



**struggles
for**

the human

Violent Legality and the Politics of Rights

LARA MONTESINOS COLEMAN

**struggles
for
the human**

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insurgent
legalities**

a series edited by
Eve Darian-Smith and
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LARA MONTESINOS COLEMAN

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Dedicated to the memory of Álvaro Marín (1958–2021),
poet, essayist, beekeeper, loving human

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We sing so that the light may be
The light too has its kin
The light, it has been said, is the daughter of words
But it is also the daughter of song, and of dance.
We sing to light the flame at the end of the night.
—ÁLVARO MARÍN, *Song for Eliana*

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acknowledgments

For all that has been written in criticism of modern/colonial conceptualizations of the human, the figure of the isolated, rational individual still pervades images of the writing process. Writing is rarely talked about in its entanglements with relationships of care and with the material conditions of everyday life. Still less do we tend to regard writing as embodied practice, involving joints and connective tissues that are vulnerable to injury. When a book is the product of almost two decades of thinking in conversation, it is impossible not to approach acknowledgments in a way that does not recognize writing as a practice undertaken in relationship. So, too, when those years have encompassed a period of physical disablement, solo parenting, and navigating violences of a more intimate nature than those I address in this book, it is necessary to acknowledge that its completion would have been impossible without the community of friends, family, colleagues, and *compañerxs* that has sustained me throughout.

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introduction

Human Rights in Struggle

In an ominously titled book that best translates into English as *Biodiversity Is the Horseman of Death*, the Colombian poets Humberto Cárdenas and Álvaro Marín mention a conversation in which a well-known lawyer and sociologist described human rights as “the opium of the people.”¹ Through their foray into investigative journalism, the two poets document how, in their own country, international support for human rights and “sustainable development” has gone alongside a brutal imposition of policies designed to benefit multinational corporations. Massacres of populations occupying sites targeted for resource extraction and selective assassinations of trade unionists, community leaders, and human rights activists have become normalized within this repertoire of repression. “The fact that the worst displays of cruelty are accompanied by a humanist and environmentalist discourse,” Cárdenas and Marín write, “has enabled us to glimpse through lived experience the true intentions of the policies” promoted by international institutions.² The reference to “the opium of the people” expresses a widespread sentiment on the left that all human rights can provide in such contexts is a diversion, a sedative, a degree of analgesia in an intolerable situation. Worse, they may anesthetize us completely or provoke memory loss and confusion about what is really happening.

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Cárdenas and Marín's Colombian readers would, however, immediately notice a subtext to this assessment of human rights. Their interlocutor was the late Eduardo Umaña Luna, a sociolegal thinker whose own son, Eduardo Umaña Mendoza, had been killed because of his work as a prominent human rights lawyer defending the rights of left-wing dissidents, trade unionists, and rural populations who were, in turn, being killed and threatened because of their resistance to a neoliberal economic model or because they inhabited territories lucrative for foreign investment. This is a familiar pattern across much of the world. Today, a vast proportion of victims of assassination and forced disappearance are those defending the rights of populations contesting the social and environmental costs of the predominant approach to development, focused on industries such as oil and mining, agroindustry, and other enterprises that appropriate nature for the accumulation of capital.³

Given this scenario, can we do without human rights? Certainly, many social movements would say that they have no option but to appeal to rights, but what are we to make of human rights as a vocabulary of opposition to the dynamics of plunder, exploitation, dispossession, and armed repression that constitute contemporary capitalism? What do we make of human rights as an expression of ethical commitment or of solidarity with others? For many, the answer would be “not much.” In her book *The Shock Doctrine*, Naomi Klein denounces the international human rights movement along lines that resonate with Cárdenas and Marín's critique. The Pinochet dictatorship in Chile was, Klein argues, not only the laboratory of what was to become a global drive to restructure economy and society along neoliberal lines. It was also the laboratory for an international human rights movement whose advocacy served to detract from the fact that torture and forced disappearance were central to the process of neoliberal restructuring.⁴ Even if human rights campaigners are not considered complicit with the economic policies generating premature death and misery for much of the world's population, they are often said to divert attention from the real source of the evils they so vocally deplore. Human rights, critics remind us, come burdened with the moral-political baggage of liberal individualism. They naturalize a concept of “the human” (sovereign, self-interested, and ruling over nature) that is inextricably linked to the rise of modern capitalism and shaped through the exploitation and dehumanization of colonized peoples.

Nevertheless, the routine killing of human rights defenders in many parts of the world points us to another side of the story. Whatever the critique of human rights from the left, the assault from the right is even more fervent and sustained. Right-wing authoritarians and xenophobic populists typically

revile human rights, and these forces are on the rise, even in the former heartlands of liberal internationalism. “The endtimes of human rights” have even been prophesied in the face of an increasingly multipolar world order marked by conservative religious influence.⁵ In 2019, the British human rights organization Liberty distributed fliers decrying politicians’ attacks on the Human Rights Act and inviting readers to “tear off the rights you’re happy to throw away.” The list of rights under that headline (not to be tortured, not to be a slave, to have a fair trial if accused) were, by implication, rights that no one could not want. Yet, might appealing to human rights not end up foreclosing on other possibilities: forms of political economy that may be more liberatory, gentler, more enabling of human and nonhuman flourishing or even of our collective survival?

This book offers a fresh approach to the politics and ethics of human rights by way of an ethnographically infused blend of political philosophy and critical theory based on years of engagement with peasant, worker, Black, and Indigenous movements in Colombia. It is the product of almost two decades of dialogue and relationship, as well as direct involvement in struggle. When scholars refer to the “violence of development,” or to synergies between neoliberalism and authoritarianism, Colombia often features as an emblematic example, in part because of the extent to which it sustains the contradictions between a formally liberal-democratic polity and a political economy that generates death on an enormous scale. This is not, however, a book about Colombia; unlike an anthropological study, it is not primarily concerned with how human rights culture is manifest in that context.⁶ Rather, this is a political inquiry into human rights as a vocabulary of resistance, as well as an ethical inquiry concerned with human possibilities and political imaginations in the face of atrocity and devastation. What is most distinctive about the approach here is that it puts struggles against extractivist capitalism at the forefront of ethical and political reflection.

In Colombia, as in many other parts of the world, human rights are harnessed by social movements steeped in decolonial, Marxist, feminist, and Indigenous thought. As in many other parts of the world, too, a major focus of these struggles has been on multinational corporations, both as direct accomplices in human rights abuse and as authors and beneficiaries of a legal order that enables plunder at immense human and ecological cost. “If you were to stop and ask someone to name a human rights abuse,” Stéfanie Khoury and David Whyte begin their book on corporate human rights violations, “whether they realised it or not, chances are it would include corporate involvement in one form or another.”⁷ There is a burgeoning literature on

prospects for legal action against companies, as well as on problems with the very idea that corporations—as legal structures designed as the engine of capital accumulation—can be meaningfully held to account for the harm they generate.⁸ Yet scholars have paid scant attention to how social movements use human rights in struggles against the violence of capital or to how these efforts may be focused on multinational corporations *precisely because* the corporation is the machinery of a global political economy bringing devastation and death. Nor, I should add, have existing studies considered such struggles as a lens into an appraisal of human rights more widely. While much has been written in critique of the “international human rights movement,” critics rarely interrogate the profound differences between some international nongovernmental organizations (NGOs) advocating for human rights and the politics of rights within struggles at companies’ sites of operation.

