Race, Social Struggles, and 'Human' Rights: Contributions from the Global South

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Many contemporary social movements in Latin America base their political projects upon a critique of colonialism or coloniality, and point to the problem of racism that lies at the core of human rights thinking. This article further develops these critiques by discussing two important antecedents to contemporary human rights thinking. The first concerns the construction of the hierarchical category 'human' during the conquest and colonization of America. The second concerns the ways in which a particular construction of race crystallized and played a pivotal role in the social struggles of racialized subjects in Latin America during independence and republic building. These struggles ensured that an idea of racial equality was incorporated into the legal frameworks of the newly independent Latin American countries. However, the inclusion of this idea in the legal bases of these new republics was, at the same time, used to cover over the struggles of the racialized subjects that brought them into being in the first place. This article highlights the ongoing importance of these points to contemporary human rights thinking.

Introduction

Contemporary social and ethnic movements in Latin America base their theories and political projects upon a critique of colonialism or coloniality. Such critiques are also influential amongst scholars from the region because they provide new insights into

localised problems while at the same time addressing global power relations and the inequalities they sustain (see Gordon, 2006a; Grosfoguel & Castro-Gómez, 2007; Lander, 2000; Mignolo, 2006; Stavenhagen, 2011). However, these projects and critiques also underscore how contemporary human rights discourse is based in and on racism. This article seeks to further develop the theoretical and historical bases for viewing human rights as racist constructs.

To understand the claim that human rights are intrinsically racist constructs, it is necessary to enact a shift in the geography of reason and explore how indigenous and afro-descendent social and ethnic movement read the discourse of human rights. That is, the very category of 'human rights' must be approached in a way that takes as valid the frames of analysis employed by these subalternised movements. In order to do this:

> It is important … to distinguish the *epistemic* location from the *social* location. The fact that one is socially located in the oppressed side of power relations does not automatically mean that he/she is epistemically thinking from a subaltern epistemic location … Subaltern epistemic perspectives are knowledge coming from below that produces a critical perspective of hegemonic knowledge in the power relations involved. (Grosfoguel, 2009a, p. 14, emphasis in original)

As we will see, shifting the geography of reason implies a teleological suspension of western thought (Gordon, 2006, p. 35), and hence a fundamental break with the frames most commonly used in the study of human rights. Or to put it differently, it requires a shift in both the spatial and temporal coordinates through which human rights are conceived and analyzed.

Because human rights obtain their *name* as Human Rights with the Universal Declaration after the Second World War, they are often conceptualized as legal categories with universal validity and application. That is, their aim and purpose is to protect the life and well being of *all* individual citizens from the kinds of atrocities that were committed by the Nazis. Such conceptualizations take the conjunction of the word *Human* with the word *Rights* as the central point of departure, and use the emergence of the Universal Declaration as the *paradigmatic experience* from which the overcoming of racism is imagined (see Hesse, 2004). In this sense, the imaginary of universal human rights is undergirded by an idea that racism has been overcome, and that there is no longer such thing as *colonial racism*. As Barnor Hesse points out,

> … the emphasis on the Holocaust providing the paradigmatic experience [upon which racism has been conceptualized] has underwritten a liberal

critique of the political extremism of fascist racism, obliging the foreclosure of a radical critique of the social conventions of colonial racism. It has rendered inviolable the vaunted western ideal of a universal liberal political culture, only aberrantly fascist and benignly colonial. (Hesse, 2004, p. 15)

Despite the enduring power of this western ideal, many critical scholars have shown how the racist governmentalities of the Nazi regime were themselves a variation of the practices which emerged during the early years of the 'discovery' of America, and which sought to govern and control populations through the hierarchization of humans (e.g. Cèsaire, 2006; Goldberg, 2002; Grosfoguel, 2009a, b; Quijano, 2000a, 2000b; Wynter, 2007).

In keeping with these critical approaches, this article contends that in order to understand the conjunction of *human* with *rights*, it is necessary to appreciate how the idea of the 'human' emerged in close relationship with the question of rights, and how both of these notions were embedded in racist practices from their very beginning. Here this is achieved by enacting a double-shift in the coordinates of human rights thinking. In spatial terms the move is from Europe to the Americas, and in temporal terms it is from the mid-twentieth century to the fifteenth century. This double-shift brings into view a pivotal period in transatlantic relations, which provides for a novel and illuminating analysis of human rights and their history. It also indicates some new ways to go about understanding ongoing attempts to challenge or transcend human rights within the Latin American context (cf. CDP, 2004; Conaie et al., n.d.; Cuatro Etnias, 1999; Dussel, 2007; Guardiola-Rivera, 2010; Rappaport, 2005; Rivera, 2010; Walsh & García, 2002; Walsh, 2008).

To be sure, such an approach clearly gestures towards a comprehensive revision of human rights scholarship. As a first step in this process, this article focuses on two important antecedents to contemporary human rights thinking. The first concerns the construction of the intrinsically hierarchical idea of what is 'human' – that is, the idea of race – during the conquest and colonization of America. The second concerns the ways in which a particular construction of race not only helped crystallize, but also continued to play a pivotal role in the social struggles of racialized subjects in Latin America during independence and republic building. These struggles ensured that an idea of racial equality was incorporated into the legal frameworks of the newly independent Latin American countries.[1] However, the inclusion of this idea in the legal bases of these new republics was, at the same time, used to cover over the struggles of the racialized subjects that brought them into being in the first place.

