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RESEARCH ARTICLE

The question concerning human rights and human rightlessness: disposability and struggle in the Bhopal gas disaster

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In the midst of concerns about diminishing political support for human rights, individuals and groups across the globe continue to invoke them in their diverse struggles against oppression and injustice. Yet both those concerned with the future of human rights and those who champion rights activism as essential to resistance, assume that human rights -- as law, discourse and practices of rights claiming -- can ameliorate rightlessness. In questioning this assumption, the article seeks also to reconceptualise rightlessness by engaging with contemporary discussions of disposability and social abandonment in an attempt to be attentive to forms of rightlessness co-emergent with the operations of global capital. Developing a heuristic *analytics of rightlessness*, it evaluates the relatively recent attempts to mobilise human rights as a frame for analysis and action in the campaigns for justice following the 3 December 1984 gas leak from Union Carbide Corporation's (UCC) pesticide manufacturing plant in Bhopal, Madhya Pradesh, India. Informed by the complex effects of human rights in the amelioration of rightlessness, the article calls for reconstituting human rights as an *optics* of rightlessness.

Keywords: human rights; rightlessness; disposability; struggle; Bhopal gas disaster

1. The question concerning the relationship of human rights and rightlessness

Despite grave concerns about the diminishing political support to fulfil and protect human rights across the globe, individuals and groups increasingly invoke human rights in their diverse struggles against oppression and injustice. Yet both those concerned with the future of human rights¹ and those who champion rights activism as essential to resistance,² fail to question the relationship between human rights and human 'rightlessness'. Rather than theoretically explored and empirically examined, it is often assumed that human rights -- as law, discourse and practices of rights claiming constituted in a 'symbiotic but tense relationship'³ -- can ameliorate rightlessness.

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A range of varied theorisations of human rights rely on this underlying assumption that human rights are addressed to, and can address, human rightlessness; that they are, in a certain sense, the antidote to rightlessness. This assumption holds for understandings of human rights as entitlements⁴ arising from morality or custom, which have historically informed rights struggles⁵ and which continue to enable the codification of human rights in international treaties and domestic constitutional-legal arrangements. For Charles Beitz this assumption transforms our understanding of rights from minimalist ‘natural’ rights accruing to all human beings by virtue of their nature to expansive and historically specific ‘basic requirements of global justice’ within the contemporary global economy.⁶ In political theory, Morton Winston argues that the amelioration of rightlessness is the very justification for human rights,⁷ while in sociology Bryan Turner advances a cosmopolitan conception of human rights aimed at the protection of a vulnerable humanity.⁸ Critical theorisations of rights claiming as performative practice that can engender active citizens and revitalise democracy also share this assumption.⁹ For contemporary human rights scholarship, then, rightlessness is ‘a transitional phenomenon that will be resolved with further entrenchment of human rights’.¹⁰ Strikingly, the assumption that rights are able to ameliorate rightlessness appears equally central to those rare accounts informed by the close interconnection of rights and rightlessness, such as Upendra Baxi’s, who forewarns that ‘narratives of human rights are inadequate, even misleading, without companion narratives of the production of human rightlessness’.¹¹ In discussing the protection of human rights in India, Baxi attributes human rightlessness to ‘bare acts of sovereignty that simply refuses to accept certain claims to being human and having human rights in the first place’.¹²

What if, this article asks, the relationship between rights and rightlessness is not one of opposition -- of antidote to poison, or medicine to ailment? And, what if the conventional attribution of rightlessness to the state and its ‘acts of sovereignty’ is incomplete? Should we not consider amongst the contemporary sources of rightlessness the state’s legal attempts to address it and multinational capital’s treatment of people as disposable? Most worryingly, might processes of claiming and agitating for human rights occlude the persistence of rightlessness? Provoked by these questions, the article challenges the assumed opposition between rights and rightlessness, and seeks in the process to reconceptualise rightlessness *itself* beyond the simple denial of rights. Supplementing the historical association of rightlessness with statelessness, the article develops a heuristic *analytics of rightlessness* by engaging with contemporary discussions of

disposability and social abandonment. The analytics, it argues, enables us to ask how and to what extent the legal mobilisation and discursive invocation of human rights resists rightlessness understood in this heuristic manner.

