reprend et développe des thèmes déjà abordés dans mes travaux précédents sur les droits humains et les mouvements sociaux. Il se compose de trois parties principales. La première se penche sur les liens socio-historiques entre les droits humains et les mouvements sociaux, critiquant la littérature dominante et examinant la relation complexe et ambiguë entre droits de l'homme et pouvoir. La seconde partie explore les implications de mon analyse pour la théorie sociale, soulignant la nécessité de reconstruire une sociologie historique non eurocentrique qui accorderait une place centrale au concept de « creative agency from below *»* (agency *créative par le bas*)*. La troisième partie évoque brièvement certains liens largement négligés entre droits de l'homme, mouvements sociaux et praxis démocratique. Elle soulève la question de savoir si les mouvements sociaux, en tant que forme particulière d'association humaine, ont un rôle spécifique à jouer dans le développement et l'approfondissement de la praxis*

[1] Neil Stammers would like to thank Julie Ringelheim and Zdenek Kavan for their helpful comments on earlier versions of this article.

démocratique. Une brève conclusion présente des réflexions finales sur les principaux thèmes de l'article.

Introduction

This article is a revised form of a paper presented to the workshop *Human Rights: The Last Utopia?* held at Saint-Louis University, Brussels, in November 2014. It is oriented towards issues raised by the organisers under the rubrics: « human rights and social movements » and « human rights and the political ». The article draws from and develops arguments made in earlier articles and in my book *Human Rights and Social Movements*[2]. It comprises three parts. The first discusses the links between human rights and social movements, arguing that the mainstream literature on human rights is largely incapable of properly examining that relationship. In contrast, my socio-historical exploration of these links indicates that human rights have been an important, though ambivalent, resource for movement mobilisation and activism as challenges to arbitrary power and privilege. Ambivalent because of the importance of what I have called the paradox of institutionalisation which leaves human rights standing in a complex and ambiguous relation to power.

The second part of the article inverts the direction of my gaze to consider the implications of my work on human rights and social movements for social theory. If my socio-historical analysis has merit, it necessarily challenges the continuing persistence of Eurocentrism, methodological nationalism and dichotomous forms of thinking and reasoning in contemporary social theory. More positively, I suggest that my work points towards the need for reconstructing a non-Eurocentric historical sociology that has a concept of creative agency from below at its core.

The third part of the article briefly considers links between human rights, social movements and democracy. It considers whether social movements, as particular forms of human association, might have specific roles to play in embedding and deepening democratic praxis. It will become apparent that I take the view that social movement struggles for human rights and social movement struggles for democracy are, in many respects, co-constitutive.

[2] N. STAMMERS, *Human Rights and Social Movements,* London, Pluto Press, 2009.

1. Theorising the relationship between human rights and social movements

How we conceptualise social phenomena – the sort of lenses through which we look at things – has a deep impact on what we find, how we interpret it and, indeed, what we believe to be possible. Though an uncontroversial claim in itself, such epistemological difficulties are often ignored or denied and no more so than when it comes to conceptualising both human rights and social movements.

Attempts to explore the questions « what are human rights » and « where do human rights come from » are typically structured by a range of assumptions prevalent in the dominant literature that largely predetermine the answers that emerge. We get answers that privilege western philosophical thinking or « black letter law » in ways that suggest these are the ultimate achievements of human civilisation. Alternatively, critical voices often portray human rights as the ideology of the possessive individual – an ideology that has served to buttress the development of capitalism and legitimate western modernity for the last 350 years[3]. These sorts of assumptions, relying on the lenses that they do, are – in my view – so corrosive and distorting that the dominant accounts of human rights can be seen as a hall of mirrors. Not the one at the palace in Versailles but, rather, the ones you find at carnivals and fun fairs[4].

In trying to conceptualise social movements, things are not much better. A distinction has often been drawn between « American » and « European » approaches[5]. The former have tended towards quantitative studies and positivist analysis, focussing on visible protests, tangible resources and other observable and measurable phenomena. In contrast, European approaches have offered broader interpretive understandings but, unfortunately, attempts to link these understandings to long term social and historical transformations have often lapsed into forms of structural

[3] See for example G. ESTEVA and M. S. PRAKASH, *Grassroots Postmodernism,* London, Zed Books, 1998, p. 121. For how this underpins contemporary debates see, firstly, S. HOPGOOD, « Reading the small print in global civil society: the inexorable hegemony of the liberal self », *Millenium : Journal of International Studies,* vol. 29, 2000, n°1, p. 1-25, and, then, S. HOPGOOD, « Human Rights : past their sell-by date », at https://www.opendemocracy.net/openglobalrights/emerging-powers-and-human-rights, 2013, last accessed June 2015.

[4] See N. STAMMERS, *Human Rights and Social Movements*, *op. cit.*, *supra,* n.2, Ch. 1.

[5] For example D. RUCHT (ed.), *Research on Social Movements: The State of the Art in Western Europe and the USA*, Frankfurt am Main/Boulder Colorado, Campus Verlag/Westview Press, 1991.

determinism[6]. Two specific difficulties impact on any examination of the relationship between human rights and social movements. Firstly, there is a strong tendency to conflate social movements with organisations and, secondly, there is a broad failure to grasp the complexity of the relationship between instrumental and expressive dimensions of movement activism[7]. Moreover, because of the practical difficulties of studying social movements, especially their expressive dimensions, many researchers end up narrowing their focus to study the instrumental dimensions of organisations whilst still claiming their work as a study of social movements[8].

As far as my own lens is concerned, I have argued that we « need a non-Eurocentric, historical sociology of human rights which embeds a concept of creative agency from below at its core »[9]. But a similar lens could equally be used to the study of social movements and many other aspects of social relations. I will consider some implications of using such a lens for social analysis later. For the moment, let me keep a more specific focus.

A. Questioning common assumptions about human rights

As soon as one starts to explore the socio-historical relationship between human rights and social movements, the accuracy and utility of some of the most commonly accepted accounts of human rights are brought into question, necessitating – as Madsen puts it – , « a critical examination of the dominant academic preconstructions »[10]. Moreover, in trying to re-formulate answers to those basic questions « what are human rights? » and « where do human rights come from? », we are forced to address the relevance of human rights to struggles for social change. This brings us to broader issues about the nature of power, democracy, participation and representation. In other words, a socio-historical approach draws us towards

[6] N. STAMMERS, « Contested Identities in Struggles for Human Rights: The Long View », *in The Identity Dilemma: Social Movements and Collective Identity,* A. McGarry and J. Jaspers (eds.), Philadelphia, Temple University Press, 2015.