This book traces the trajectories of some of these struggles over years and across continents, as they have been taken up within transnational campaigns and legal actions, sparking policy initiatives on the part of global elites.⁹ It is, at one level, an interdisciplinary study that engages literatures in critical legal studies, international political economy, intellectual history, and philosophy. Yet in its very method, this book can also be considered an antidisciplinary work in that it draws much of its intellectual and political inspiration from the lived thought developed within these struggles themselves. As Lewis Gordon reminds us, all disciplines and fixed conceptual frameworks risk enclosing the world within boundaries that occlude this lived dimension to thought. “Any discipline or generated system for the organization of reality faces the problem of having to exceed the scope of its object of inquiry,” Gordon writes. “There is, in other words, always more to and of reality. Failure to appreciate reality sometimes takes the form of recoiling from it. . . . The discipline becomes, in solipsistic fashion, the world.”¹⁰

As a result, *Struggles for the Human* tells a different story, both from those who embrace human rights and from critics who consider human rights inherently complicit with capitalism and neocolonialism. We should not assume in advance that rights talk constrains emancipatory change or that human rights operate only within the confines of hegemonic political horizons. Indeed, the very idea that we should decide “for” or “against” human rights only really makes sense when we bypass the politics of struggle. What I seek to show here is that, when human rights are most tightly yoked to existing structures of power, this is not because they are inextricably tied to liberal individualism or because they serve to inculcate docile forms of subjectivity, but because they are taken up as abstract values that can then be fixed neatly

within an existing order of things. The predominant approach to ethics at this juncture—as a “feel-good” enterprise based on a fetishism of abstract values—has led to human rights’ becoming mere add-ons to the tyranny of a “rule of law” designed to facilitate plunder. One key contribution of this book is what we might call a diagnosis of this scenario. As changes to economic policy and law slowly erase the rights of citizenship, human rights have been, in effect, “privatized.” Since the second half of the 1990s, when the Washington Consensus gave way to the post-Washington era of “development with a human face,” ethical discourse has become a core feature of neoliberal business as usual. In this context, a series of interventions for “corporate social responsibility” and “decent work” have made human rights entirely contingent on the profitmaking activities of multinational corporations. “The market”—rather than law or citizenship—defines the very subjects of rights, assigning people a value and fixing them in place. These privatized rights are a counterpart of the armed repression of those who contest an economic model that condemns many to death.

The other major contribution of this book is to show why and how this is not the full story. Importantly, this is not the sort of “redemptive critique” that Ben Golder identifies in international legal scholars who offer criticism of human rights and yet end with a qualified retrieval of human rights all the same.¹¹ Rather, the crux of my argument is that there is a very different sort of appeal to human rights at play in struggles for less destructive and more ecologically sustainable ways of organizing and reproducing life. Critical theorists and philosophers have pointed out, in various ways, that appeals to rights can also unsettle oppressive logics of power and interrupt normative schemas that assign rights within the confines of the existing order of things. By thinking through engagement with actual struggles, the analysis in this book adds two important sets of insights to this overall line of argument. The first is a focus on the imbrication of law within the social relations of capitalism, and on the relations established with legality at moments when human rights are used in international litigation or in “alternative justice” mechanisms to make claims about forms of harm that cannot be fully recognized within the terms of dominant legal narratives. Strategic appeal to human rights in such contexts can advance what I call *counterlegalities* in ways that evince the violences enabled by the existing legal order through processes of critique that push the system beyond what it can contain.

The second set of insights concerns how struggles using human rights may also be sites at which alternative normative visions are forged in the wake of atrocity, as people have sought to reclaim land from which they

were displaced and develop plans for less harmful ways of living. Ethics here is anything but an abstract exercise. The affirmation of human rights is inseparable from persistent critique of capitalist extraction and of the very conceptualization of the human that has long underpinned capitalism and “development.” At the same time, however, these struggles reach beyond critique. By refusing to foreclose on human possibilities, they point the way to a human rights praxis that keeps open the question of the subject of rights and, indeed, of what it might mean to be human. I suggest, furthermore, that thinking through the lens of these struggles might provide us with the coordinates of a broader ethico-political orientation that I denote an “insurgent humanism.” Whereas mainstream philosophical accounts of human rights have tended to invoke a transcendent human dignity rooted in an understanding of the human as sovereign individual, I point to a dialectic within these struggles between immanent critique of systemic violence and appeal to a transcendent sense of good that is elusive and beyond language, and that renders the normative coordinates shaped through these struggles far from merely “local.” If law and the normative concepts that underpin it are constitutive of capitalist relations, then attention to the dynamics of an insurgent humanism has a lot to teach us about how we might think of our ethical obligations toward others.

The Human of Human Rights

Human rights advocates have come under fire from various directions for failing to address the power relations that shape prevailing understandings of humanity, legality, and justice. Mainstream political theory and doctrinal approaches to law view rights as claims, privileges, or “trump cards” held by individuals, increasing choices, advancing interests, or providing protection against abuse by the powerful.¹² From here, it is a short step to the argument that global justice requires the enforcement and diffusion of human rights norms.¹³ The trouble with such approaches is that they fail to grasp how such norms are already power-laden, already the product of histories of violence. Human rights doctrine was formulated as a doctrine of what it means to be human by reference to various permutations of the figure of sovereign “Man,” which, in Sylvia Wynter’s words, “overrepresents itself as if it were the human itself.”¹⁴ Things start to look a good deal more complicated once we recognize “Man” not only as a parochial, cultural construct but also as one that has come to be taken for granted through the subjugation and enslavement of

colonized peoples and, subsequently, the denigration and abandonment of populations deemed naturally lacking in the qualities required for success within the development of modern capitalism.¹⁵

One important line of critique has come from Latin American decolonial scholars, who have emphasized how modern understandings of what it is to be human were developed through skeptical interrogation of whether colonized peoples met the criteria to be classified as such. Enrique Dussel famously argued for the particular significance of the Spanish Conquest of the Americas, which, in his account, inaugurated modernity as an ostensibly innocent civilizing process. Modernity, Dussel argued, is based on a myth concocted to conceal its sacrificial violence toward colonized Others, who are presented as needing to be emancipated from their own faults.¹⁶ While the atrocities perpetrated against the colonized were rationalized on the basis that Indigenous peoples were not fully human and thus did not count as subjects of natural rights, colonial brutality did not occur outside of moral discourse nor, contrary to what Achille Mbembe suggests in a well-known essay, did it reside at its core “in the exercise of a power outside of the law (*ab legibus solutus*).”¹⁷ From the time of the Conquest, colonial violence was entangled with the ethics of war as “one of the characteristic features of European modernity.”¹⁸ In the Americas, theories of just war were elaborated to justify the forced subjugation of Indigenous peoples who did not accept the God of the Catholic Church or enter into commerce under the terms of the *conquistadores*.¹⁹ Julia Suárez-Krabbe describes how the Nasa Indigenous people of Colombia speak of a colonial “death project,” which persists in the present and is inseparable not only from “racism, capitalism, patriarchy and predatory behaviours against nature” but also from ethical discourse and the legal capacity to render people politically nonexistent.²⁰

From this perspective, even apparently emancipatory extensions of rights have worked their own violence. A good example is the way in which the philosopher and theologian Francisco de Vitoria argued for the inalienable human dignity of Indigenous peoples following the Conquest. In so doing, de Vitoria intervened in the then hegemonic frames of the Spanish Empire, which failed to recognize Indigenous peoples as fully human. Yet de Vitoria’s recognition of the shared humanity of Indigenous people occurred within specific conceptual parameters: those recognizable as subjects of rights were subjects with the capacity for “dominion” over themselves and their patrimony through the use of reason (in contrast to “wild beasts” and “irrational animals,” which “have not dominion over themselves” and thus “can be killed with impunity, even for pleasure”).²¹ Indigenous peoples, he argued, did

exercise dominion—because they had laws, a system of exchange, and so on, which required the use of reason. Only on this basis could they be recognized as subjects of natural rights and thus could not be deprived of their property or enslaved. Even de Vitoria’s argument for the rights of Indigenous people was, simultaneously, a justification of colonialism: Indigenous peoples were now to be ruled, for their own good, by others with a stronger capacity for government.²² More fundamentally, de Vitoria’s very act of recognition of Indigenous peoples as subjects of rights was also an act of epistemic violence (violence at the level of knowledge itself). By affirming them as particular sorts of subjects that fit within a particular definition of the human and, only as such, worthy of recognition as subjects of rights, de Vitoria appropriated Indigenous peoples into colonial epistemic territory. As Walter Mignolo notes in the aptly titled essay “Who Speaks for the Human in Human Rights?” de Vitoria “spoke for humanity and told half the story without realizing it,” never stopping to ask whether the “Indians” own relationship to land was one of property.²³ In fact, the idea of land as property is unintelligible within the metaphysics of Indigenous peoples of the Americas. Land is not something external to the human, an object that can be appropriated as a commodity or defended as property. It is a living being, to be respected and protected as part of life.²⁴