The article, at the same time, seeks to ground such theoretical questioning of rightlessness, and its relationship to rights, in the relatively recent attempts to mobilise human rights as a frame for analysis and action in the campaigns for justice following the 3 December 1984 gas leak from Union Carbide Corporation's (UCC) pesticide manufacturing plant in Bhopal, Madhya Pradesh, India.¹³ An estimated forty tonnes of highly toxic methyl isocyanate (MIC) and other gases leaked into the atmosphere, causing the deaths of at least 3,000 residents of the neighbourhoods [*bastis*] adjacent to the plant who could not outrun the toxic clouds.¹⁴ Another estimated 20,000 residents have died in the three decades since, while half a million people – survivors and the next generation still residing in the vicinity of the abandoned and non-remediated factory -- continue to suffer from the health impacts of direct gas exposure and the worsening soil and ground-water contamination.¹⁵

Widely acknowledged as the world's gravest industrial catastrophe, and 'the most significant recent example of United States industry injuring foreign victims',¹⁶ the Bhopal gas disaster has engendered diverse subjects, practices and continuously evolving modes of struggle in its campaigns for justice. Bhopal survivors, as their testimonies make clear, have ceaselessly struggled for 'healthcare justice',¹⁷ the improvement of work conditions, and for opportunities and pensions suitable for the little-understood needs of gas-affected residents.¹⁸ Whilst coping with the under-researched but no less debilitating effects of gas exposure,¹⁹ they have fought for justice. Largely thwarted and unsuccessful legal attempts to hold UCC accountable for the leak and its devastation have been unfolding, initially led by the Union of India (UOI) in the US courts and later by the tenacious efforts of local activists who have fought to revive the case in the Bhopal courts, and whose efforts continue against Dow Chemical, which purchased UCC in 2001 whilst repudiating all its liabilities in Bhopal.²⁰

While the multiple forms of struggle and framings of the disaster are beyond the scope of this article, the analysis here examines the mobilisation of human rights in the last decade following the 20th anniversary of the gas leak, when NGOs such as Amnesty International, with elite reinforcement within India's legal profession, began to frame the disaster and its aftermath as the 'biggest example of human rights violation in the world'.²¹ Given the failure to bring UCC to justice through tort law, such interventions

appear to offer beneficial ways forward by making claims for justice within the legal frameworks and truth discourses of human rights, in which the state is the primary duty bearer. Employing the analytics of rightlessness it develops in section two, the article critically evaluates the extent to which turning to human rights law and discourse enables the amelioration of rightlessness in Bhopal in section three. Informed by the complex effects of human rights in the amelioration of rightlessness, the conclusion calls for reconstituting human rights as an *optics* of rightlessness.²²

2. Towards an analytics of rightlessness

The contemporary plight of stateless populations, refugees, undocumented migrants or those seeking asylum from multiple forms of persecution ensures that discussions of rightlessness continue to relate it to the political community's inability or unwillingness to fulfil the 'right to have rights',²³ following Hannah Arendt's articulations of this *moral* right 'to belong to a political space' that makes possible claims to subsequent constitutional rights and entitlements.²⁴ Attributing rightlessness to statelessness endures in studies of the denial of rights to non-citizens or the emergence of human rights in place of those guaranteed by political community.²⁵

In the context of human rights expansion and continued rights claiming in on-going struggles against dispossession and oppression, this article calls for greater attention to forms of rightlessness co-emergent with the operations of global capital. The neoliberal governing economic paradigm -- enabled by discursive constructs 'of a world governed by wise and efficient market forces, by invisible hands that effectively allocated profits and calibrated prices, wages...' ²⁶ -- has entailed 'market-conforming state-crafting'²⁷ and has resulted in new legal-constitutional arrangements,²⁸ which inflect in specific ways the pre-existing, colonial, forms of harm, abandonment and disposability, astutely captured by scholars of contemporary coloniality.²⁹ Seeking to expand our understanding of rightlessness is not a rejection of the importance of statelessness but, rather, a call to pluralise rightlessness's meanings, locate its sources in the structural inequalities of market liberalisation and the very functioning of the law, and better recognise its many local sites. In this task, the article engages with recent discussions of 'social death', 'abandonment' and, significantly, 'disposability' in order to articulate a heuristic analytics of rightlessness.