[7] A distinction between « instrumental » and « expressive » dimensions of movement activism is often used in studies of social movements. For detailed discussion see N. STAMMERS, *Human Rights and Social Movements*, *op. cit.*, *supra*, n.2, Ch.6. I use the instrumental dimension to refer to concrete political, economic and cultural demands made by movement actors and the expressive dimension to refer to broader proposals for the construction, reconstruction or transformations of norms, values, identities and ways of living and being in the world.

[8] C. ESCHLE and N. STAMMERS, « Taking Part: Social Movements, INGOs and Global Change », *Alternatives,* vol., 29, 2004, n°3, p. 333-372 ; N. STAMMERS and C. ESCHLE, « Social Movements and Global Activism » *in Global Activism, Global Media*, W. de Jong, M. Shaw, N. Stammers (eds.), London, Pluto Press, 2005, p. 50-67.

[9] N. STAMMERS, *Human Rights and Social Movements*, *op. cit.*, *supra* n.2*,* p.231

[10] M. MADSEN, « Reflexivity and the Construction of the International Object: The case of Human Rights », *International Political Sociology,* n°5, 2011, p. 259-275, p. 262.

a broad, more holistic, analysis of social relations within which the relationship between human rights and social movements is embedded. Most of the dominant accounts of human rights are quite unable to grasp the complexity of human rights as forms of social praxis. Disciplinary constraints and ideological predispositions have meant that social movements barely feature in most narratives of human rights.

Although recent decades have seen increasingly important contributions from historians, sociologists and anthropologists, such work is still often marginalised or ignored by philosophers and lawyers. With their emphasis on the analysis of thought, texts, celebrated « canons » and legal process, the logics and trajectories of these disciplines are particularly inhospitable to any analytical focus on social movements. Ideological perspectives from liberalism to post-structuralism manifest different problems but these too have importantly shaped the dominant scholarship on human rights[11]. Perhaps what is most fascinating is that, within this dominant scholarship, proponents and critics of human rights often share a range of key assumptions.

Firstly, there is often a shared, essentialist, answer to the question « what are human rights? » Strangely perhaps, many liberal answers to that question agree with Marxist, cultural relativist and post-structuralist assertions that human rights are, and can only ever be, the rights of possessive individuals in a capitalist society. Social and collective dimensions of human rights are, consequently, either obscured or denied. Secondly, dominant accounts are often fixated on the institutionalised and legal domains of human rights, precluding examination of the non-institutional and non-legal dimensions of human rights and their relation to institutionalised and legal forms. Uncritical proponents then often fail to grasp that human rights can have an ambiguous relation to power, while uncritical critics take evidence of the abuse of institutionalised human rights as conclusive proof that human rights can only ever serve the interests of power. Finally, a key impact of the dominant literature is to obscure the relevance of historical and social practices on our understandings of human rights. So, for example, it is regularly assumed that human rights only began in 1948 or, in Samuel Moyn's view, in the late 1970s[12]. But such assumptions wipe out 300 years of Western – let alone non-Western –

[11] N. STAMMERS, *Human Rights and Social Movements*, *op. cit.*, *supra* n.2, p. 14-18.
[12] S. MOYN, *The Last Utopia: Human Rights in History*, Harvard, The Belknap Press, 2010.

histories. Furthermore, what Richard Wilson calls « the social life of human rights » [13] is, once again, assumed to be insignificant.

B. Re-analysing the long history of human rights

My own account begins in the seventeenth and eighteenth centuries, looking at the English civil war, the American and French revolutions and the revolt against slavery in Haiti. I then looked at the nineteenth century, a century of global significance in terms of both the rise of workers and socialist movements and the struggles for self-determination in the colonised world and in Europe. I called it « the lost nineteenth century » because the bulk of the dominant literature on human rights ignores it altogether, even that which identifies the American and French revolutions as the cradles of modern human rights[14].

My reviews of the historical evidence showed that claims to natural rights had much broader social and collective dimensions than is often acknowledged. They had economic dimensions more to do with defending people's basic subsistence and customary practices than with creating or defending capitalist property rights, as has been recognised by some Marxist historians [15]. Furthermore, far from being purely individualistic, they connected understandings of identity to ideas of collective, as well as individual, rights. In Haiti, claims to natural rights combined demands for freedom and emancipation for slaves with a fundamental challenge to the economic logic that underpinned the plantation economies of the Caribbean and the Atlantic slave trade.

In the nineteenth century, the concept of natural rights was developed and widely used by activists in the emergent workers and socialist movements during fierce struggles to organise collectively and protect economic and social conditions. So central were human rights to the praxis of the emergent working class and socialist movements that, by the end of the nineteenth century, the historian Jacob Burkhardt commented that « the modern version of the Rights of Man … includes the right to work and subsistence »[16]. None of this evidence fits with either liberal accounts of

[13] R. WILSON, « Afterword to Anthropology and Human Rights in a New Key: The Social Life of Human Rights », *American Anthropologist,* vol. 108, 2006, n°1, p. 77-83.
[14] N. STAMMERS, *Human Rights and Social Movements*, *op.cit., supra*, n.2, p.72-76. There are of course extensive literatures in closely related fields, for example on the self-determination of peoples and the struggles for suffrage. My criticism here is aimed specifically at the dominant literature that takes human rights as its principal subject matter.
[15] E. M. WOOD, *The Origin of Capitalism: A Longer View*, London, Verso, 2002 ; E. P. THOMPSON, *The Making of the English Working Class*, London, Penguin Books, 1980.
[16] Cited in E. HOBSBAWM, *The Age of Capital 1848-1875*, London, Weidenfeld & Nicolson, 1975, p. 305-306.

natural rights or those of their Marxist and poststructuralist critics. Most glaringly, perhaps, the extensive use of claims to natural and human rights in radical ways by the emergent workers and socialist movements is hard to square with the argument that human rights may be dismissed as « merely » bourgeois rights[17].