In both of these periods, the idea of rights which later came to underpin global human rights discourse was a central instrument to white elites' projects of maintaining

social, political and epistemological power over their racialized others. This is clearly apparent in the transatlantic power struggles that took place during each period, which relied heavily on techniques of racial hierarchization. Indeed, when indigenous and afro-descendent social movements in Latin America today criticise human rights for being 'the tools of the oppressor', they are taking as their point of departure these historical and epistemological developments. According to these movements, the dynamics at play during conquest, colonization, independence and republic building – where the construction of the subaltern Indigenous and Black *other* was pivotal – are not things of the past. On the contrary, they are fundamental to the continuing dynamics of hegemonic power, where exploitation, violence and control are exercised through an interplay between the 'concession' of rights – which works to quiet down social struggle – and the use of these new 'conceded' rights to obstruct the continuity of social struggle(s).

Race, Racism, and the Critiques of Human Rights

In contrast to the critique of human rights launched by indigenous and afro-descendent movements, many scholars, practitioners and laypersons share a belief by which human rights are regarded as a universal and meta-political set of ideas and norms that protect us. That is, human rights are seen as something that transcends particular interests or contexts, and by this they become the incarnation of goodness, equality and humanism (see Herrera, 2005; Douzinas, 2007; Grosfoguel, 2009c; Ishay, 2007; Jackson, 2005; Mignolo, 2006, 2009; Santos, 1995a, 1995b, 2000; Wright, 2001; Wynter, 2003). But this idea cloaks the aspects of human rights that are constitutive of the problems they themselves seek to protect us from. In what follows this basic critique will be briefly unpacked, but before doing so it is important to underline that while the movements and critiques in mention do typically regard human rights as a tool of the powerful, they also acknowledge how to some extent these same tools can be used to work against power and the powerful (Suárez-Krabbe, 2011). Indeed, a central element to these critiques is the suggestion that while human rights may well work, they do so predominantly for people who already have rights – such as those who own property, and those who are deemed to be 'proper' citizens. Most obviously, this is apparent in the ways that human rights are *suspended* for certain groups through the enactment of racist rationalities and governmentalities. Think Gaza, Guantánamo, Sierra Leone, Colombia, and Haiti.

Human rights are suspended in relation to those people whose existence is constructed as the opposite of those whose existence obeys the logics of power. To pose that the *existence* of some people obeys the logics of power is to pose an argument about racism. Racism is the excess of some people's affirmation of their existence at the expense – and negation – of the existence of others (see Fanon, 1967). It is also to underline that

there is a fundamental correlation between how some people think of others in terms of race, and how racial thinking constitutes social, political, and legal practice. Additionally, it is to point out how these ideas are naturalized to such an extent that those whose existence obeys the logics of power often actively ignore these ideas. In contrast, such ideas are very tangible to the people whose existence does not obey the logics of power, and this is why it is important to take their readings and critiques into account. The ones whose existence does not comply with these logics are in touch with a reality that is invisible to those who inhabit what Fanon terms the 'zone of being'.

Of course, one could argue that these limits to human rights – i.e., the fact that they work predominantly for those who already have rights – are the main reason why many social movements around the world are concerned with them. That is, one could say that the supposed universality of human rights is relevant for those who do not yet possess them because it is through this *de facto* lack of universal application that the universal pretensions of human rights becomes relevant. This line of thought suggests a need to move from the universal *declaration* of human rights to the universal *application* of human rights. But to raise the issue of application is to bring with it the question of how this relates to the contexts within which rights are applied. On my view human rights can be seen to 'work' only when they are transformed and/or concretised within a particular context – that is, when they have been de-linked from the reasons and practices from which they emerged. Thus, I follow Boaventura de Sousa Santos by considering human rights as 'globalized localisms'. With *globalized localism*, Santos refers to:

> … the process by which a particular phenomenon is successfully globalised, whether it be the worldwide activities of the multinational, the transformation of the English language into a lingua franca, the globalisation of American fast food or popular music or the worldwide adoption of the same laws of intellectual ownership, patents or telecommunications aggressively promoted by the USA. In this mode of production of globalisation, what is globalised is the winner of a struggle for the appropriation or valuation of resources or the recognition of difference. This victory translates into the capacity to dictate the terms of integration, competition and inclusion. In the case of the recognition of difference, the globalised localism implies the conversion of triumphant victory into a universal difference and the consequent exclusion or subordinate inclusion of alternative differences. (Santos 2002a, pp. 25-6)

Insofar as human rights work as globalized localisms they can be criticized as inherently racist constructs. However, human rights are not simply globalized localisms; they also operate in conjunction with what Santos terms *localized globalisms*. These

localized globalisms are the specific local impacts of the transnational practices that produce globalized localisms (Santos, 2002a, p. 26). It is in response to precisely such localised globalisms that indigenous and afro-descendent movements formulate their positions on issues of human rights and development. This is analytically important because such groups analyse human rights not as what they should be but as what they are, and as discourses that legitimate the suspension of rights (see Baxi, 2002).