In linking rightlessness to contemporary forms of socio-economic exclusion and destitution, Lisa-Marie Cacho provides a compelling reading of neoliberal modes of differentiation and exclusion within the racialised imaginaries of US society, as exemplified in the aftermath of Hurricane Katrina, and in practices of countering terrorism and ‘illegal’ migration. While Cacho sustains the link between racialised rightlessness and the denial of ‘the right to have rights’ by/in a political community, her analyses of the ways in which ‘unprotectable’ citizens become criminalised by the state and its laws allow us to connect rightlessness to uses of the law to exclude historically specific, internal and external ‘others’ within political community.³⁰ This destitution through the law, then, forms the first element of our analytics of rightlessness.

Joao Biehl too charts the phenomenon of ‘social abandonment’ to neoliberal forms of governing, which individualise and differentiate according to groups’ and individuals’ productive value and, hence, negate the societal, communal and familial worlds of sociability within, amongst and towards ‘superfluous’ populations in Brazil. In addition to explicit neglect, Biehl shows abandonment to involve a host of medico-social interventions and other attempts at regularization by civil society, provincial and federal state agencies, which reinforce and enable the neglect of those considered superfluous.³¹ The idea that abandonment requires systematic ‘work’ recalls Veena Das’s insight that ‘pain and suffering...are not simply *individual* experiences which arise out of the contingency of life’ but ‘may also be experiences which are actively created and distributed by the social order itself’.³² This active entrenchment of suffering by the social order forms the second element of an analytics of rightlessness.

These scholarly interventions highlight the rendering of certain others as politically ‘non-pertinent’ to the objectives articulated for the welfare and management of the population as a whole and, thus, as unworthy of ethical care.³³ Such accounts make clear that modern governmental rationality has abandonment ‘always already inscribed into it’,³⁴ making marginalisation and disposability ‘not only possible but ordinary’.³⁵ What does it mean to be politically non-pertinent, however? With Cacho, we might trace non-pertinence to processes of differentiation and exclusion within global, but locally manifested, modes of governing that render parts of the population ‘disposable’, in the sense of becoming ‘ineligible for personhood’.³⁶ This form of ‘social death’

not only defines who does not matter, it also makes mattering meaningful. For different reasons, undocumented immigrants, the racialized poor of the global South, and criminalized U.S. residents of color in both inner cities and rural areas are populations who “never achieve, in the eyes of others, the status of ‘living’”.³⁷

Although the phrase ‘ineligibility for personhood’ highlights the complicity of the social order/political community in rendering segments of the population disposable, disaggregating the complex meanings of ‘disposability’ better informs our analysis of contemporary rightlessness. According to Ranjana Khanna, the adjective ‘disposable’ carries within it two distinct ‘references to excess’: in the sense of ‘disposable camera or disposable diaper,’ excess denotes any such thing that is intended for a limited number or period of use ‘at which point it is treated as excessive or as waste matter’.³⁸ This ‘greater unity of production, consumption, and excretion’ signals that ‘the disposability of workers’ is not just an ideological construct but, rather, constitutive of capitalist social relations.³⁹ In another sense, ‘disposable’ refers to one’s ‘disposable income or disposable assets’, which denotes ‘something...in excess of notions such as need, necessity, or requirement’.⁴⁰ Both senses of ‘limited use, then waste’ and ‘in excess of necessity’ are predicated on the disposable object or subject being available for use.⁴¹ The capturing of human beings as a (disposable) available resource [*Bestand*], explored by Martin Heidegger as an epochal transformation specific to modernity’s objectifying forms of relationality,⁴² forms the third element of our analytic of rightlessness.