The nineteenth century also witnessed enormous struggles around self-determination across the colonised world, North America and Europe. Eric Hobsbawm argued that the oft-claimed equations of state = nation = people were understood in deeply contrasting ways in the nineteenth century[18], suggesting that – even in Europe – claims for self-determination did not necessarily imply acceptance of the model of the nation-state that has subsequently become hegemonic in the contemporary world.

Overall, my account of the long history of natural and human rights indicates that such ideas were used by movement activists as « struggle concepts » in various but persistent attempts to challenge arbitrary power and privilege. It is here we can make the linkage from the long historical past into the present. Upendra Baxi has argued that, since the end of the Second World War, it has been the poor and oppressed of the world who have been the hidden authors of new forms of human rights[19] and this aspect of Baxi's argument fits with my own contention that the longer and deeper history of human rights indicates that institutional and legal processes should be seen as the *outcomes* of the history of human rights not the *origins* of that history.

But if this is so, how do we assess the development of the international human rights regime since 1948? I have suggested that its origins were anomalous in the context of this longer and deeper history, insofar as it was an institutionalised process from the outset rather than being any direct outcome of movement struggles[20]. Yet, at the same time, the evolution of the human rights regime has created – for the first time in history – a « concrete universal » which can be adapted, contested and transformed. In a similar vein, Mohanty claims that human rights evolved from an initial liberal humanist formulation in 1948 to a more subtle and complex constellation of understandings by the 1990s, arguing that this demonstrates the limits and inadequacies of both traditional liberal advocacy and traditional radical critiques of human rights[21].

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[17] N. STAMMERS, *Human Rights and Social Movements*, *op. cit., supra*, n.2, p. 77-80.
[18] E. HOBSBAWM, *Nations and Nationalism Since 1780: Programme, Myth, Reality, 2*nd edition, Cambridge, Cambridge University Press, 1992.
[19] U. BAXI, *The Future of Human Rights*, Oxford, Oxford University Press, 2002.
[20] N. STAMMERS, *Human Rights and Social Movements*, *op. cit., supra*, n.2, p. 116-118.
[21] M. MOHANTY *et al*. (eds.), *People's Rights: Social Movements and the State in the Third World*, New Delhi, Sage Publications, 1998, p. 22-23.

C. The paradox of institutionalisation

This need to grasp the social complexity of human rights leads us quickly to what I have called the paradox of institutionalisation. The heart of this paradox is to be found in the necessity of institutions to social life – our very social existence – combining with an apparently intractable problem of institutional *power to* so easily morphing into forms of *power over*[22]. Underpinning my concern is how power is embedded within, and works through, institutions and organisations. This is hardly a novel issue, it has been raised in a variety of ways in much social theorising. All the more curious then that so few attempts have been made to make institutionalisation a specific focus when analysing human rights. The disciplinary and ideological orientations of the dominant forms of human rights scholarship again explain this absence. Many proponents and critics assume that the study of human rights is, or should be, the study of human rights *that are already institutionalised.* For proponents, the institutionalisation of human rights is often seen as largely unproblematic and questions of power left well alone. On the other hand, many critics believe that institutionalised human rights (and human rights activism that engages with the institutional world) cannot have any meaningful emancipatory dimension because institutions can only ever reflect and serve existing relations and structures of « power over ».

In my view, these positions are far too simplistic. In their institutionalised form, human rights stand in a complex, ambiguous, relation to power but they do retain a capacity to challenge and constrain various forms of power. I will look at this in more detail in a moment. Yet there is also abundant evidence that institutionalised human rights have been structured to support power and used explicitly by powerful actors in pursuit of their own interests. The historical evidence suggests, unsurprisingly, that it is from the point when they are institutionalised that human rights become necessarily enmeshed within extant relations and structures of power. In the long history of human rights I have identified two persistent pressures which I have described as « liberalisation » and « nationalisation »[23].

[22] This is not to say that all forms of « power over » are necessarily illegitimate but it is to assume that all forms of « power over » need to be legitimated. However, the specialist literature on legitimacy and legitimation has mostly focussed on political rather than social power, though see D. BEETHAM, *The Legitimation of Power*, 2nd edition, Basingstoke, Palgrave MacMillan, 2013. From their earliest specifications, ideas of human rights have been used as tools of delegitimation, as challenges to arbitrary power and privilege. Once institutionalised, they also become an important source of legitimation.

[23] N. STAMMERS, *Human Rights and Social Movements*, *op.cit.*, *supra*, n.2, p. 110-115.

The paradox of institutionalisation also tries to capture other important dimensions of social processes. Social movement struggles are typically rooted in the everyday world but – historically – have persistently constructed human rights claims in ways that demand their institutional instantiation. In other words, non-institutional activism has historically demanded the institutionalisation of human rights. Moreover, a clear trajectory can be identified in the historical development of social movements and NGOs which can be characterised as a tendency towards the institutionalisation of activism, often leading to co-option, assimilation and bureaucratisation. While familiar to those studying social movements, this is rarely examined in the human rights literature and, all too often, poorly understood or ignored by activists themselves.

So key questions implied by a focus on the paradox of institutionalisation are the extent to which the emancipatory thrust of human rights can be sustained through processes of institutionalisation, and – if so – how? It follows that, in trying to think about the extent to which human rights might contribute a positive social transformation, we must not only consider what is being resisted but also what is being proposed and how it could be achieved. This brings us close to the relationship between human rights and democracy, which I will come back to in the third part of this paper.

D. Human rights: an ambivalent resource for movement mobilisation

The extent to which human rights can be a resource for collective mobilisation depends on what we mean by « human rights ». The institutionalised, legal and quasi-legal international regime – the various texts, adjudicating bodies and enforcement mechanisms – can certainly be a resource for collective mobilisation insofar as they set a series of reference points which enable movement actors to argue that particular forms of unfairness, injustice or oppression are breaches of human rights. Such claims may be used to delegitimise specific social practices and – where there are enforcement mechanisms – challenge their legality and claim redress. In a review article focussing on human rights as a positive law system, Tsutsui, Whitlinger and Lim explore the tensions between state actors and civil society actors since 1948. They argue that :

« social movements have played critical roles both in elevating the standards of human rights in international law and in leveraging these standards into better local practices »[24].