Fanon's distinction between the zone of being and the zone of non-being proves important to understanding this suspension of rights (Fanon, 1967: 10). In the 'zone of being' – which is populated by those whose existence is in keeping with the norm – human rights are characterised by legality and protection. But in the 'zone of non-being' – which is inhabited by those against which this very normality is constructed – rights require victims, and more often than not these rights are articulated through logics of appropriation, exploitation and violence (Suárez-Krabbe, 2011). This duality needs to be understood in the historical connection of human rights to race, which is forged during the *first modernity*. This is a period of world history that comprises both Spanish and Portuguese colonialism. With Spanish and Portuguese colonialism there emerges the first systematic transatlantic connection by virtue of the colonizing endeavor and the slave trade. This 'older' connection does more than render problematic the assumption that transatlantic relations can be adequately understood through contemporary ties between Europe and the United States; it also highlights how European modernity itself emerged through a relationship of exploitation, violence, and control that Southern Europe practiced against its African and American *others*. It is to the subjective and existential aspects of this latter relationship that we now turn.

The Imperial Attitude

With Spanish colonialism and the European invention of America a complex entanglement of processes was initiated. These had profound impacts on the constitution of the modern/colonial world-system, encompassing processes that range from subject and identity formation through to the economic, social, political, legal and epistemic ordering of the world. Here I conceptualize the world-system as modern/colonial because the 'coloniality of power', as distinct from 'colonial power', is an often-overlooked side of modernity.

To the reader who is unacquainted with the Latin American theoretical tradition, it is necessary to clarify that when we conceptualize global processes in terms of a world-system, we are not simply recycling those theories about globalization that emerged within the region during the 1970s and 1980s; we are developing them further. Thus, we speak of a world-system where core and periphery continue to play an

important role, but whose coordinates are changing. However, these changes do not, at least not yet, challenge the colonial logic of the world-system. They challenge only the capitalist ordering of the globe. Crucially, then, we speak not only of the world-system, but of the modern/colonial world-system to emphasize that the logic by which global processes function continues to be colonial – or, that the globalised localisms which emerge with the 'discovery' of America still play a crucial organising role within he world-system (see Dussel, 2000, 2007; Escobar, 2003; Grosfoguel, 2009a; Mignolo, 2000, 2006; and Quijano, 2000a, 2000b). This coloniality can be traced back to the first modernity, which begins in 1492 with the rise of Spanish and Portuguese colonialism. The *second modernity*, which emerges in Northern Europe from the eighteenth century onwards, takes shape through the Industrial Revolution and the Enlightenment. As already mentioned, in the first modernity begins Europe's hegemony over the Atlantic. This is also a crucial phenomenon in the transition to the second modernity, wherein (Northern) Europe achieves a position of geopolitical centrality whose hegemony persists to this day (Dussel, 2004).

But to posit as I do here that coloniality is intrinsic to all configurations of power today implies, among other things, that there is a direct link between colonial and modern subjectivity. Enrique Dussel (1995) makes this connection by arguing that the Cartesian *ego cogito* was preceded by the *ego conquiro*, or the *I conquer* of the first modernity. His approach is premised on the historical processes that took place in the context of the 'discovery' of America (including the Caribbean) from the sixteenth century. The *I conquer*, he argues, is the first modern subjectivity: it is a way of being, or of existence, that seeks to erase *the other* through exploitation and violence. It is incarnated by the conqueror that arrives and practices diverse forms of violence in the Americas, and represents an enslaving, male, and phallic ego (see also Dussel, 2008; Lugones, 2007; and Silverblatt 1987). This first modern subjectivity is thus also a deeply gendered subjectivity.

While Dussel's conceptualization of the *I conquer* elaborates some of the ideas already being explored within the Latin American philosophical tradition, it is with Nelson Maldonado-Torres' (2008) examination of colonial/modern subjectivity that questions of race and human rights come to the fore. To follow Dussel and Maldonado-Torres and emphasize the colonial origins of modern subjectivity here is to reveal a significant blindness commonly found in social-scientific approaches. Indeed, the construction of 'man' or the 'human' that so much poststructuralist scholarship has since sought to deconstruct emerged in the context of the discovery of America. During the sixteenth century, for example, debates took place among the Spanish colonial powers that explicitly concerned the status of the indigenous peoples in the conquered territories, and the question of their 'humanity' was interwoven with that of whether the Spanish

colonial powers had the 'right' to exploit the Indians and their territories. These debates are perhaps best known as the Valladolid debates, where two main positions were to be found. Ginés de Sepúlveda best represents the first of these. According to Sepúlveda, who frames his argument in secular terms, the indigenous peoples were subhuman others who had to comply with more advanced peoples and their laws (see Sepúlveda, 1996 [approx 1550], pp. 109-113). If war was required to meet these aims, war had to be waged. Quite clearly, this position obeyed the interests of the conquerors and the crown, as it provided legitimization for colonization and exploitation. Bartolomé de Las Casas (1552) is a popular exemplar of the second position in these debates. Las Casas rejected war as a means to 'civilize' the other. Instead, he thought, the other must be won by reason, and otherness must – at least in principle – be respected. According to Las Casas, the indigenous peoples were human and thus subject to rights, including the right to be different (see also Carozza, 2003; Castro, 2007; Dussel, 2008; Guardiola-Rivera, 2010; Koskenniemi, 2010; Maestre, 2004; Suárez-Krabbe, 2011; Wynter, 2003).