The *verb* ‘to dispose’ too denotes excess but, upon reflection, also bears strong connections to governing and the sovereign exercise of power. To ‘dis-*pose*’ recalls ‘...a laying down of something...a disposition suggesting...a suitable placing and enframing of things and words’.⁴³ Placing and arranging the available (and disposable) subjects invokes Foucault’s understanding of ‘government’ as a form of directing and regulating conduct focused on discerning and effecting the ‘right disposition of things’ to achieve socio-economic objectives, rather than as restricted to apparatus of the state.⁴⁴ Articulating objectives about the population entails distinguishing between the pertinent and the non-pertinent, expendable, parts of the population. At the same time, ‘to dis-*pose*’ highlights ‘an exertion of power by the disposer...in a decision to exercise a control’; this is best understood in the ‘sovereign commandment’ which decides on the specific *disposition* (arranging, use) and *disposal* (use, ‘discarding of’) of the available-disposable.⁴⁵ This two-fold exercise of governmental and sovereign power for organizing and enabling disposability forms the fourth element in our analytics of rightlessness.

Formulating an analytics around questions of legal exclusion, facilitation of suffering by the social order itself, the capturing of people as disposable resources and the exercise of power in the enablement of disposability acknowledges, at a minimum, that rightlessness far exceeds the tragedies of statelessness. Importantly, it highlights the

‘international’ processes of becoming- and keeping-rightless in the contemporary ‘life-times of disposability’.⁴⁶ Rather than *assume* that human rights are able to rectify rightlessness, the analytics encourages a more sober assessment of the possibilities for amelioration through human rights, which the remainder of the article examines in the complex turn to human rights in the Bhopal campaigns for justice.

3. Grounding rightlessness in the multiple Bhopal disasters

Offering a necessarily fragmentary discussion of the turn to human rights law and discourse in campaigns for justice in Bhopal, this section mobilises the elements of the analytics of rightlessness developed above in order to evaluate the potential contributions and risks of human rights’ ability to resist rightlessness.

3.1 Contesting the legal production of rightlessness

Reflecting on the incontestable failure of the law, and litigation as a strategy for obtaining justice for the Bhopal survivors, the former Chief Justice of India J.S. Verma called Bhopal ‘an egregious violation of human rights of thousands of people’.⁴⁷ Preceding this influential pronouncement, an investigative report by Amnesty International had also called Bhopal – the gas leak and its legal and political aftermath – ‘a human tragedy and a tragedy for human rights’ at its twentieth anniversary in 2004.⁴⁸ Indeed, in the case of Bhopal, the ‘law’ – legislation, litigation, legal doctrine and processes of adjudication – played a central role in entrenching rightlessness in the heuristic sense explored above. The Bhopal Act of 1985 designating the UOI as the sole legal representative of the Bhopal gas-affected population, the adversarial legal framing of the disaster which deprioritised much-needed compensation of survivors,⁴⁹ the failed attempts to legally pursue UCC in the US courts,⁵⁰ the 1989 Indian Supreme Court settlement now viewed as a ‘miscarriage of justice’,⁵¹ as well as the continuing, obstacle-ridden, efforts to bring UCC to justice in the Madhya Pradesh courts in the decades since,⁵² have all received critical attention, leading scholars, including those involved in the various attempts to obtain justice, to speak of ‘legal torpor’.⁵³ Two striking, rather than exhaustive, examples illuminate the forms of rightlessness perpetuated through the law.

Bridget Hanna’s ethnography maps the closure of participation, indeed, the exclusion from the legal *struggle* for justice, following the Bhopal Act (1985), which adopted the *parens patriae* principle in order to enable the state ‘to pursue mass disaster

litigation as a victim surrogate before US judicial fora'.⁵⁴ In one sense, invoking *parens patriae* was technical decision that allowed India to pursue UCC, which would otherwise have been outside its jurisdiction. Moreover, it morally recognized that 'most of the gas victims did not have the resources or even the language (in this case, English) necessary to fight the legal battle for themselves' and was hence intended to officially represent and protect the Bhopal survivors.⁵⁵ India's legal response to the disaster, however, cast survivors as "juridically incompetent", a status usually reserved for the very young or the mentally ill', which inadvertently 'robbed them of their legal right to pursue Union Carbide individually while technically establishing their right to be provided for, and advocated for, by the government'.⁵⁶ Hence, in legislating for their protection, representation and provision of care, the state rendered Bhopal survivors voiceless in *legal* fora and processes of justice: 'the government's rhetorical monopolization of the poverty and acute suffering of the survivors became a way to limit their rights by declaring them *non sui juris* (without the legal capacity to act for themselves)'.⁵⁷ As Sheela Thakur explains 'we felt like beggars on the street. We forgot we were asking for our rights as citizen's [sic] of a free country'.⁵⁸