That said, and especially in the case of an enforceable human rights regime, there are dangers that recourse to such regimes may shape the nature and extent of movement mobilisation, perhaps pushing it into purely legalistic channels or coming to rely on established definitions and/or norms found within the international bill of rights. There is evidence to show that the most conservative NGOs within a particular movement sector tend to be those who rely on and/or pursue a legalistic understanding of human rights derived from the international regime[25]. The dangers of the paradox of institutionalisation will be most acute for those movement actors who seek to engage with human rights as already institutionalised regimes. McCann sums it up neatly when he says :

« Legal mobilization does not inherently disempower or empower citizens. How law matters depends on the complex, often changing dynamics of the context in which struggles occur. Legal relations, institutions, and norms tend to be double-edged, at once upholding the larger infrastructure of the status quo while providing limited opportunities for episodic challenges and transformations in that ruling order »[26].

But there is also a much broader way in which human rights can be a resource for collective mobilisation. Meanings and understandings of human rights are much wider than the framework of the international regime and legalistic definitions of what human rights are. Movement activism around human rights has typically been organised through an expressive dimension which is often foundational for what the movement actors are seeking to achieve. This expressive dimension is oriented towards the construction, reconstruction or transformations of norms, values, identities and ways of living and being.

An outwardly directed element is about projecting alternatives into the wider social milieu. We might think, for example, of how and why indigenous peoples' movements and women's movements succeeded in transforming

[24] K. TSUTSUI, C. WHITLINGER and A. LIM, « International Human Rights Law and Social Movements: State's Resistance and Civil Society's Insistence », *Annual Review of Law and Social Science,* 2012, n°8, p. 367-396.
[25] M. MCCANN, « Law and Social Movements: Contemporary Perspectives », *Annual Review of Law and Social Science,* 2006, n°2, p. 17-38 ; A. ESTEVEZ, *Human Rights and Free Trade in Mexico,* New York, Palgrave Macmillan, 2008 ; K. HANSON and O. NEUWENHUYS (eds.), *Reconceptualizing Children's Rights in International Development*, Cambridge, Cambridge University Press, 2013.
[26] Cited in M. McCann, *op. cit.*, *supra*, n.25, p. 19.

the international human rights agenda. Moreover, ideas of human rights can also be deployed in explicit and direct attempts to transform public culture, for example, when activist women demand an immediate end to male violence not through changes in the law but through men changing their own behaviour.

An inwardly directed element of expressive activism seeks to legitimate the position, values and identities of the movement actors. Particular understandings of human rights can be a direct resource that contributes to the genesis and mobilisation of a social movement[27]. But it is worth stressing there is nothing new about this. E. P. Thompson placed human rights at the centre of a working class culture of resistance in nineteenth century England[28] and, in his study of radical artisans in England and France between 1830 and 1870, Prothero argues in psycho-social terms that :

« (…) the language of rights, especially natural rights, can be a very effective and exhilarating instrument which can facilitate a change in people's self-image and be a liberating and even revolutionary rhetoric »[29].

In summary, down the centuries, ideas of human rights as challenges to arbitrary power and privilege have been an important resource for movement mobilisation and activism. Moreover, the possibilities for innovation and creativity around human rights remain strong. Most notably, human rights can be developed as a 'coalitional concept' bringing together otherwise potentially disparate movements. This was true in the case of distinct indigenous peoples' movements constructing an effective global solidarity and it can also be seen in contemporary anti-capitalist and environmental activism.

E. Recognising the bottom-up dimension of human rights

The dominant literature on human rights also shares a common trajectory in assuming and delineating a top-down movement of what happens to ideas and practices of human rights in the contemporary world. Even those whose work is very much focused on « the local » are not immune from assuming this trajectory. In her research, Sally Engle Merry explores the role of « translators » as they move between a cosmopolitan awareness of human rights and local socio-cultural understandings[30]. Her

[27] *Ibidem.*
[28] E. P. THOMPSON, *op.cit.*, *supra*, n.15, Ch. 4 and p. 545-546.
[29] I. PROTHERO, *Radical Artisans in England and France 1830-1870*, Cambridge, Cambridge University Press, 1997, p. 29.
[30] See in particular S. E. MERRY, « Transnational human rights and local activism: mapping the middle », *American Anthropologist,* vol. 108, 2006, n°1, p. 38–51.

ground-breaking work has helped us to understand how ideas of human rights can be « remade in the vernacular », yet sometimes a top-down logic still rears its head. For example, she argues « (…) core human rights principles concerning women spread more extensively from their global sites of production in New York and Geneva to local settings around the world »[31]. How those principles arrived in their supposed « global sites of production » is not considered and thus the role of grassroots women's activism in the construction of those principles is erased.

My work emphasises a different dynamic, a dynamic that recognises « bottom-up » as well as « top-down » dimensions. Indeed, the central contention of my work is that ordinary people, working together in social movements, have always been a key originating source of human rights. This emphasis on the possibility of creative agency from below has a strong pedigree in Anglophone historical scholarship, most obviously through the writings of the Marxist historian, E.P. Thompson. But it is still very much a live debate. For example, in *Colonialism in Question,* Frederick Cooper[32] has sought to rescue an appreciation of historical agency from below from both orthodox Eurocentric historiography and the excesses of some post-colonial theory. He argues that human rights are a product of struggle, reflecting the labours of :

«…unnamed ex slaves, dependent labourers, and colonised peasants who revealed the limits of colonial power and defined alternative modes of living and working in the crevices of authority »[33].

So it remains today. Contemporary social movements all around the world are constructing, reconstructing and deploying claims to human rights in order to challenge a wide variety of forms and spatial configurations of power. This chimes with Baxi's argument that the poor and the oppressed of the world have been the hidden authors of human rights for much of the last 60 or 70 years. Unfortunately, through a top-down lens, this sort of bottom-up agency either gets lost or, worse, dismissed as delusional.