Maldonado-Torres (2007, p. 245) sheds new light on the Valladolid debates by showing how, at the basis of these questions concerning the humanity of the Indians – that is, of whether they were rational beings, or of whether they had rights – lies the 'imperial attitude' of the *I conquer*. The imperial attitude questions the humanity of the conquered, and precedes Cartesian methodic scepticism, whose central principle is doubt. Maldonado-Torres emphasizes the crucial significance of doubt, or of question, to what he terms 'Manichean misanthropic scepticism'. This doubt, he argues, is central to understanding the existential and political dimensions of the *I conquer* for both the conqueror and the conquered. Indeed,

> Misanthropic skepticism doubts in a way the most obvious. Statements like 'you are a human' take the form of cynical rhetorical questions: Are you completely human? 'You have rights' becomes 'why do you think that you have rights?' Likewise, 'You are a rational being' takes the form of the question 'are you really rational?' (Maldonado-Torres, 2007, p. 246)

What is important about misanthropic scepticism are not the answers to the questions posed above; what is important are the questions themselves. It is precisely a doubt about the humanity of the other that relegates *the other* to the zone of non-being, where she is expected to remain or constantly prove her *being*:

> Misanthropic skepticism provides the basis for the *preferential option for the ego conquiro*, which explains why security for some can conceivably be obtained at the expense of the lives of others. The *imperial attitude* promotes a

fundamentally genocidal attitude in respect to colonized and racialized people. Through it colonial and racial subjects are marked as dispensable. (Maldonado-Torres, 2007, p. 246, emphasis in original)

This imperial attitude quickly becomes a racist and colonial commonsense that both radicalizes and naturalizes a 'non-ethics of war'. This non-ethics of war (Maldonado-Torres, 2007, p. 247) is similar to the idea of a 'death project' that some indigenous movements in Latin America operate with today, which draws attention to those aspects of European modernity that connect it to capitalism, coloniality, its depredations against nature, and the genocidal attitude it maintains towards its many *others* (Suárez-Krabbe, 2011; see also Maldonado-Torres, 2008a). But Manichean doubt had already become commonsense by the time that the Pope, in 1537, declared that the Indians were humans. In this way, the Pope's declaration did not really make a difference, for it was already in play when the Valladolid debates took place (Maldonado-Torres, 2007; see also Quijano, 1992). Moreover, this imperial commonsense was never questioned by the Cartesian doubt either, and as we will see, it has been left unquestioned in subsequent thought. This is not coincidental. Rather, it relates to the processes that took place in the transition between the first and the second modernity, when Northern Europe started to displace Spain and Portugal by taking power over the transatlantic and the slave trade.

The Imperial Attitude: Race, Racism, and Human Rights

The processes that connect the construction of the category of the human being to those of race and human rights are complex. When the Spanish elite engaged in a debate over the question of whether or not the indigenous people of the Americas were human, three different positions emerged (König, 1998). The conquerors were interested in rapid enrichment through the exploitation of the gold and other natural resources to be found in the Americas. Thus, for them, it was convenient that the Indians were not regarded as human beings. The Spanish Crown was also concerned with rapid enrichment, but through its connection to the Church, it encountered some ethical limits on the views it could take regarding the humanity of the Indians. For the most part, the endeavor of the Crown was aimed at protecting the life of the Indians and facilitating their evangelization. To the Crown, the Indians were part of the value of the 'discovered' territories; they were a labour force, and they were tributaries to the Crown. But the Church, through figures such as Las Casas, defended that idea that the Indians were human and had to be treated as such. Or to put it more precisely, it argued that they had the potential of becoming Christian, and thus of becoming fully human. This evangelizing endeavor was the

Church's main concern.

Despite of these notable differences among the Spanish elites, in all three positions the indigenous peoples were regarded as being inferior to the Spanish. This hierarchization of human beings, which implies that some discuss whether or not others are human, is the basis of racism. These discussions were made on the basis of what the Spanish powers took to be important elements in the constitution of the human – namely, questions of religion, social organization, political organization and thought. The less similar a people were to Spanish ways of being, the less human those people were deemed to be. But having the power to discuss whether or not someone is human is already indicative of a racist ordering of society. Thus, while many scholars do emphasize how the Church was often 'on the side of the Indigenous', they often leave unquestioned the fact that 'being on the side of the indigenous' was a privilege that only the Spanish elites had. In this way, the commonsensical way of thinking about these problems was not only an early version of what we today know as cultural racism; it is also a racist way of thinking that continues to persist within contemporary academic discourse (see Suárez-Krabbe, 2011). With this in mind, we must stress that when the Spanish elites were debating the 'rights of peoples' (*jus gentium*), they were necessarily doing so from a position that had already granted them the privilege of defining rights.