The anthropological paradigm of the “rational” individual was entwined with the degradation, not only of colonized peoples, but also of European subaltern classes. For instance, in the context of enclosure of the commons and the rise of “commercial society” in Britain, elites consolidated a long-standing division between the “deserving” and “undeserving” poor by “blackening” the lower orders as inferior types of human through analogy to savages and slaves.²⁵ The paradigm of the rational individual was likewise inseparable from the degradation of women. The genocidal witch hunt that took off in Europe in the sixteenth and seventeenth centuries destroyed women’s social power and enclosed them within the confines of an emergent capitalist regulation of the family and property. The witch hunts abated only in the eighteenth century when an ideology of rule of law became the preeminent means through which the ruling classes legitimized their property and status.²⁶ The ideology of rule of law was also central to the first Latin American constitutions of the early nineteenth century, which followed soon after the late eighteenth-century declarations of rights by the United States and France. By this point, the humanity of colonized peoples was no longer a topic of open debate. However, an epistemic shift was underway, with a more secularized understanding of the human defined increasingly as economic

man—onto which Charles Darwin’s understanding of natural selection would subsequently be projected. Instead of colonized peoples being defined in terms of degrees of subrationality—and, hence, subhumanity—civility was linked to economic success, as a rising European bourgeoisie sought to redescribe human activity in ways that would legitimate their own ascent to hegemony.²⁷ Thus, the new declarations of rights subtly bolstered colonialism, including internal colonialism in the case of the newly independent Latin American republics: in practice, to “fit into the category of citizen, a person had to fit into requirements concerning religion, blood, color, gender, knowledge, government, property etc. as defined by European male elites.”²⁸ These observations resonate with Karl Marx’s reflections on rights in the markedly different context of nineteenth-century Europe. The extension of political rights, Marx argued, created a dualism between the abstract figure of the citizen (“man as an allegorical and moral person”) and “egotistical man” in the private sphere (“an individual withdrawn behind his private interests and whims and separated from the community.”)²⁹ What is more, the (natural) human rights that the declarations of the “rights of man and citizen” considered political rights to defend (liberty, property, equality before the law, and security) were nothing other than the rights of this particular conception of isolated, egotistical, and self-sufficient “man.”³⁰

Socialists more widely have tended to be hesitant in regarding rights as a language of reform. In the early twentieth century, some states began to canonize social rights in their national constitutions in response to working-class struggle. (Notable examples are the constitution that followed the Mexican Revolution in 1917 and that of the Weimar Republic in Germany.) Social rights crept in piecemeal in Europe until their climax after World War II.³¹ Meanwhile, in Latin America citizenship was increasingly defined in terms of social rights, even if the welfare state was to remain a distant aspiration. Nevertheless, socialists on both continents were skeptical as to whether rights could be rescued from their nineteenth-century libertarian associations, and Latin American socialists in particular argued that rights could not serve revolutionary ends or challenge the systematic inequality generated by capitalism. Even reformulations of rights as economic and social rights did not in themselves challenge inequality. After the adoption of the United Nations Universal Declaration of Human Rights (UDHR) in 1948, which enshrined social rights as international norms, the English historian and international relations theorist Edward Hallett Carr commented that without, at the very least, an equivalent emphasis on social obligations, rights were unlikely to change the equation.³²

However, here too, the ambiguity around rights hinges on the question of the human. Decolonial critics are right to highlight the colonial origins of the concept of the human at the heart of human rights, but the problem extends beyond this. As Jacques Rancière puts it in his well-known essay “Who Is the Subject of the Rights of Man?,” rights end up being allocated to categories of human symbolized as “functional parts” within the existing social order. Entitlements to speak and act are ascribed on the basis of the place and function people have within an unequal society. This includes postwar welfare states, in which politics was largely reduced to a “logic of consensus”—a process of negotiation or pursuit of technocratic fixes to ensure an optimal balance of interests within the terms of the existing order.³³ Thus, it is of little surprise that welfare states simultaneously reinforced hierarchies around race and gender, as well as class divisions, while the UDHR itself was, as Samuel Moyn notes, vague on the continuation of empire and had nothing to say about unequal distribution—within or among the sovereign states that now made up the United Nations.³⁴ New Third World states did seek to deepen international recognition of economic and social rights as part of a movement for a New International Economic Order that would enable greater equality among states, and that included proposals to subordinate multinational corporations to public authority on an international scale.³⁵ However, this movement largely placed questions of inequality within states to one side, relegating them to the pursuit of national “development.” These proposals were, in any case, rapidly sidelined as neoliberal economic orthodoxy took hold. Meanwhile, a mode of international human rights activism flourished in which rights were, once again, detached from their loose, earlier twentieth-century connections with social welfare.³⁶

Critics of the international human rights movement that emerged in the 1970s consider it a counterpart of the neoliberal reforms that devastated the lives of actually existing human beings, first in Augusto Pinochet’s Chile and then more widely, with the stringent conditions placed on aid by the World Bank and International Monetary Fund from the 1980s.³⁷ For some, there are fundamental synergies between human rights and neoliberalism because human rights actively foster forms of selfhood compatible with the imperatives of capitalism. Stephen Hopgood, for instance, has suggested that human rights were the “small print” of the vision of “global civil society” that proliferated in the 1990s. By maintaining the kernel of the autonomous individual, human rights activism became a site at which supposedly “virtuous” identities are inculcated—in particular, that of “an autonomous and morally self-sufficient person able to pursue self-authored interests”

who meets with other such individuals only to do this.³⁸ For Wendy Brown, human rights embody a false promise, a false capacity of the individual to pursue self-authored interests, because they carry conceptual baggage that disregards “the historical, political, and economic constraints in which this choice occurs.” Human rights activism, for Brown, is “not merely a tactic but a particular form of political power carrying a particular image of justice.” As such, it risks displacing the struggles and emancipatory political projects of its intended beneficiaries.³⁹

The simultaneous rise of neoliberal economics and human rights activism does not, however, indicate an inherent compatibility between the two. It was, Moyn underscores, the fact that human rights advocates lost sight of the need to curb inequality that rendered the human rights movement a “powerless companion” to neoliberalism.⁴⁰ Things begin to look more complicated, however, when we consider the efforts made by neoliberal thinkers—starting in the 1940s—to promote a specific vision of human rights entirely at odds with the UDHR and with the commitment of many of its architects to curbing inequality. As Jessica Whyte has explored at length in a recent book, the *Mont Pèlerin Society*, founded at the instigation of the Austrian economist Friedrich Hayek in 1947 to oppose socialist planning, sought from its inception to defend a vision of “human dignity” in which humans are inherently unequal and in which those most in possession of the qualities required for economic success would—and should—benefit.⁴¹ While the neoliberals rejected the Enlightenment belief in human equality, treating people equally (and so avoiding welfare and redistributive initiatives) was vital for (natural) inequalities to be perpetuated and for equilibrium to be generated through market mechanisms. This was the basis not only for opposition to socialist planning, but also for a broad-scale defense of colonialism and, from the 1970s, a rejection of Third Worldism and of demands for a New International Economic Order.⁴² Moreover, as Quinn Slobodian highlights in his intellectual history of Geneva School neoliberalism, neoliberal thought emerged after the fall of the Habsburg Empire and during the final decline of the British Empire, and one of its key problems was to think about how to safeguard global order in the absence of imperial institutions.⁴³ In the 1970s, neoliberal thinkers began to mobilize the language of human rights in opposition to demands for postcolonial redistribution, arguing that Third World governments suppressed not only the civil and political rights of minorities but also the inflow of foreign capital, private firms, and licenses for economic activities.⁴⁴ As the international human rights movement gained traction, neoliberal ideologues developed a human rights discourse geared toward

“securing the rights of investors and the wealthy in the face of challenges to their property and power.”⁴⁵ Human rights were mobilized, not to establish colonized peoples’ rights to self-determination or the rights of the poorest to basic welfare, but “to provide an institutional and moral foundation for a competitive market economy and to shape entrepreneurial subjects.”⁴⁶

It should now be clear that much of the existing critique of human rights centers on the question of the human taken to be the subject of rights. For some, the focus is on how human rights discourse takes for granted the figure of sovereign “Man” as representative of the human, with the effect that the holders of rights are presumed to conform to particular criteria of rationality; to pursue their own self-interest within a reasonable set of limits; and to exercise dominion over themselves, their property, and a natural world from which humans are presumed to be separate. For others, critique focuses on how rights are ascribed in practice to particular categories of people (e.g., workers in the context of capitalist social relations). For all the rhetorical commitment to equal rights, these categories take for granted in their very formulation a particular social order. When the rhetorical commitment to equality is removed—as it is with neoliberal thought—the subject of rights is reduced to just whoever is the right sort of human to adapt and flourish in a liberal market economy.