A second example, drawn from the administrative procedures for adjudicating the thousands of compensation claims following the 1989 Settlement, also illustrates the perpetuation of legal exclusion and destitution. The procedures established about who could apply for, and receive, compensation required stringent documentation of deaths and injuries. Because 'the government has legitimized only the documented and registered individual deaths, a process which required autopsy and registration with the police',⁵⁹ many survivors were prohibited from being able to claim even the negligible sums of compensation for lives lost (\$2,000) and for injuries (\$500). Many impoverished residents of the areas adjoining the pesticide factory were recent internal migrants to Bhopal or itinerant, not 'carrying identifying documents...and would not have been accounted for in a census'.⁶⁰ Moreover, the immediate decisions of the Madhya Pradesh and federal authorities to cremate or bury victims *en masse*, with the Indian Army transporting bodies to forests and rivers as far as the Narmada, left survivors and families of those who perished without the necessary death registration documents required for claiming compensation.⁶¹

And yet the law remains the site in which local and international activists continue to locate the possibility of attributing responsibility for the disaster, obtaining meaningful reparations, and ensuring remediation of the life-threatening environmental

conditions caused by the operation and abandonment of the plant.⁶² NGO and activist appeals to human rights as a more progressive and universal legal framework appear to offer renewed possibilities for framing the disaster, ameliorating rightlessness and achieving justice in Bhopal. How do human rights contest the exclusions and deprivations created in the legal responses and procedural arrangements to the disaster, as articulated in the first element of our analytics of rightlessness?

Two arguments have been put forward in this regard. The first proposes human rights as a moral and practical yardstick for judging the integrity of the domestic legal system. International human rights frameworks provide a way to assess state commitment to human rights through intergovernmental mechanisms such as the Universal Periodic Review or by exerting pressure and encouraging enhanced enforcement and improvements to constitutions and National Human Rights Institutions.⁶³ In much the same vein, human rights arguably can provide a standard for evaluating the integrity and responsibility of the domestic legal response to Bhopal in light of the continued injustices suffered by survivors. Justice Verma urged, for instance, that India's state and legal profession must ask, 'what were the remedies to which they [Bhopalis] were entitled at the time of the disaster and identify the violation of human rights'.⁶⁴ As a site and a framework for assessing the impact of local, legal arrangements on the entrenchment of rightlessness, human rights reopen these forms of exclusion to reconsideration and demand, if not always ensure, their reform.

A second argument proposes human rights law as a better alternative to tort law, which has served as the traditional legal avenue for pursuing justice against corporations, specifically the law of 'negligence' or 'delict', the fundamental objectives of which are to (i) provide a level of compensation to a victim which as much as possible reinstates the victim in the position that he or she would have been in if the negligence had not occurred and (ii) act as a deterrent against future wrongdoing by the perpetrator and others generally.⁶⁵

As noted above, redress through tort law was pursued by the Indian state in the US courts but was thwarted when the Second District Court of New York accepted UCC's *forum non conveniens* claims regarding the 'availability of an adequate alternative forum' in India.⁶⁶

Patently preferable to tort litigation which, in the case of mass chemical disasters, tends to become 'trapped in a legal paralysis and conceptual vacuum',⁶⁷ scholars have also argued that human rights law offers a higher normative standard compared to tort law. The latter reduces the 'significance of the alleged misconduct and harm' because it focuses on, and articulates charges in terms of, negligence.⁶⁸ On the contrary, Ratna