At the heart of most contemporary critiques of human rights is the argument that they are the expression of a new form of hegemony but, in fact, such arguments can usually be traced back to Marx's critique of the French Declaration found in *On the Jewish Question*[34]. Although Etienne

[31] *Ibidem*, p. 40.
[32] F. COOPER, *Colonialism in Question: Theory, Knowledge, History,* Berkley, University of California Press, 2005.
[33] *Ibidem*, p. 21.
[34] For example see S. HOPGOOD, « Reading the small print in global civil society… », *op. cit. supra*, n.3, and S.HOPGOOD, « Human Rights: past their sell-by date », *op. cit. supra*, n.3,

Balibar has argued that Marx's understanding of the French Declaration was fundamentally flawed[35], for many critics it remains axiomatic – almost a mantra – even when re-fashioned to fit changed circumstances. It is not that critics' arguments are without evidence or merit, rather it is that their arguments are too totalising through simplistic reductionisms and reliance on *a priori* assumptions that have little to do with either social movement struggles or human rights. I will come back to these points shortly, but it needs to be stressed that these sorts of arguments pose a real problem for contemporary struggles around human rights.

I argued in *Human Rights and Social Movements* that the first years of the twenty first century have seen human rights plunged into a crisis of actuality and a crisis of legitimacy. The crisis of legitimacy is, in significant part, the product of the caricatures proffered in much of the human rights literature. Although always controversial, these caricatures now so misrepresent human rights that their legitimacy is being rapidly and dangerously stripped away. And this is where I really take issue with many critics because it seems to me the continuing dismissal of human rights and human rights activism by supposedly radical theorists is disastrous. Scholarly cynicism is a dangerous potion when mixed with the bleak realities of the crisis of actuality[36]. So, partly in an attempt to explore the roots of such scholarly cynicism, let me now invert my own lens.

2. Implications for social theory

It is not just the arguments of the critics but, rather, the whole of the dominant literature on human rights that is suffused with simplistic reductionisms and *a priori* assumptions drawn from a range of ontological and epistemological positions in philosophy and social theory. So, to the extent there is merit and utility in my exploration of the relationship between social movements and human rights, we can go on to consider what my findings tell us about social theory in general[37]. My answers are troublesome on a broad front but also point toward the need to develop what I described earlier as a non-Eurocentric, historical sociology which embeds a concept of creative agency from below at its core. Let me begin by briefly commenting on two key issues forced to the forefront of debates in social theory in recent decades, arguably as a consequence of trajectories of globalization.

[35] E. BALIBAR, *Masses, Classes, Ideas: Studies on Politics and Philosophy Before and After Marx,* New York, Routledge, 1994, p. 46.
[36] N. STAMMERS, *Human Rights and Social Movements*, *op.cit., supra*, n.2, p. 223-228.
[37] *cf.* M. MADSEN, *op. cit.*, *supra*, n.10, p. 262-263.

A. The problems of Eurocentrism and methodological nationalism

The first is the problem of Eurocentrism, the tendency to assume that anything worth thinking and knowing about has its most developed antecedents in European thought or history. Virtually all accounts of the history of human rights that look back before 1948 do so through an historical lens that is deeply Eurocentric. In *Human Rights and Social Movements* I tried to give some illustrative examples of the problem. I discussed the Haitian revolution which is rarely mentioned in dominant accounts and also struggles for human rights in Latin America which are usually assumed to have simply imported European ideas. I also gave the example of the human rights literature never having considered whether the notion of *swaraj* developed in the struggles against British imperialism in India might be able to help us understand the difficult relationship between individual and collective dimensions of self-determination[38].

That said, other work tackles Eurocentrism in a more sustained way. For example, although not making it a central conceptual focus, Balakrishnan Rajagopal points to the serious limitations of the dominant literature on human rights in his detailed study of *International Law from Below,* the central concern of which is how one might « write resistance into international law and make it recognize subaltern voices »[39]. More explicitly, Jose-Manuel Barreto in *Human Rights from a Third World Perspective* sets out what he sees as the main strands of the standard Eurocentric narrative before going on to argue that this has a counterpoint in other strands of human rights thinking that have emerged out of the context of the history of imperialism and resistance to colonial violence[40].

The second problem is that of methodological nationalism, « (…) the assumption that nation/state/society is the natural social and political form of the modern world »[41] and therefore the proper basic unit for social analysis. While this problem began to be recognised as scholars began to analyse

[38] N. STAMMERS, *Human Rights and Social Movements*, *op.cit*., *supra*, n.2, p. 63-67 and p. 92-101.
[39] B. RAJAGOPAL, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge, Cambridge University Press, 2003.
[40] J-M BARRETO, *Human Rights From A Third World Perspective: Critique, History and International Law,* Newcastle-upon-Tyne, Cambridge Scholars Publishing, 2013, Ch. 5.
[41] A. WIMMER and N. G. SCHILLER, « Methodological Nationalism and Beyond: Nation-State Building, Migration and the Social Sciences », *Global Networks,* vol. 2, 2002, n°4, p. 301-334.

processes of globalisation [42], as with Eurocentrism, methodological nationalism is often so deeply ingrained that it just flows through academic scholarship – whether in terms of ideas or empirical data sets – without challenge. In terms of human rights, this usually manifests itself in terms of state-centric understandings of where human rights come from, who is entitled to them and how duties to protect human rights should be assigned. Jack Donnelly acknowledges that « this state-centric conception of human rights has deep historical roots »[43], in what I have called the « liberalisation » and « nationalisation » of human rights[44]. In the contemporary era the problem of mass migratory flows, as people flee wars and poverty, demonstrates all too clearly that we are not just dealing here with academic semantics. Indeed, Marie-Bénédicte Dembour has felt it necessary to remind us that « [m]igrants are human beings too » in her study of the treatment of migrants before the European Court of Human Rights[45].

B. The problem of reductionist dichotomies

While critiques of Eurocentrism and methodological nationalism raise complicated questions rarely acknowledged within social theory until recently, other key issues constitute the central historical subject matter of social theory. Despite being vigorously critiqued for many decades, there remains a strong tendency for social phenomena to be understood in dichotomous terms. Having been so constructed, one end of a dichotomy is then typically privileged over the other. In terms of human rights, the binary opposition of individual and collective is clearly crucial. In terms of thinking about social change, the assumed dichotomy between reform and revolution has plagued political thinking on the left and, within studies of social movements, a dichotomy between interests and identities became central to the analysis of the so-called new social movements.