Francisco de Vitoria, an important figure in the discussions of the School of Salamanca on natural law, the rights of peoples (*jus gentium*), fair play, sovereignty and just war, can also be regarded as one of the first thinkers of the modern colonial capitalist world-system. He is often seen as the father of international law, and his deliberations included an exploration of the morality associated with profit-based trade (see Gómez, 2005). Vitoria's work condenses, in significant ways, the positions of the Crown, the Conquerors and the Church to form a reason, and an ethics, of war. But as Antony Anghie (1996, 1999, 2004) has shown, Vitoria also provides principles for the distinction between natural law, human law and divine law in order to reconceptualize the 'Indian question' – that is, the legitimacy of imperial power regarding indigenous peoples in America. Within this distinction, Vitoria makes a crucial manoeuvre in situating questions having to do with ownership and property within natural and human law. While divine law, mediated by the Pope, is limited to the Christian world, natural and human law transcend cultures. Inasmuch they transcend specific cultures, they are universal. Here are the bases of the law of peoples, *jus gentium* (Anghie, 1996, pp. 324-326; see also Vitoria, 1981). Vitoria emphasizes the humanity of the indigenous peoples in some parts of his discussion, while in others he excuses just war against them. He does so because, according to the Spanish, the Indians are, potentially, ontologically equal to them. However, this ontological definition occurs within Spanish Christian epistemological frameworks, and there is covering over at the centre of the definition:

what for the Spanish is a potential is, at the same time, a negation. A potential to sameness is a negation of difference. This concealment makes it possible to grant meta-legal status to the war against the Indians. The foundations of international law and the doctrine of sovereignty contain this ambiguity, which is either obscured or explicitly negated in studies of international relations and international law (see Anghie, 1996, 2004).

The privilege that the Spanish elites granted themselves to define rights was based on an imperial commonsense that, while concluding that the indigenous peoples were indeed human, was nevertheless founded upon a doubt about their humanity. Most salient in this context was, of course, the complete invisibility of the African peoples who were brought to the Americas to replace the indigenous people as a primary soure of labor. The connection between this early version of racism and rights resides in the criteria that were used to distinguish humans from inferior humans or non-humans. These criteria were implicit in the imperial attitude and persist today. Typically they involve a commitment to a specific notion of time and history; to a notion of private property; to an individual and/or anthropocentric world-view; to a Christian religiosity (or a commitment to the idea of secularism); to specific notions of gender and gender relations, to denying the existence of *other* ways of being and thinking about the world; and to an endorsement of the European, or white, ways of being and living as the only valid ways of being and living in the world (Suárez-Krabbe, 2011; see also Anghie, 1996, 1999, 2004). These discussions were relevant in the sixteenth century in relation to the Indians in the Americas, and they continue to have a central place today. Take for example recent discussions about whether democracy can be achieved in non-western countries, or on the role of women in the 'Arab Spring' revolutions (see also Adlbi Sibai, 2011). The ones whose rights are protected are in most cases those who, regardless of their skin colour, comply with these criteria. As I have implied from the outset, this is a reflection of those racist governmentalities which conceive of human rights as the overcoming of racism, and which thus depend upon the continual suspension of these rights in order operate with some semblance of coherence.

Three Layers of Negation

The interplay between social struggles and their subsumption or neutralization by hegemonic power is crucial to understanding Latin American ethnic and social movements' critiques of human rights. This is because the struggles of racialized subjects helped shape the ideas and legal frames of the second modernity. While the period leading up to Latin American independence and republic building is interesting in itself, it is particularly so in the context of reviewing the global configurations of power in the present. In our historical moment, the transatlantic elites are more cohesive among

themselves than ever before, and yet they also continue to deny or indeed render obsolete the social struggles that have shaped their thought and political practice. Moreover, from the vantage point of today, we can now see how the impact of these social struggles was negated in the subsequent rise of global human rights thinking.

This negation has three layers. The first is the imperial attitude's negation of the *other*, and the second is the Cartesian *ego cogito*, which conceals the covering over of the *other* effected through the *I conquer*. The third layer is an extension of these first two negations, whereby Spain itself located in a kind of border zone. This operation can be found at work even during the Enlightenment in what has since been termed *The Black Legend*.[2] The Black Legend involved a representation of Spain as pursuing an anachronistic and particularly cruel form of colonialism. As a Protestant backlash towards Catholic colonial Spain and Spanish imperial practices, it effectively defended the imperial interests of Northern European and North American colonialisms by implying that they were humane and modern, at least in comparison with the Spanish (Beverley, 2008, p. 599). This Black Legend played an important role as a third layer of negation, for in sectioning-off Spanish and Southern European practices from those of other modern imperial powers, Southern Europe becomes neither modern nor colonial. Instead, it is relegated to a position 'between Prospero and Caliban' (for an interesting analysis of this condition in the case of Portugal, see Santos, 2002b).

Common to the transatlantic elites of this time was an understanding of *the others* as being in an earlier stage in the history of humanity. This temporal figure brought with it a spatial wall between the modern North and the backward South. The Black Legend effectively cemented this wall by installing a North-South divide within Europe that was based upon a similar logic (see Santos, 2002b; Mignolo, 2005). Moreover, this barrier is one of the reasons why many students of human rights today depart from the assumption that these rights are primarily a product of seventeenth and eighteenth-century Northern European thought (and of the work of Hobbes and Locke in particular). This rights narrative is typically constructed chronologically, running from the English Bill of Rights in 1689, through the US Declaration of Independence in 1776, and to the Declaration of the Rights of Man and of the Citizen in 1788 (which is linked to the French Revolution). According to this narrative, these declarations culminate in 1948 with the Universal Declaration of Human Rights and the subsequent 'generations' of rights (Balfour & Cadava, 2004, p. 282; Jackson, 2005, p. 166; Douzinas, 2000, 2007).