So far, however, these criticisms have turned on the discursive, cultural, symbolic dimension of social order. We must, however, not forget that rights are also legal categories—and that the law demands compliance rather than mere belief. The neoliberal reconceptualization of human rights did not just provide a moral foundation for neoliberal economics. It was also inseparable from proposals for legal reform, to put in place a global institutional structure privileging the rights of property and contract and the market freedom of private capital.

The centrality of law to social relations is often overlooked. It is, of course, widely acknowledged among critical thinkers that the law in liberal democracies protects private property and profit more than it does citizens. Meanwhile (as I discuss further in chapter 4), the punitive side of the legal system falls heavily on the poor. Yet at the same time, the law exercises its power in a manner quite distinct from brute force or arbitrary power: it claims to represent a series of universal rules, shaped through moral discourse and applied on the basis of a principle of equity. For instance, the commodification of the “free” worker’s labor power under a system of wage labor relies on the “*fiction juris* of a contract” between workers and employers, formally grounded in principles of “liberty” and individual “right” (which, as Marx

saw so clearly, masks the unfreedom of workers who are compelled to sell their labor power to survive).⁴⁷ Law is not just epiphenomenal to capitalist relations, superstructural to a separate material base, a means through which capitalism is regulated and violations of property rights are enforced. It is part of the fabric of social relations in a manner that makes it impossible to draw any neat distinction between material “base” and ideational “superstructure.” Relations of production would be, as E. P. Thompson put it, “inoperable” without law.⁴⁸ For some—most notably, the Russian legal theorist Evgeny Pashukanis—the very form of law is capitalist. In Pashukanis’s account, the legal form was the specific form of social regulation necessary to deal with the possibility of disputes among the formally equal, isolated, and egotistical individuals implied by commodity exchange, and it is no coincidence that the emergence of capitalism was coeval with the emergence of “Man” as a bearer of rights.⁴⁹ Pashukanis’s view that law needed to “wither away” did not make him popular with the Soviet regime, which eventually had him executed. Nor would it find favor with many human rights advocates, for whom law—and, specifically, the prosecution of perpetrators of human rights abuse—is central. Nevertheless, Pashukanis’s theory of law has underpinned a skepticism among Marxist legal scholars toward the idea that human rights can be the basis of any form of emancipatory struggle.⁵⁰

Rights in Resistance

The arguments of those who reject human rights because of the tight relations between law and capitalism can be captured with the poet Audre Lorde’s metaphor that “the Master’s tools will never dismantle the Master’s house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”⁵¹ Lorde, however, was referring to white feminists’ using the tools of racist patriarchy against that same patriarchy as a result of white feminists’ exclusion of Black and lesbian feminists from debates on feminist philosophy. Law might be better seen not merely as the “Master’s tools,” but as the fabric of “the Master’s house,” part of the very structure that is to be dismantled and reassembled into something able to accommodate those previously excluded, without (to stretch the metaphor horribly) the devastating ecological impact of the Master’s way of living. After all, as Thompson emphasized in a critique of schematic Marxist accounts, law was as deeply imbricated within precapitalist agrarian political economy as it is within capitalism, and it is through conflict over

law (e.g., indefinite agrarian use rights versus landowners' property rights) that class struggle has played out and a particular vision of "the law" has been consolidated.⁵²

Such insights do not only caution us against a crude economism based on the idea that we can separate ideas from material structures. They also remind us that the legal categories constitutive of capitalist relations are cultural artifacts that rely on particular conceptions of what it is to be human—who can be included in that category and to what extent. While the subordination of wage labor to capital relied on a fiction of the "free" individual, chattel slavery (sidelined in Marx's account of capitalism but equally central to its rise) was justified and institutionalized through the legal codification of a category of person who was not a "free" worker but a commodity, stripped of any claim to legal personality.⁵³ Thus, as Gurinder Bhambra and John Holmwood emphasize, all of the complex forms of subordination of labor to capital (wage labor, slave labor, family labor, and so on) are "socially constructed (and resisted) and politically regulated."⁵⁴ What is more, legal categories—and the social relations to which they give form—have come about through struggle and conceptual innovation. From this perspective, there is nothing about the legal form that requires that the legal subject be defined in terms of the "free" rational individual. Indeed, as I show in chapter 4, a great deal of jurisprudential and philosophical argument was required to put the rational individual at the heart of law. By the same token, to reduce law to a mask for domination is to overlook how the idea of rule of law, as a guarantee against tyranny, and the idea of the free individual at the heart of modern law are also products of centuries of struggle against absolutism and arbitrary power.⁵⁵ Indeed, for Thompson it was precisely law's "logic of equity" that has made it a valuable tool of struggle: "The rulers were, in serious senses, prisoners of their own rhetoric: they played the game of power according to rules which suited them, but they could not break those rules or the whole game would be thrown away."⁵⁶ The law had to be seen to apply to everyone. Thus, writes Thompson, law, "in certain limited areas," was "a genuine forum within which certain kinds of class conflict were fought out."⁵⁷ Likewise, as José-Manuel Barreto reminds us, the foundations of human rights law and theory "are to be found not only in the Enlightenment, but even before that, in resistance to the display of the capacity for destruction of imperialism—the dark side or the other constitutive pillar of modernity."⁵⁸

These histories of struggle over both the form and the content of law need to be borne in mind when we consider that human rights—including legal struggles that invoke human rights—have been a visible thread binding

the struggles of the dispossessed. What is more, the impetus here has not come merely from the world of international NGOs and “cause lawyers” but from within struggles of anticapitalist, anti-imperialist, and decolonial social movements that are keenly aware of the contradictory politics of rights.⁵⁹ In his assessment of the “endtimes of human rights,” Hopgood presents the demise of the human rights sanctioned by the institutions of liberal global governance as freeing space for human rights as weapons of the weak against violence and deprivation. For the oppressed, he suggests, any language is useful that helps to raise awareness, generate transnational activism, put pressure on governments, facilitate legal redress, and attract funds for campaigning (human rights, solidarity, love, or whatever).⁶⁰ The question arises, however, as to what it means for a language of resistance to be “useful.” What formulations such as Hopgood’s miss is the capacity for abstract ideals to be taken up in ways that bolster the very forms of power that those in struggle seek to contest. This may be the case even when these interventions involve an apparently progressive recognition of those previously not recognized, as we saw with the extension of rights of Indigenous peoples in the decades after the Conquest. In *Red Skin, White Masks*, Glen Coulthard underscores not only that recognition was part of colonial politics but that “the politics of recognition in its contemporary liberal form promises to reproduce the very configurations of colonial, racist, patriarchal state power that Indigenous peoples’ demands for recognition have historically sought to transcend.”⁶¹

Another set of arguments, more nuanced than Hopgood’s regarding the potential of human rights as a weapon of the weak, has focused on how rights might be used innovatively or disruptively “from below.” Boaventura de Sousa Santos has proposed that human rights should be reconceptualized as multicultural via mutual critique of different cultures’ conceptualizations of human dignity. This, he suggests, should mobilize the version of each culture that represents its “widest circle of reciprocity,” reappropriating and subverting cultural formulations that legitimate oppression.⁶² In a recent book, Sumi Madhok draws on engagement with mobilizations in India and Pakistan to show how subaltern struggles use human rights to enact radically different ideas of justice, politics, and citizenship in struggles for rights to food, to gender and caste equality, to ancestral forests, and in working-class struggle against the military. Madhok combines ethnographic investigations with political philosophy not merely to insist—as Santos does—that human rights *can* be conceptualized as multicultural, but also to argue that decolonization of human rights demands a reckoning with the multiple forms of world making at play within actual struggles for rights.⁶³ Robin Dunford has likewise

shown in relation to transnational peasant struggles how subaltern struggles can be sites at which human rights discourses are created, and that these alternative understandings of rights can “travel” to shape global norms—albeit always with the risk of co-optation by global institutions.⁶⁴