Of more general relevance is the often assumed dichotomy between agency and structure. I find it hard to understand how anyone can still accept such a simplistic binary opposition given the extensive critiques made in both Anglophone and Francophone scholarship. My own approach has drawn from Alain Touraine's understanding of the self-production of society, Anthony Giddens theory of structuration, Margaret Archer's critical realist

[42] For an account of the career of the concept of methodological nationalism in social theory, see D. CHERNILO, « Social Theory's Methodological Nationalism: Myth and Reality », *European Journal of Social Theory*, vol. 9, 2006, n°1, p. 5-22.
[43] J. DONNELLY, *Universal Human Rights in Theory and Practice*, 2nd edition, Ithaca and London, Cornell University Press, 2003, p. 34-35.
[44] N. STAMMERS, *Human Rights and Social Movements, op. cit.*, *supra*, n.2, p. 110-115.
[45] M.-B. DEMBOUR, *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint*, Oxford, Oxford University Press, 2015, p. 1.

approach to social theory and Piotr Sztompka's account of the sociology of social change[46]. I have proposed a triadic conceptualisation of actors, agency and structure within which agency is understood as a potential attribute of both actors and structures and conceptualised as synonymous with power (that is, the dynamic but complex relation between « power to » and « power over »)[47].

Traditional constructions of the agency and structure dichotomy have had a direct impact on key arguments in human rights scholarship. Classical and neo-liberalism privilege the agency of individual actors and assume that all social explanation must be rooted in the analysis of the views and behaviour of individuals. In contrast, and spanning the ideological spectrum, structuralist explanations of social processes have often dominated attempts to develop historical sociology and are prevalent in the disciplines of sociology and anthropology. In their most extreme form such analyses see individual human beings as merely being the bearers of structural determinations or, as some post-structuralist theorists would have it, the whole of human subjectivity is entirely constituted by discourse[48].

A related issue is how concepts such as « the social », « the political »,« the economic » and « the cultural » are understood and connected. Firstly, many analysts simply fail to specify their usage and go on to use them as if their meanings and relations are self-evident and unproblematic. Alternatively, analysts assume that social phenomena are best analysed through one (and thus privileged) sphere of either « the economic », « the cultural' or « the political ». I have proposed a framework within which « the social' is understood as an overarching category within which there is dynamic interaction between « the political », « the economic », and « the cultural », [49]. The extent to which

[46] A. TOURAINE, *The Self-Production of Society*, Chicago, University of Chicago Press, 1977 ; A. Giddens, *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge, Polity Press, 1984 ; M. ARCHER, *Realist Social Theory: The Morphogenetic Approach,* Cambridge, Cambridge University Press, 1995 ; P. SZTOMPKA, *The Sociology of Social Change*, Oxford, Blackwell, 1993.

[47] N. STAMMERS, *Human Rights and Social Movements*, *op. cit.*, p. 25-27. This conceptualisation breaks with the common assumption that agency is solely a property of social actors. It allows for a broader understanding of agency which is, *de facto*, synonymous with power as capacity at this level of abstraction. Although there are also important differences between our respective approaches, I feel Stompka's diachronic account of « social becoming » is helpful for thinking about this. See especially, figure 15.3 « the flow of historical process » (P. SZTOMPKA, *op. cit.*, *supra* n.46, p. 226).

[48] D. HOWARTH, *Discourse*, Buckingham, Open University Press, 2000, especially Ch. 6.

[49] Arguably, a sphere of the biophysical should now also be seen as a realm of the social insofar as consensus is growing that the planet has entered a new epoch known as the « Anthropocene » in which Earth-system processes and ecosystems are now dominated by

– and how – these domains interact is left open for investigation and analysis, not assumed *a priori.* Within this framework institutions and law are embedded dimensions of the social, each with significant political, economic and cultural impacts. Moreover, when we situate power in this configuration, it becomes apparent that « power to » and « power over » exist in all these realms of the social and that there is a complex interplay between different forms of power resulting in a more complex patterning of social power than many thinkers have been willing to acknowledge[50]. I have tried to develop a framework which avoids the ontological privileging of a particular form of power in a particular realm of the social whilst – at the same time – recognising the vast asymmetries of « power over » that have blighted the histories of human civilizations across the world.

C. The process of reasoning

A final point relating to the problem of dichotomies concerns the most basic element of social research and theorising, the process of reasoning itself. Though few scholars would ever explicitly advocate maintaining a strict dichotomy between deductive and inductive reasoning, much « grand theorising » in social theory has privileged forms of highly abstracted deductive reasoning to the point where theoretical frameworks become world views (*weltanschauung*) from – within which – any particular social phenomenon can be explained, regardless of any evidence pointing in a contrary direction. Forms of structuralist or systems-level explanation, whether in liberal, Marxist, post-structuralist or postmodern guises, are particularly prone to this tendency and it is a problem that has bedevilled the whole of the social sciences including many attempts to develop historical sociology[51].

Having said that, let me reiterate that my reconfiguration of the actor, agency, structure relation specifically acknowledges « the agency of structure ». Moreover, I also appreciate that some structural forms may be so embedded in socio-historical practices that they are not easily observable

human activities. See F. BIERMAN, *Earth System Governance: World Politics in the Anthropocene,* Cambridge, Mass., MIT Press, 2014.

[50] M. MANN, *The Sources of Social Power: V.1 History of Power from the Beginning to AD 1760*, Cambridge, Cambridge University Press, 1986 ; S. LUKES, *Power: A Radical View*, 2nd expanded edition, Basingstoke, Palgrave Macmillan, 2005; Powercube.net at http://www.powercube.net/ last accessed September 2014.

[51] This is not a novel point. See C. Wright,Mill's critique of Parsonian sociology in *The Sociological Imagination,* London, Penguin, 1970. My own formative encounter with this form of theorising was with the structuralist Marxism of Louis Althusser and Nicos Poulantzas in the mid 1970s, in my opinion most effectively rebutted by E.P. Thompson in *The Poverty of Theory,* London, Merlin, 1978.

through the normal methods of empirical research[52]. However, these two points need to be separated out from the habitat in which they are most often found in social theory – that « grand theorising » referred to above. In my view, such forms of theorising do little more than create yet another form of theology. Social analysis always requires a constructive interchange between deductive and inductive reasoning.