This historical narrative, however, is part of the third layer of negation described above. Reassessing the history of human rights in the second modernity implies penetrating all three layers of negation. While the present article alone cannot achieve this, it can at least begin the task by focusing on how contemporary human rights discourse both obscures and reveals its foundation in colonial racism. The social struggles

of racialized subjects during Latin American independence and republic building is particularly illuminating in this regard. These struggles ensure that the idea of racial equality becomes included in the legal frameworks of the newly independent countries, but this same idea also becomes a legal tool that is used to cover over the struggles through which it emerges in the first place.

Social Struggles, Rights, Assimilation, and Control

In 1776 the Europeans – who under the Spanish and English colonization of the region, had already reached what is now the United States of America – declare themselves independent from British colonial power and affirm the rights of 'men'. Their Declaration of Independence does not acknowledge African-descendent slaves as 'men', and it portrays the Europeans as vulnerable to the "merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions".[3] On the one hand, it is clear that 'the people' to whom the Declaration refers were only a few human beings meant to stand in for the latest and most advanced incarnation of civilization. On the other hand, it is equally clear that the 'Indian Savages' are not 'real people' – at least not people with rights, due to their violent nature and destructive behaviour. Blacks are entirely invisible to the signatories of the declaration. Hence, in this document 'rights' clearly cover over colonialism and coloniality, and not simply the *other*. The Latin American elites' independence movements relied on similar discourses. However, while the US elites would disguise their own colonial activity through the belittling of Indians on the grounds of their alleged primitiveness, the Latin American elites would highlight their indigenous virtues by returning to some of the ideas of the Church during the Spanish colonial regime (such as those of Las Casas).

Overall, the independence movements in the first half of the nineteenth century in the Spanish and Portuguese colonies were connected to European imperial conflicts over economic and political control of the 'new' territories and the Atlantic circuit. They materialized simultaneously with French usurpation of power in Spain and Portugal in 1807–8. When the French armies occupied large parts of Spain and King Ferdinand VII had been imprisoned, the Spanish Empire underwent some important changes. Although the King's authority was not explicitly questioned, the cities in Spain and the colonies started to organize into local governments. The Spanish authorities gradually lost power to the Creole elites (which were a people of Spanish and Portuguese descent born in the colonies, and second to Europeans in the social/racial hierarchy).

In 1810, the Constitutional Courts in Cádiz were established in order to decide upon a constitution for the monarchy, and for a grand Spanish nation including its colonies in the Americas. The Constitutional Courts in Cádiz quickly recognized

indigenous citizenship largely because the idea of their "legal liberty and nominal equality" was already established in the Spanish legislation of the time (Lasso, 2007, p. 35). They did not recognize, however, the same rights for people of African descent who were free (*pardos*). According to Marixa Lasso (2007), affording the same rights to *pardos* would mean that the demographic majority would lie with the Americans, because few of them could prove the purity of their bloodlines. Cleanliness of bloodlines (Spanish descent) was an important factor in social organization of the time. Thus, almost all Americans could claim ascendance to freed African slaves. In this manner, questions of racial equality acquired centrality not only in these debates, but also in regard to the construction of the nations in the Americas. That these questions were debated does not mean, however, that the covering over of the *other* was in any way questioned or overcome.

In addition to these developments, some revisionist histories of Latin America suggest that the partial recognition of racial equality in a number of countries was the effect of the social struggles of the time (Dussel, 2007, pp. 201-206; Lasso 2003, 2006; Romero, 2003). Indeed, by the end of the wars of independence in 1824,

> … the constitutions of all the nations in Spanish America granted legal racial equality to their free populations of African descent and a nationalist racial ideology had emerged that declared racial discrimination—and racial identity—divisive and unpatriotic. (Lasso, 2006; pp. 336-7)

In the context of the processes of independence and republicanism in *Gran Colombia* (now Venezuela, Panama, Ecuador, and Colombia, plus small portions of Costa Rica, Perú, Brazil, Guyana and Nicaragua), racial equality was in several instances a condition put forth by indigenous and free black leaders in exchange of their support in independence struggles (Dussel, 2007, pp. 201-206; Lasso, 2003, 2006; Romero, 2003). Within the Caribbean parts of Gran Colombia,

> Afro-Latin Americans were not mere 'cannon fodder'; they participated and influenced the political debates about citizenship in the revolutionary period, sometimes pushing the elites to acquiesce to radical measures they had not initially contemplated. (Lasso, 2006, pp. 337-8)

When appraising the degree of support provided to independence struggles by the indigenous people relative to that of the free blacks, it is important to remember that the Spanish empire only granted citizenship to the former. At the same time, some of the indigenous populations in Latin America did regard the protection of the Spanish crown

as providing them with a more preferable outcome to the one promised by independence.