Struggles for the Human also combines ethnographic engagement with political philosophy to consider how possibilities for human rights might be expanded by attention to social movement struggles outside the “West.” At the same time, however, I want to consider how human rights struggles “from below” pose a challenge not only to Eurocentric histories and theories of rights, but also to the ways in which prevailing legal and policy narratives draw lines between worthy and unworthy lives. It is a well-worn claim that demands for rights can challenge and disrupt prevailing normative schemas (rather than just demanding that more be included within existing norms).⁶⁵ However, while much of the second part of this book focuses on the disruptive potential of rights, there are two aspects that come into the foreground as a result of thinking through actual struggles. First, not all such forms of disruption are equivalent. “What are we up against?” and “What are the broader dynamics that have necessitated this struggle at this juncture?” are unavoidable questions for actual human beings resisting the depredations of capital on the ground. On the one hand, if law—and the moral economies of representation shaping law—are constitutive of capitalist relations, then struggle over law and legal categories is arguably necessary (though not sufficient) to struggles for alternative political economies. On the other hand, however, to grasp what is at stake in struggles over rights, we also need a sense of the material relations of power and violence that are both constituted and concealed through the law. What is missed by an overemphasis on shifts and dislocations within the field of representation is the continuity in the wider terrain of capitalist extraction, as well as the capacity of capital to integrate what once appeared as transgressive. The “privatized” human rights that I discuss in this book can be considered an extreme example of capitalism’s absorption of an apparently disruptive articulation of rights. Yet the problem runs deeper. Whether an emancipatory logic can be attributed to the disruptive or transgressive depends, as Emilios Christodoulidis emphasizes, on whether this has “the capacity to transform the power structure as a whole.”⁶⁶ In other words, what matters is immanent critique in the Marxist sense: pushing the system beyond what can be contained within the order of capital and its economy of representation. Undermining the selective recognition of “the human” may be an important part of this, but we must

consider how such disruptive appeals to rights are bound up with wider social movement struggles and pedagogical practice.

The second aspect that comes to the fore as a result of attention to struggle is the question of ethics, of the relation between politics and its outside, between the immanent and the transcendent. Traditionally, philosophical accounts of human rights have tended to rely on a humanist position, justifying the universalism of rights by grounding them in the inherent dignity of the sovereign, rational individual. For some, following Wynter's insistence that liberatory praxis must involve resignifying what it is to be human, the question of grounds is superseded by the task of decolonizing the praxis of being human by breaking with the "master code of symbolic life and death" that justifies expropriation and exploitation.⁶⁷ For others, the response has been to rethink the normative underpinnings of human rights as immanent to the practices through which those rights are asserted, or—in Judith Butler's influential formulation—as a response to a constitutive vulnerability of all of us *qua* human that demands a "more robust universalization of rights" at the same time that it requires a resignification of the norms through which humanness is recognized.⁶⁸ The ethnographic lens of this book leads me to a slightly different approach. Instead of trying to theorize ethics in advance, I begin from reflection on how ethical coordinates are shaped in struggles that seek to unsettle the concept of "the human" that has underpinned capitalist and colonial relations. From there, I consider how we might approach human rights as an expression of a deeper ethical call that implies the construction of alternative political economies, as well as contestation of renderings of "the human" that mask and underpin systemic violence.

Thinking Through Struggle

This book, as I have said, develops its concepts through many years of involvement with the struggles of grassroots organizations, both at their sites of emergence in Colombia and through associated transnational campaigns. The primary vehicle of my involvement since about 2005 has been la Red de Hermandad (Network of Brotherhood/Sisterhood, known as la Red), a loose grouping of peasant, Indigenous, Black, labor union, and human rights organizations established in 1994, at a juncture at which massacres and selective killings by state-backed paramilitaries were proliferating in the context of neoliberal reforms. These organizations came together, in part, to

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better coordinate their activities, which included projects documenting the atrocities; an “observatory” to monitor the involvement of multinational corporations in abuses; and numerous struggles over land, livelihood, and labor conditions across the country. However, a core aim of the network was also to give international visibility to what was happening. Thus, la Red also incorporated solidarity collectives from various European countries on the principle of “horizontal relations among peoples.” From the outset, la Red’s internationalism was conceived as an alternative to mainstream humanitarian and developmentalist assistance. There is a word for the latter in Spanish—*asistencialismo* (lit., assistance-ism, which connotes helping but not standing alongside and being part of the struggles of others). European groups in la Red mobilize contacts when someone is killed or threatened and promote international campaigns such as the boycott of Coca-Cola that was launched by the Colombian Food Workers Union after the murder of several of its members. However, central to the network are the activities of *internacionalistas* (internationalists) across Colombia, who provide protective accompaniment for human rights defenders, labor unionists, and rural communities in areas with particularly high levels of armed repression. Accompaniment implies a tactical mobilization of the divisions between lives that are protected and those that are not within the racialized matrices of global capitalism (sometimes described as being a sort of “unarmed body-guard”).⁶⁹ Yet unlike some international NGOs, which offer accompaniment on strict principles of political neutrality, accompaniment within la Red is provided on the basis of political affinity, with emphasis placed on *internacionalistas* working as part of the social movement and sharing relevant skills (anything from research to installing electrical wiring) while learning from Colombian organizations. In my case, this involved contributing to research and writing—for instance, by writing human rights reports, helping prepare legal cases, and cowriting a book on the oilfields of BP (formerly British Petroleum) with an organization set up by peasant leaders who had been forcibly displaced from the region. In la Red’s lexicon, this day-to-day work alongside Colombian organizations is also sometimes referred to as accompaniment: part of a practice of walking alongside others in struggle.

The rejection of *asistencialismo* and commitment to horizontal relations of solidarity is central to what I will characterize as la Red’s decolonial ethos. Organizations in la Red rarely describe themselves as involved in a decolonial struggle, but the concept pervades their activities, even if the word does not. While human rights and law-based struggle are central to la Red’s activities, the network is a site of persistent critique of legacies of colonial-

ism that shape contemporary capitalist relations, as well as of the associated epistemic frameworks that characterize dominant narratives of development, law, and human rights. That said, by referring to decoloniality as an ethos, I also want to highlight the complexity and plurality of these struggles rather than imply that they can be neatly contained within a framework derived from decolonial thought. I started reading decolonial scholarship when I was already involved with la Red in Colombia and remember recognizing much in what I read that was already part of day-to-day conversation on the ground. Peasant, Indigenous, and Afro-Colombian critiques of the violence of development, for instance, found resonance in the analyses of Arturo Escobar (who acknowledges the influence of Afro-Colombian thought and whose earlier genealogy of “development” has, in turn, influenced Colombian social organizations).⁷⁰ Mignolo’s “border-thinking” captured the sort of dialogue or threshold between ways of knowing in meetings where, for example, one person would invoke the concept of popular sovereignty over natural resources, while another would highlight the colonial origins of the term and argue in favor of self-determination based on equilibrium between humans and nature.⁷¹ Yet all this is lived, often implicit, permeating conversation and praxis without any of the neologisms (*coloniality*, *pluriversality*, and so on) that pervade the appropriation of Indigenous and social movement thought within the academy. By the same token, the network has a distinctively modern intellectual heritage. There is a strong Marxist current of analysis running through the heart of the network’s activities. Likewise, anarchist and feminist concepts, and even tropes of liberal political theory, are combined within a plural intellectual constellation that shapes—and is shaped by—struggle. It is worth underscoring, too, that this plurality and intersection of intellectual traditions is not a specifically Colombian phenomenon but something reflected in the struggles of grassroots movements more widely in Latin America.⁷² The Aymara/Bolivian sociologist Silvia Rivera Cusicanqui condemns lauded “decolonial” scholars in the North American academy for neglecting these dynamics in favor of extractivist intellectual production that has commodified the thought of social movement intellectuals, offering it up for consumption in romanticized and reified terms that occlude the counterhegemonic strategies and often characteristically modern aspects of Indigenous struggles.⁷³