Let me illustrate this by coming back to the paradox of institutionalisation. As my research proceeded, clear tensions and contradictions emerged between the evidence that supported the arguments of proponents of human rights and evidence that supported the arguments of the critics. There was substantial evidence on both sides of this divide, but both sides also suppressed, dismissed or denied evidence that contradicted their positions. Moreover, as far as I could see, there was no way that either side would ever be able or willing to draw from the full range of evidence so as to create an effective and holistic analysis. Could I do anything to bridge the gap, or find a way of bringing together these competing forms of analysis?

Social theory is not short of analyses that put institutions under the spotlight. In particular, the work of Max Weber, Roberto Michels and Michel Foucault have all problematised institutions and institutional power and these issues have been pursued to some extent in studies of organisations and social movements. But no-one had looked at human rights through a lens that made institutions and institutional power a central analytical focus or – at least – not without prejudging the outcome. In trying to accommodate the complexity of the research evidence and produce an integrated analysis, I was forced into a process of inductive reasoning that – whilst drawing from pre-existing sociological and theoretical work – could resolve the evidential tensions and contradictions. The specific shape and form of my paradox of institutionalisation was the end result of this sort of process.

Now there is an irony here insofar as the paradox of institutionalisation has the potential to be a meta-level, deductive social theoretic construct. So, for example, whilst classical liberal and neo-liberal scholarship tends to identify state power as *the problem* and Marxist scholarship tends to identify economic power in the form of the capitalist mode of production as *the*

[52] To talk of the « agency of structure ». here is not meant to imply the existence of social structures distinct from the human activities that create, instantiate and transform them, although – analytically – it is often useful to separate them. The question of the « depth » of social structure and its consequent relation to and impact upon human actors lies at the heart of the so-called « agency-structure debate ». For a brief summary of various debates and positions see P. SZTOMPKA, *op. cit.*, *supra*, n.46, Ch. 13, and for Sztompka's own resolution see Ch. 15.

problem, my approach identifies the morphing of « power to » into « power over » in institutional settings (political, economic and cultural) as *the problem*. Moreover, I have also argued that social movement struggles around human rights have identified five sites with trans-historical and trans-cultural reach and impact through which « power over » has been organised and sedimented[53]. Precisely because of the breadth of these claims, further research in these areas will need to avoid the dangers of deductivism and recognise the importance of the interplay of inductive and deductive reasoning.

3. Human rights, social movements and the renewal of democratic praxis

Much exploration of the relationship between human rights and democracy has – in fact – focused on the nature of the relationship between liberal understandings of human rights and liberal understandings of liberal democracy. Yet, as a set of political institutions, liberal democracy has been heavily criticised, especially for its limited and procedural characteristics and the extent to which formal political equality obscures the actuality of asymmetries of power in social relations more generally. Moreover, across most of the ideological spectrum, social and political activists accept what they see as the inevitability of elite rule and oligarchy. Yet the history of social movement struggles – their persistent critique of arbitrary power and privilege and their capacity for generating creative and innovative social praxis – points in other directions. So it is important to ask whether, and how, social movements might be able to contribute something quite specific to the relationship between human rights and democracy.

The importance of this point is further highlighted by what Upendra Baxi has called « the problematic of representational power »[54]. Across the world, all sorts of organisations claim to speak on behalf of others and much human rights work relies heavily on large international NGOs such as Human Rights Watch and Amnesty International. These are key players in Keck and Sikkink's transnational advocacy network on human rights[55]. Yet how often are there any democratically constructed, meaningful and robust channels of communication, participation and representation between the NGOs and those people they claim to represent? The absence of such

[53] N. STAMMERS, *Human Rights and Social Movements*, *op.cit.*, *supra*, n.2, p. 148-152.
[54] U. BAXI, *op. cit.*, *supra*, n.19, p. 53.
[55] M. KECK and K. SIKKINK, *Activists Beyond Borders: Advocacy Networks in Transnational Politics*, Ithaca, Cornell University Press, 1998.

channels potentially poses extremely serious problems which are what Baxi's notion of 'the problematic of representational power' tries to capture[56].

There are two areas here that have received inadequate attention from social theorists. The first concerns the democratisation of global social relations and the part that social movement struggles for human rights (understood here as challenges to arbitrary power and privilege) could play in any such process. There have been a range of proposals for the development of democratic global governance which look quite radical[57]. But, on closer inspection, most of these turn out to be rooted in notions of elite governance relying, uncritically, on the construction of global structures of institutional power. Very few of these proposals make any space at all for social movements in their various schemes for popular participation through global civil society[58]. Yet the paradox of institutionalisation points towards the necessity for social movements to be able to challenge the legitimacy of any and all forms of arbitrary power and privilege. Specific spaces in the broad ensemble of social relations need to be made for social movement struggles around human rights to emerge and contest existing social relations. At its broadest, this would provide an opportunity to transform the common heritage and public culture of all humankind. But this requires the institutionalisation of the possibility for the subversion of extant global structures of institutional power, in the sense of embedding the possibility for the abolition or substantial transformation of such institutions within those institutions themselves [59] . How could this inherent tension between insurrection and constitution at the heart of democratic legitimacy, as Balibar puts it, be concretised in global processes of democratic participation? [60]

The second area concerns the possibilities for achieving institutional democratisation. Historically, social movements have been important sites for the creation of forms of democratic praxis and movements themselves have always been sites of struggles for democracy. Despite this, the

[56] Further discussion in N. STAMMERS, « Children's Rights and Social Movements: reflections from a cognate field », *in Reconceptualizing Children's Rights in International Development*, K. Hanson and O. Neuwenhuys (eds.), *op. cit. supra*, n.25.

[57] For example D. HELD, *Democracy and the Global Order*, Cambridge, Polity Press, 1995 ; W. FELICE, *The Global New Deal,* Lanham, Rowman and Littlefield, 2003.

[58] For further discussion of these points see N. STAMMERS, *Human Rights and Social Movements*, *op. cit.*, *supra*, n.2, p. 240-244.

[59] N. STAMMERS, *Human Rights and Social Movements*, *op.cit.*, *supra*, n.2, p. 214-216.