Nevertheless, different indigenous rebellions throughout the continent in this period do demonstrate that the indigenous peoples were also engaged in the search for the construction of a society different to the one offered by the colonizers and their descendants (see Faverón, 2006 and Hernández, 2008). Significantly, the indigenous and blacks on occasion were in a position to negotiate conditions with the elites. As mentioned, this was related to the fact that they were demographic majorities whose support was necessary to wage the independence wars. Additionally, their rebellions – whether large or small – had decisive effects in this context.

Among the most significant of these rebellions were the Tupac Amaru rebellion in the Viceroyalty of Peru between 1780 and 1782, and the Haitian revolution between 1791 and 1804. Indeed, news of these and other rebellions travelled throughout the continent and to the other, European side of the Atlantic, being widely discussed among the elites of the time (Dussel, 2007 and Lasso, 2006).[4] Their effects were powerful, generating insecurity among these white elites. Many of them feared that the idea of racial equality could mean 'chaotic' conditions, similar to those faced in Haiti (see Lasso, 2003, Romero, 2003). As we saw previously, in the context of Caribbean Gran Colombia, this led some of the white elites to enter into negotiations with the free black leaders. However, this perception of racial equality as entailing mayhem – which implies a loss of control over the means and factors of production – can be taken as a reason for why, in the end, the fear of the other led the Creole elites to identify more with the elites from the North than with the peoples who had enabled their revolutions (Dussel, 2007).

Like in other newly independent territories in Latin America, Colombia's early republican period saw the idea of racial equality transmuted into the idea of the *mestizo raza* (Indian-European), which identified a universal race through which the quality of being Colombian could be created. This idea prepared the ground for attempts in Colombia to 'whiten' the population. Indeed, even though Mestizo identity implies a 'whitening' of some and a 'blackening' of others, the racial hierarchies continue to play an important role in the idea of *mestizaje*. Thus, the more 'white' a Mestizo, the better (see also Arias, 2008). In this way, the victories of the social struggles were only partial. They had nevertheless sown seeds that were to become important in the context of the present social and ethnic struggles (see Dussel, 2007, Guardiola-Rivera, 2010). In the nineteenth and twentieth centuries however, the white elites dictated the terms of racial equality and citizenship.

Indeed, the *idea* of Latin America evolved among the Creole and Mestizo elite populations who were now identifying with European histories (Mignolo, 2005). The belief that the only way possible for the course of history to unfold was toward European

modernity, civilization, and progress inherited from the initial moments of conquest and colonization had become the 'natural' order of things. To the Creole and Mestizo elites, Latin America – as an extension of the new central axis of European imperial powers and intellectual centers of Germany, France and the United Kingdom – was the domain of the 'Latin' race, and not of the American Indian (nor of those of African descent).

After the period of independence and republic building, Latin America took shape by reproducing and adapting colonial hierarchies of social organization to fit the interests of these new elites – that is, through 'internal colonialism'. As Mignolo (2005) has noted, Creole identity emerged in a doubled way: as geo-political consciousness in relation to Europe, and as racial consciousness in regard to the other populations in the colonies. The questions and concerns among the Creoles were thus markedly different from those of the Afro-descendent and indigenous peoples. While the Creole/Mestizo experience in Latin America, as that of the US Americans, is marked by its participation in colonial and imperial projects (and concurrently by their being imperial and colonial subjects), the colonial histories of the people of African-descent are entrenched within the African diaspora, slavery, resistance, *cimarronismo, quilombolismo* and rebellion, and the stories of indigenous peoples, which are shaped by the population's relation to Spanish institutions and settlements (Suárez-Krabbe, 2008).

More generally, the period of Latin American independence is woven into the general decline of Spain as a major colonial power, and the rise of Northern Europe and the US as imperial powers. While independence movements explicitly used the idea of racial equality, the elites in the US largely ignored race. As the French revolution and the Declaration of the Rights of Man and the Citizen attest, the concerns for racial equality had been absent in these latitudes for some time. Contrary to the idea of progress and to, for example, the debates on the rights of people in the sixteenth century, the colonial dimensions of issues concerning citizenship and (in-) equality were largely absent from various ideas of rights (Mignolo, 2000, p. 29). Indeed, these ideas became more and more detailed, but only within the epistemological frames drawn by the 'proto-national' and 'national' "limited and sovereign" (see also Anderson, 1991; Santiago-Valles 2003), and by the configuration of 'the Citizen' within these structures. In order to fit into the category of the citizen, a person had to conform to certain requirements regarding religion, blood, colour, gender, knowledge, government, property, and so on, as defined by European white male elites. According to these dominant imaginaries, the colonized still had to progress towards maturity before they themselves could be expected to begin those processes that mark civilized societies – including that of defining human rights.

Concluding Remarks

The ideas of the French Declaration of the Rights of Man and of Citizens, of the US Declaration of Independence, and of the various Latin American self-determination movements must be grasped together. They were all varied continuations of a theme that first began to be discussed with the management of the colonized lands of America (see Césaire, 2006). Moreover, they all worked to conceal this imperial attitude that informed their growing focus on the nation state, and on the category of 'the citizen' in particular. Citizenship was and is precisely a condition not granted to all inhabitants of a nation.