Rivera Cusicanqui’s attack on “decolonial” intellectuals is part of a wider critique of a “political economy of knowledge” in which I have one foot firmly planted simply by virtue of receiving a salary from a British university and publishing in English with Duke University Press.⁷⁴ *Struggles for the Human*

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began as a contribution to a conversation that is ongoing—in Colombia and within movements resisting capitalist extraction in many other parts of the world—about the place of human rights and legal strategy in struggles against the depredations of what we might (to go with a now well-established neologism) call capitalist coloniality. I have had an odd positionality in these encounters, being fully part of la Red during the early years of this project as an *internacionalista*—a role that la Red was set up to incorporate—while also, by virtue of that role, being an *extranjera* (foreigner), *uropea*, someone from outside whose involvement was enabled at that time only by funding for a doctorate. I was engaged in research and writing directly for and with Colombian organizations. At the same time, however, I was also doing my own research and writing in a political environment that is itself rich in public intellectuals and popular educators who provided an intellectual community as well as being *compañerxs* (“friend-comrades,” expressed in gender-neutral form). From time to time, I came close to interviewing people I was working with, but even then what might have been planned as an informal interview became, in reality, a conversation fueled by beer, wine, or *aguardiente* (cane liquor), recorded (by consent) so that I could remember what we talked about in the morning without having to rely on sparse or illegible notes. Most of these more focused discussions involved going more deeply into the history or experiences of a particular struggle or organization than was possible in the context of day-to-day working relationships. While drinking in the presence of a voice recorder might better be described as a social activity than a research “method,” there is value in sociability (in Deepak Nair’s terms “playful social interaction pursued *as if* for its own sake”) for creating shared understandings and relationships as comrades and interlocutors.⁷⁵ Indeed, my thinking was shaped even more profoundly by the far greater number of conversations (during drinks, meals, long car journeys through the mountains) that took place spontaneously, intermittently, picking up on threads of earlier conversations, after meetings, or because one of us had been reflecting on something the other had said previously. From other interactions, I have learned more about courage, endurance, and political imagination in a way that is hard to convey within the conventions of academic writing. Certainly, the process of thinking behind this book has been inseparable from relationships with people with whom I have worked over the years, from a desire to listen, to think in conversation, which, as Sara Motta points out, also requires self-critical “listening” to one’s own internal narratives.⁷⁶ It has also been inseparable from anger, grief, fear. All of the analysis here has been shaped, in ways that are difficult to express, by the first student protest I attended in

Colombia, when police fired tear gas and rubber bullets at students at the Universidad del Valle and later stormed the campus, shooting dead twenty-two-year-old Jhonny Silva, who could not run away with the others because of his disability. The few days after that, working with human rights defenders, was when I think both the limits and the necessity of human rights really hit home.

Thus, the starting point of this book is a relational and embodied approach to knowledge production akin to what Diana Taylor calls *acuerpamiento*—“learning of a situation by living it in the flesh,” connecting knowing to sustained and reflective action in the company of others; to relationships of care, of listening, of *hermandad* (brotherhood/sisterhood).⁷⁷ Yet the book itself has been written in an uncomfortable in-between space, on the borders between lifeworlds and knowledges—mostly in Britain while continuing my involvement in solidarity work, visiting Colombia for shorter periods and maintaining online relationships with *compañerxs* there. My position within the political economy of knowledge has given me paid time to write, reflect, and read, but it also comes with limitations. The aim of this book was never to simply describe how social movements approach human rights; nor do I seek to speak for or replicate the ideas of those at the heart of these struggles. Still, much of this book has been written at a distance, back in Britain, where the day-to-day conversations I had with people when I was living in Colombia were not possible as my ideas developed. I do not think that this is entirely a bad thing. Gaining distance can be vital to reflection. Michel Foucault once referred to critique in terms of a “distant view,” and this book, as a political and ethical inquiry, has demanded a step back from the immediate concerns of struggle to reflect on deeper questions.⁷⁸ The challenge that accompanies this, however, is how to step back in this sense without betraying knowledges shaped in struggle and without losing sight of the “big picture” or of what is at stake.⁷⁹

Distance in this case, however, has been physical, as well as intellectual, which means no longer having the immediate sense of things that comes from being with people and working directly together. Thus, there has been an increasing temporal distance that inevitably further dislodges my account from the time when some events and encounters that I narrate took place. This has been exacerbated by other aspects of my position within the political economy of knowledge: being in a British university, where constant funding squeezes limit the possibility of travel, as well as being a full-time solo parent, both unable to fund the costs of my daughter traveling with me to Colombia and unwilling to subject her to a context where my own political involvement

had even the slightest possibility of generating risk for her (a freedom that I recognize does not exist for *compañerxs* in Colombia who have had their own children targeted as a result of their political activity). This is not to say that I have been entirely disconnected during this period of writing, or that I have been unable to discuss many of the ideas here with people in Colombia. A fellowship and other smaller research grants have made it possible to visit Colombia, catch up with *compañerxs*, and discuss ideas and solidarity initiatives on several occasions since 2014. In addition, my discussion of strategic appeal to human rights owes much to my involvement in work surrounding Gilberto Torres's case in the London High Court against BP for his kidnapping and torture as a result of his trade union activities. Conversations with Torres while I accompanied him on a speaking tour in Britain in 2015 led to a shared project on the politics of strategic litigation, in which much of the content of the first five chapters of this book was discussed in workshops with social movement leaders and lawyers during 2017–19—a process that Torres described as “building collective critical thought.”⁸⁰

It is important to emphasize that the in-between space from which I have written this book has also meant that I am writing for another set of interlocutors: an academic community, publishing mostly (albeit not exclusively) in English. In addition to drawing inspiration from the lived thought at play within Colombian social movements, *Struggles for the Human* has been informed by close engagement with texts from across the array of disciplines referred to earlier. When I write in the first-person plural, I do not write for a pre-formed “we.” That is to say, I do not appeal to a scholarly “we” whose frameworks and questions define the conditions in which thought can be validated.⁸¹ Nor do I write for a “we” in resistance, whose field of action is already neatly delineated.⁸² I approach writing as an attempt to enlist the reader into a narrative and thus construct a “we”—at least momentarily. The decision to publish this book in English in the first instance reflects my own position within a global political economy of knowledge that demands publications and citations to such an extent that even my Colombian academic interlocutors publish mostly in English. I also think and write better in English, and the Colombian poet and author Álvaro Marín, a dear friend who had offered to help me finesse a simultaneous Spanish version, was found dead shortly before I submitted the book proposal. It thus seemed better to rely on an Anglophone-weighted political economy of knowledge to facilitate a Spanish translation. Nevertheless, this book can be read as an attempt to bring together two sets of interlocutors and to insert insights shaped through

struggle into traditions of scholarly writing that so often fix and reify ideas or legislate for resistance on the basis of theoretical reflections about the nature of capitalism, law, the coloniality of power, or even the inexorable fluidity of power-knowledge relations.

Thinking through engagement with specific struggles, rooted in specific historical and material conditions, makes it difficult to read the politics of rights off a fixed framework at the same time that it demands attention to the big picture of an extractive and exploitative political economy whose violence is underwritten by a global configuration of legality. Attention to how struggles have been neutralized or contained casts light on how what might look humanistic or emancipatory in fact is not (Marín, in his book with Cárdenas, wrote about the propensity of global institutions and compliant NGOs to *defender la vida diseminando la muerte* [defend life by spreading/sowing death]).⁸³ Attention to struggle can also counter tendencies to confine our understandings of the potential of human rights or strategic appeals to law within the parameters of pre-given theoretical commitments. It is also, sometimes, within attempts to articulate alternative social relations that deeper human possibilities are revealed.