[60] E. BALIBAR, *op. cit. supra*, n.35. Interestingly in this connection, Boaventura de Sousa Santos has described the modes of struggle found in the World Social Forum process as extremely diverse and appearing to spread out in a continuum between the poles of institutionality and insurgency. B. de Sousa Santos, « The World Social Forum: Toward a Counter-Hegemonic Globalisation (Part I) », *in World Social Forum: Challenging Empires,* J. Sen, A. Anand, A. Escobar, P. Waterman (eds.), New Delhi, The Viveka Foundation, 2004.

analysis of democracy, its failures and its potentials, has overwhelmingly focused on the political sphere and on the formal structures of governance. Yet the analysis of social power, especially when considered alongside the paradox of institutionalisation, makes it clear that a focus on « the political » as the appropriate and sole sphere for democratic arrangements and democratisation is wholly inadequate. Social power in general, and institutional power in particular, exist across all realms of the social – « the economic » and « the cultural » as well as « the political ». Yet, to the best of my knowledge, there is little or no work being done on broader models of institutional democratisation.

So, in both of these areas, social theory has so far proved inadequate. But perhaps further exploration of the role of social movements in historical development, especially their use and deployment of ideas and practices of human rights, would provide some important insights. I think two points are particularly relevant here.

Firstly, there are potentials for constructing and reconstructing democratic praxis both within social movements themselves and between social movements and « their » organisations. Because social movements are not organisations, « not even of a peculiar kind »[61], they necessarily retain much more open forms of collective association than formally structured organisations. While NGOs are always likely to be routinely subjected to the pressures of the paradox of institutionalisation and face the problematic of representational power, we can ask whether « democratised links » between informal networks of movement activism and « their' movement organisations could help inoculate NGOs from these dangers. In other words, could democratised relations within social movements help to arrest the dynamic of the drift from « power to » to « power over » in institutionalised settings?

Secondly, and following from the above, because social movements have a special capacity to straddle the porous boundary between the institutional and everyday worlds across all spheres of « the social », they potentially provide channels for communication, participation, deliberation and learning in both directions. Through the underlying facets of their form and what I have called the expressive/instrumental dynamic, social movements offer ways for informal movement activism in the everyday world to interact with the institutional world via NGOs associated with their

[61] M. DIANI, « The Concept of Social Movement », *in Readings in Contemporary Political Sociology*, K. Nash (ed.), Oxford, Blackwell, 2000, p. 162.

movement[62]. From the perspective of those fully embedded in the structures of the institutional world, the existence of social movement networks embedded in the everyday world offers an opportunity for forms of communication and dialogue that have the potential to transcend the oft-perceived illegitimacy of imposed top-down decision-making and « education from above ».

Extrapolating from these two points, we can go on to ask whether it might be possible to identify forms of social praxis for achieving social change which neither assume the historical inevitability of top-down governance nor the complete abolition of the institutional world as it currently exists. To the best of my knowledge, these sorts of issues remain almost completely unexplored. Yet, even to pose those leads us to two further provocative questions.

As I mentioned above, proposals for the reconstruction of democracy and the protection of human rights overwhelmingly focus on forms of top-down, elite governance in formal institutions of the political sphere. But, now we can specifically consider whether, instead, it might be social movements – as particular forms of human association – that are best placed to continue the struggle for human rights and democracy on a world scale. Secondly, and more generally, we can also consider whether it is now globalising social movements that are best able to identify and critique the multidimensionality of contemporary power locally and globally. Perhaps it is time for social theorists to exercise a little more humility and acknowledge that they could learn a lot more from the creative praxis of social movements.

Conclusion

I have argued in this paper that to study « the social life of human rights »[63] is a complicated business. In particular I have argued that, for reasons of disciplinary dispositions and ideological commitments, the mainstream academic scholarship on human rights is largely incapable of properly examining the links between human rights and social movements. My socio-historical exploration of these links suggests that, down the centuries, ideas of human rights have been an important resource for movement mobilisation and activism as challenges to arbitrary power and

[62] See further C. ESCHLE and N. STAMMERS, « Taking Part: Social Movements, INGOs and Global Change », *op. cit., supra*, n.8; N. STAMMERS and C. ESCHLE, « Social Movements and Global Activism », *op. cit., supra*, n.8.

[63] R. WILSON, « Afterword to Anthropology and Human Rights in a New Key: The Social Life of Human Rights », *op. cit., supra*, n.13.

privilege. The potential for innovation and creativity around human rights on the part of social movement actors remains strong. Yet, at the same time, this exploration has also pointed towards the importance of what I have called the paradox of institutionalisation and that, in their institutionalised form, human rights stand in a complex and ambiguous relation to power. That said, I concluded the first half of my paper by suggesting that the continuing dismissal of human rights and human rights activism by supposedly radical theorists has been disastrous in terms of delegitimising broad understandings of human rights and social movement struggles around them.

In an attempt to explore the roots of such scholarly cynicism, the second half of this paper sought to consider the implications of my findings for social theory. Attention was drawn to problems of Eurocentrism, methodological nationalism and dichotomous forms of analysis – especially around the so-called agency-structure problem and the relationship between deductive and inductive reasoning. My analysis points towards possibilities for reconstructing a non-Eurocentric historical sociology that has a concept of creative agency from below at its core.

The final part of the paper turned to the relationship between social movements, human rights and the possibilities for broadening and deepening democratic praxis. It was argued that social theory has so far proved inadequate in terms of addressing the need for both the democratisation of global social relations and for institutional democratisation. I considered whether, firstly, the reconstruction of democratic praxis within and between social movements and « their » NGOs might mitigate some of the worst impacts of the paradox of institutionalisation and then, secondly, whether the particular capacity of social movements to straddle the boundary between the institutional and everyday worlds offered potentially important channels for communication, participation, deliberation and learning in both directions.

This paper began with a critique of the dominant scholarship in the field of human rights and ended with a critique of the current inadequacies of social theory. Common to both are the difficulties of fully understanding and integrating the historical role of social movements in contributing to social change. In 2004, in a paper with Catherine Eschle[64], we argued that there needs to be a fundamental shift in the way the transformative agency of social movements is conceptualised. That need is becoming ever more urgent.

[64] C. ESCHLE and N. STAMMERS, « Taking Part: Social Movements, INGOs and Global Change », *op. cit., supra*, n.8.