This imperial attitude is a form of commonsense, and it is form that is central to racist thought. It is also extremely relevant to question of human rights, for the imperial attitude continues to underpin the ways in which global elites – whose humanity, rationality, and usefulness is not questioned by the logics of power – produce the ignorant, the residual, the inferior, the local and the non-productive (Santos, 2005, pp. 160-2). Through this duality, the security or rights of some are achieved and maintained at the expense of others, as Maldonado-Torres puts it. Moreover, the imperial attitude is also central to understanding the role that the struggles of the subaltern play within the history of human rights. Curiously, these struggles have had an important impact upon the ideas that were to eventually be named as human rights, but they have been largely overlooked in later human rights discourse.

Legal scholar Paolo Carozza (2003) acknowledges this point when he discusses the 'echo' of the French and North American revolutions in Latin America. That the ideas of the former appear in the latter, he argues, is not simply a matter of mimicry. These ideas resonate in Latin America because they were in many ways based on shared legacies, which date back to the Spanish colonial endeavor. And although some of the ideas concerning racial equality seem to have been promoted by the blacks and the indigenous movements, the fact remains that the independence movements, in terms of their ideas, were the work of the elites.[5] More precisely, they were the work of the educated Creole elites who themselves were part of a broader global elite. As Mary Ann Glendon states:

> Though conventional history treats Latin American constitutionalism as merely derivative of American and European models, it is more accurately regarded as representing a distinctive fusion of moral and political traditions. The insistence on the correlation between human rights and duties, for example, has been a characteristic feature of Latin American political philosophy and constitutional law since the beginning of the nineteenth

century. The universalizing, internationalist dimension of this heritage was furthered by the Inter-American Conference, established in 1890. (Glendon, 2003, p. 33)

In contrast to what Glendon is suggesting concerning some 'originality' of the 'Latin American tradition', I maintain instead that the legacy of human rights in the region is better viewed as a translation of mono-logic ideas concerning rights, sovereignty and citizenship that stem from global white elites. These elites include those in Latin America, who, precisely in this period of history, begin to emphasize the (Northern) European origins of civilization and modernity. In so doing they obscure the participation of Spain, Latin America and Africa in 'world' history, including the history of ideas (see Dussel, 2008). That Latin American elites contribute to the construction of these historical erasures is an expression of the region's ongoing battle with internal colonialism (see González, 1992).

Some recent studies have shown how these same earlier Latin American constitutions were important inspirations in the drafting of the International Declaration of Human Rights in the mid-twentieth century, suggesting that human rights themselves might be understood as 'creolized'. This aspect of human rights discourse has been neglected until recently. Beyond a continuing power of the imperial attitude, this neglect reflects the fact that those global elites who write histories have not yet taken into account the first period of modernity. As a result, they have overlooked important elements of global history and taken for granted that the subaltern did not play any significant role in shaping this history. Hence, if human rights are to be treated as a product of creolization, it is important to specify that this is a process that occurs at the expense of the subaltern and their voice. In other words, it is a creolization that occurs among elites, who have appropriated ideas stemming from the social struggles that they seek to cover over. For the most part, however, the idea of racial equality – and that of abolitionism – is often believed to have emerged as a great concession of the white man, and not as the result of subaltern struggles. This is an important point to remember, irrespective of the fact that the idea of racial equality, as adopted by the elites, has subsequently been used to prevent rather than foment radical social change.

Finally, these aspects of human rights history are useful in gaining a better understanding of the criticisms that some social movements launch at human rights today. Indeed, in Latin America these movements explicitly argue that the theoretical, legal and practical concerns of human rights discourse are conditioned by coloniality, which again defines what is permissible in terms of theory, law and practice. Insofar as human rights are ideas and practices through which processes of identity construction and power relations are enacted and experienced, the discussion of *other* possible worlds

– such as those which the Latin American social and ethnic movements are actively engaged in constructing – is crucial. The reluctance to take seriously these criticisms and to change the terms of debate over human rights reflects an existential and ontological insecurity. Existentially, the dominant ideas of human rights thinking connect many individuals to the modernist and modernising utopias of 'human prosperity' and 'equity' (Espinosa, 2007). These utopias are remarkably similar to those by which conquest and colonization were justified and implemented (Suárez-Krabbe, 2011). In this sense, the very notion of human rights today is a utopia of global white elites. It is a utopia about humanity defined on the basis of a negation of the *other*. It is therefore an inherently racist utopia. This is the core of the critique launched by many social and ethnic movements today, and it is, indeed, a critique that demands a profound reassessment of our knowledge about and practice of human rights.

Notes

[1] The Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969.

[2] Julián Juderías coined this term in his 1914 book *The Black Legend and Historical Truth* (La Leyenda Negra y la Verdad Histórica), in reference to anti-Spanish propaganda.

[3] The Declaration is available online at: www.ushistory.org/declaration/document/ On the complexity of attitudes towards the indigenous peoples in the British colonial territories, see Borch (2004).

[4] As Buck-Morss (2000) suggests, it was also through reference to the Haitian revolution that Hegel developed his idea of the relation between lordship and bondage.

[5] In the years preceding the American revolutions, the Spanish crown "tried to abolish all professorships of public law, natural law and the *ius gentium* in the colonial universities and seminaries, and to ban all teaching of doctrines of popular sovereignty" (Carozza, 2003, p. 299).

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