Outline of the Book

Chapter 1, “Necroeconomics: Violence, Law and Twenty-First-Century Plunder,” builds on the insight that law and its underlying moral economy are constitutive of economic relations. It sets the context for the discussion of human rights in the next chapters via a recalibration of how we understand violence in relation to law. Colombia is an extreme example of how the violence of armed repression intersects with less visible violence inherent in the ordinary operation of capitalism, a point that I seek to bring home via a juxtaposition of the situation in Colombia with neoliberal reforms in Britain. The myth of a neutral, natural legal order conceals these deeper dynamics of violence, with liberal legal narratives of freedom and equality embodying moral reference points that are at odds with the political economy within which they are asserted. Yet while classical liberal thinkers attempted to resolve these contradictions by separating the principles for moral and economic action, neoliberalism was, from its inception, both a moral and a legal doctrine. With the globalization of neoliberal legality, the very meanings of democracy and ethics have been transformed. Deadly economic policies are

often rationalized in terms of law and ethical discourse, a fact that should incite caution about how human rights might be taken up within this Orwellian scenario.

Chapter 2, “Deadly Colonial Ethics: Development Policy-Speak and Corporate Responsibility,” identifies these dynamics within the emergence of the corporate code of conduct for human rights in the late 1990s. Voluntary corporate responsibility for human rights, I maintain, represents a privatization of human rights unanticipated by the UDHR or by Third Worldist efforts to harness human rights to the taming of corporate power in the 1970s. To arrive at this position, I trace the trajectory of peasant struggles at what might be considered the birthplace of the contemporary configuration of voluntary corporate responsibility for human rights: BP’s Colombian oilfields. Drawing on my own involvement in a project seeking to recover historical memory of what took place, I make the case that voluntary corporate responsibility sustains a moral discourse that equates resistance with irrationality or subversion, thus rationalizing death in the name of “development.”

Chapter 3, “Privatizing Workers’ Rights: Social Partnership in a Neoliberal World,” picks up on the story of the privatization of rights almost a decade later, in the mid- to late 2000s. Once again, I trace the trajectory of a specific struggle—in this case, the international campaign against Coca-Cola launched by the Colombian Food Workers Union following murders of union leaders and other grave abuses of human rights. The puzzle that motivates my inquiry is how it was possible that the global union for the food sector campaigned *against* the Colombian Food Workers. Reluctant to allow companies to set their own codes of conduct, global unions had begun to promote “global framework agreements,” negotiated with multinational corporations on behalf of unions worldwide. While these agreements are said to embody a global version of postwar “social partnership” between labor and capital, the rationale for protecting rights within so-called global social partnership is “market”-based, separated from the social-democratic legal frameworks that defined postwar social partnership. Through attention to the trade union-led campaign against the Colombian Food Workers, I explore how this prevailing mode of protecting workers’ rights is part of a scenario in which managerial logics of audit prevail over concerns about past abuses, while violations of workers’ human rights cease to feature as justiciable wrongs.

Chapter 4, “Elusive Justice: Capital, Impunity, and Counterlegality,” moves on another decade to consider current renewed efforts to use law to combat the problem now frequently referred to as “corporate impunity.” Although such efforts risk legitimating the legal fiction of the “corporate per-

son” while turning compensation payments into externalities to be brought into companies’ cost-benefit analyses, it is important to consider how social movements that are fully cognizant of these problems nevertheless make strategic use of law. I draw here on my ongoing involvement with the struggles of Colombian social organizations to show how law can be an important site of immanent critique of both law and capital via the articulation of “counter-legality” that draw attention to violence that constitutes the existing legal order. Impunity appears here as a different sort of problem from that given shape within mainstream human rights narratives. Human rights abuses are neither conceptualized as individual acts nor narrated as past events. They are exposed as an ever present possibility with roots in the (mostly legal) operation of capitalism. In this light, struggles over corporate impunity demand that we address the relationship between violence and legality, between past atrocities and a present order of things in which corporations are declared ethical actors who can show “due diligence” for human rights.

Chapter 5, “From Pernicious Optimism to Radical Hope: Human Rights beyond Abstract Values,” draws together the threads of the analysis so far, returning to the question of human rights as an ethical and political vocabulary. I suggest that the privatization of human rights, as add-ons to a political economy bringing widespread premature death to actually existing human beings, reflects an approach to ethics now predominant among the self-proclaimed representatives of global civil society, which I denote “pernicious optimism.” In this prevailing ethical orientation, the fetishism of abstract values facilitates disavowal of the consequences of capitalism, of the ways in which ordinary law and economic policy condemn many to untimely death. I contrast this to how human rights are mobilized to expose the violence of capital and law within a wider series of struggles where rural populations have sought to reclaim land and build ways of sustaining and reproducing life that are less harmful, less predatory on people and planet. These struggles, I suggest, embody a radical hope that is antithetical to the pernicious optimism of much cosmopolitan ethics. The life toward which these struggles strive is an indistinct, perhaps ever-receding horizon, but it is embodied in an ethical and spiritual disposition toward others and the natural world that implies the transformation of the human. There is nothing programmatic or triumphalist about these initiatives, no expectation that their struggles will eventually prevail. There is, however, a commitment to continuing to try and transform the world in the face of devastation, embodied in the refusal of an intolerable reality, reaching toward a sense of the good that remains yet to be defined.

It should be clear by now that it makes little sense to assess the politics of human rights in the abstract. The issue is not to decide “for” or “against” human rights but to consider how “the human” is configured as the subject of rights and how harm and violence are understood in relation to this. In chapter 6, I sketch the contours of an “insurgent humanism,” in which the human is redefined in tension with persistent critique of the relations of violence that destroy and negate life. The sense of the good to which the struggles discussed here appeal is not rooted in an inherent human dignity or in qualities of “the human” deemed morally valuable within a modern/colonial economy of knowledge. Yet this does not mean that the question of the basis of ethics is superseded. Rather, it invites a reconsideration of the relations between the immanent and the transcendent, between politics and its outside. In conversation with the moral philosophy of Iris Murdoch, I suggest that the sense of good inspiring a radical hope has no vocation to be caught directly within the categories of language. It is known, not only through critical sensitivity to the effects of power and violence, but also through a loving attention to the world and to the struggles of others.

DUKE

Introduction

- 1 Cárdenas and Marín, *La biodiversidad es la cabalgadura de la muerte*, 19.
- 2 Cárdenas and Marín, *La biodiversidad es la cabalgadura de la muerte*, 13.
- 3 Rodríguez Garavito, *Extractivismo versus derechos humanos*.
- 4 Klein, *The Shock Doctrine*, 118–21.
- 5 Hopgood, *The Endtimes of Human Rights*.
- 6 Cf. Tate, *Counting the Dead*.
- 7 Khoury and Whyte, *Corporate Human Rights Violations*, 1.
- 8 See, among others, Baars, “It’s Not Me, It’s the Corporation”; Coleman et al., *Righting Corporate Wrongs?*; Khoury and Whyte, *Corporate Human Rights Violations*.
- 9 This reflects anthropological traditions of “global” or “multisited” ethnography: see Burawoy, “The Extended Case Method”; Marcus “Ethnography in/of the World System.”
- 10 L. Gordon, “Shifting the Geography of Reason in an Age of Disciplinary Decadence,” 98.
- 11 Golder, “Beyond Redemption?”
- 12 See, e.g., Wenar, “The Nature of Rights.”
- 13 See Sikkink, “Human Rights.”
- 14 Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom,” 306.
- 15 For analysis of the genesis of Man from the rational subject of Renaissance humanism to the biological, Darwinian conception that remains predominant, see Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom.”

- 16 Dussel, *Filosofía de la liberación*.
- 17 Mbembe, "Necropolitics," 23–24.
- 18 Maldonado-Torres, *Against War*, 4.
- 19 Abello, *Violencias y culturas*, 17–19; Jahn, "One Step Forward, Two Steps Back," 630–31.
- 20 Suárez-Krabbe, *Race, Rights and Rebels*, 3–4.
- 21 De Vitoria, "The First Reflection of the Reverend Father," xii.
- 22 De Vitoria, "The First Reflection of the Reverend Father," xiii–xiv.
- 23 Mignolo, "Who Speaks for the Human in Human Rights?," 50.
- 24 Rojas-Páez, "Whose Nature?," 7. See also Vázquez, "Translation as Erasure," 37–38.
- 25 Shilliam, *Race and the Undeserving Poor*, 6, 32–58.
- 26 Federici, *Caliban and the Witch*, 186–200.
- 27 Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom," 306–21. See also Mignolo, "Who Speaks for the Human in Human Rights?," 52–54.
- 28 Suárez-Krabbe, *Race, Rights and Rebels*, 93.
- 29 Marx, "On the Jewish Question," 62, 64.
- 30 Marx, "On the Jewish Question," 59–61.
- 31 Moyn, *Not Enough*, 45–67.
- 32 Carr, "Rights and Obligations."
- 33 Rancière, "Who Is the Subject of the Rights of Man?"
- 34 Moyn, *Not Enough*, 59–61. For discussion of the racialized and colonial nature of postwar welfare states, see Bhambra and Holmwood, "Colonialism, Post-colonialism and the Liberal Welfare State."
- 35 Moyn, *Not Enough*, 116.
- 36 Moyn, *Not Enough*, 109–18.
- 37 See Klein, *The Shock Doctrine*, 118–21.
- 38 Hopgood, "Reading the Small Print in Global Civil Society."
- 39 Brown, "The Most We Can Hope For . . ."
- 40 Moyn, *Not Enough*, chap. 7; Moyn, "A Powerless Companion."
- 41 J. Whyte, *The Morals of the Market*. See also J. Whyte, "Powerless Companions or Fellow Travellers?"
- 42 J. Whyte, "Powerless Companions or Fellow Travellers?," 17–20.
- 43 Slobodian, *Globalists*.
- 44 J. Whyte, "Powerless Companions or Fellow Travellers?," 24.
- 45 J. Whyte, *The Morals of the Market*, 226–27.
- 46 J. Whyte, *The Morals of the Market*, 227. See also Slobodian, *Globalists*, chap. 4.
- 47 Marx, *Capital*; D. Whyte, "Naked Labour," 59–60.
- 48 Thompson, *Whigs and Hunters*, 204.
- 49 Pashukanis, *Law and Marxism*. See also Miéville, *Between Equal Rights*, chap. 3.
- 50 See, among others, Baars, "It's Not Me, It's the Corporation"; Miéville, *Between Equal Rights*.
- 51 Lorde, *The Master's Tools Will Never Dismantle the Master's House*, 19.

- 52 Thompson, *Whigs and Hunters*, 203–4, 208.
- 53 Shilliam, *Race and the Undeserving Poor*, 13–15.
- 54 Bhabra and Holmwood, “Colonialism, Postcolonialism and the Liberal Welfare State,” 579.
- 55 Thompson, *Whigs and Hunters*, 206.
- 56 Thompson, *Whigs and Hunters*, 263.
- 57 Thompson, *Whigs and Hunters*, 207.
- 58 Barreto, “Introduction,” 21.
- 59 Baars, “It’s Not Me, It’s the Corporation.”
- 60 Hopgood, *The Endtimes of Human Rights*, viii.
- 61 Coulthard, *Red Skin, White Masks*, 3.
- 62 Santos, “Human Rights as an Emancipatory Script?”
- 63 Madhok, *Vernacular Rights Cultures*.
- 64 Dunford, *The Politics of Transnational Peasant Struggle*. See also Dunford and Madhok, “Vernacular Rights Cultures and the ‘Right to Have Rights.’”
- 65 In his well-known discussion of the subject of rights, Rancière emphasizes that there is an inherent openness and disputability to political ideals, and that the very gap between the abstract human and possible subjects of rights makes it possible to interrupt the schemas that define who counts as a subject of rights. Costas Douzinas has coined the term *right-ing* for this disruptive aspect of human rights. *Right-ing* connotes an open-ended process of invention, “like-writing,” that occurs within struggles for rights. See Douzinas, *The End of Human Rights*, 215–16; Rancière, “Who Is the Subject of the Rights of Man?,” 304.
- 66 Christodoulidis, “Strategies of Rupture,” 7.
- 67 Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom,” 263. See also Odysseos, “Prolegomena to Any Future Decolonial Ethics”; Tsantoulas, “Sylvia Wynter’s Decolonial Rejoinder to Judith Butler’s Ethics of Vulnerability,” 168–77.
- 68 J. Butler, *Frames of War*, 29.
- 69 *Unarmed Bodyguards* is the title of the handbook of the London-based NGO Peace Brigades International.
- 70 See Escobar, “Development, Violence and the New Imperial Order.” Escobar’s seminal work on the genealogy of “development” is *Encountering Development*, translated in Spanish as *La invención del tercer mundo*.
- 71 See Mignolo, *Local Histories/Global Designs*.
- 72 See, among others, Delgado, “*Suma Qamaña* as a Strategy of Power”; Rivera Cusicanqui, “*Ch’ixinakax utiwa*,” 95–97.
- 73 Rivera Cusicanqui, “*Ch’ixinakax utiwa*,” 101–4.
- 74 Rivera Cusicanqui’s emphasis on a “political economy” of knowledge is a counter to Mignolo’s notion of a “geopolitics of knowledge.” This is not only because such a “geopolitics” is contradicted by the colonialism of much “decolonial” intellectual practice but also because “it is necessary to leave

the sphere of the superstructures to analyze the economic strategies and material mechanisms that operate behind discourses”: Rivera Cusicanqui, “*Ch’ixinakax utiwa*,” 102; cf. Mignolo, “The Geopolitics of Knowledge and the Colonial Difference.”

- 75 Nair, “Sociability in International Politics,” 197.
- 76 Motta, *Liminal Subjects*, 46–50.
- 77 D. Taylor, *¡Presente!*, 2.
- 78 Foucault, “For an Ethic of Discomfort,” 448.
- 79 On the need to step back in this sense from struggle as part of a praxis of engaged scholarship while thinking beyond Foucault’s ethos of critique, see Coleman, “Ethnography, Commitment and Critique,” 267–69, 275–78.
- 80 The discussion in the workshops is summarized in Coleman et al., *Cómo reparar las injusticias cometidas por los empresarios*, previously published in English translation as *Righting Corporate Wrongs?* See also my reflections on this project in chapter 4 in this volume.
- 81 Cf. Foucault, “Polemics, Politics, and Problematizations,” 385.
- 82 Cf. J. Butler, “What Is Critique?,” 3.
- 83 Cárdenas and Marín, *La biodiversidad es la cabalgadura de la muerte*, 11.

Chapter One. Necroeconomics

- 1 Amnesty International USA, “Impunity.”
- 2 Cárdenas and Marín, *La biodiversidad es la cabalgadura de la muerte*, 11.
- 3 Vega Cantor, *¡Sindicalicidio!*
- 4 See, e.g., Escobar, “Displacement, Development and Modernity in the Colombian Pacific,” 161. The most detailed, fieldwork-based study of paramilitary strategy available is Ó Loingsigh, *La estrategia integral de los paramilitares en el Magdalena Medio*.
- 5 Brodzinsky, “Terrorism and Bananas in Colombia”; Kovalik, “Lawyer for Chiquita in Colombia Death Squad Case May Be Next US Attorney General.”
- 6 Amnesty International, *A Laboratory of War*, 6.
- 7 See, e.g., Gillard et al., “BP Hands Tarred in Pipeline Dirty War.”
- 8 See Carson et al., “Gilberto Torres Survived Colombia’s Death Squads.”
- 9 See Giraldo and Laverde, *Casanare*, 13.
- 10 Sindicato Nacional de Trabajadores de la Industria de Alimentos (SINALTRAINAL)—literally, the National Union of Food Industry Workers but abbreviated in this book as the Colombian Food Workers Union.
- 11 SINALTRAINAL, “Genocidio en Carepa”; SINALTRAINAL, “La transnacional Coca-Cola y el paramilitarismo en Colombia”; conversations with displaced members of the union, April 2006.
- 12 Conversations with union leaders in Barranquilla, September 2006. See also Collingsworth et al., *Complaint Submitted to the US District Court*.