Kapur claims with Bhopal disaster in mind, human rights facilitate more ‘systemic’ interventions because they stand at a distance from the market ethos. Human rights law and discourse do not accept, as tort law does, a certain level of risk to human life within economic activity, which renders tort law ‘ill-equipped to deal with mass disasters resulting from ultrahazardous activities’⁶⁹ of MNCs with grave potential to cause serious human harm, especially in developing countries where ‘regulatory arbitrage’⁷⁰ incentivises corporations to ‘export [of] hazard’⁷¹ through inferior factory design and lax operational standards of worker and public protection. This is a case in point in Bhopal where ‘the technological preconditions for a major accident were embedded in the design of the Bhopal plant, which allowed for bulk storage of MIC in large, underground tanks in an environment that used manual noncomputerized control systems’.⁷² Moreover, again unlike tort law, human rights escape the ‘market model’ based on an ‘ethic of economic efficiency’, which renders judgements based on tort law as ‘mere palliatives’, however significant to those seeking justice.⁷³ This potentiality of human rights for meaningful ‘systemic’ interventions, however, requires first a perspectival shift away from having to prove *intentionality* for violations towards accepting *impact assessment* of the harm caused; and second, that the right to life, on which impact will be assessed, be grasped within broader economic and social conditions rather than in the ‘more restrictive interpretation accorded to the right in the American context’.⁷⁴

Both arguments for the ability of human rights to contest the perpetuation of rightlessness through the law come up against long-discussed limits of human rights as well as recent trends in their evolution and embedding that constraint their effectiveness. A brief recounting illuminates how these concerns inflect the turn to human rights in Bhopal. First, the limited justiciability arising from the progressive realisation of economic and social rights delimits their ability to act as an evaluative yardstick for the legal response to the disaster;⁷⁵ it also problematizes a systemic assessment of MNC practices based on the right to life fully embedded within its economic and social dimensions as advocated by Kapur. Second, the ‘complex concert’ between states in need of investment and technological innovation and MNCs, which characterised India’s relationship with UCC and later with Dow Chemical, has arguably weakened states’ ability to uphold human rights.⁷⁶ Third, and related, the development of a ‘new global regime of economic rights’ of multinational capital in the emerging neoliberal constitutionalism not only obstructs, but regresses, the embedding of global human rights and its ability to contest the market model.⁷⁷

3.2 Indicting the facilitation of suffering by the social order

The moral superiority of human rights is also implicitly invoked in the castigation of the social order – state and society -- for its permissive and active role in creating and entrenching suffering in Bhopal. How and to what extent do human rights enable an indictment of the social order in the second element of the analytics?

The continued centrality of the state as the primary duty bearer within human rights discourses and law illuminates, not *only* corporate crime and negligence, but the Indian state's grave responsibility for creating and failing to alleviate survivors' suffering. The complicity of the state before the disaster centres on its laxity in regulating appropriate design and safe operational practices by UCC in its search for foreign direct investments and technology transfers. The significance of technologically advanced industrialisation was articulated as early as 1948 and created a permissive environment⁷⁸ in which UCC designed and operated the Bhopal plant: 'the Indian government repeatedly violated it's own laws — from FERA [Foreign Exchange Regulation Act], to zoning restrictions, to ensuring comparable safety standards — in their dealings with UCC'.⁷⁹ Both the national and state authorities ignored explicit warnings raised by plant workers, local citizens, and journalists like Rajkumar Keswani, who repeatedly raised the alarm about the dangers posed by UCIL's factory in articles in *Rapat Weekly* as early as 1981.⁸⁰ Design and operational failures in the MIC unit leading to the death of Mohammed Ashraf in 1981 and a substantial fire in 'the alpha-naphthol unit in 1982', also failed to convince the authorities to take 'any regulatory action'.⁸¹ Far from heeding such signs, local 'politicians looking for votes happily granted *pattas* [rights to the land] to illegal residents next to the factory, never informing them that it posed an immense hazard'.⁸²

In addition to the state, authoritative institutions of society, such as the law and medicine failed to provide relief, remediation, health and justice to the survivors of Bhopal, further entrenching their rightlessness. While what Bhopal 'was asking for was an innovative and radical bureaucracy'⁸³ the 'scientific, legal and administrative structures of modern society' in India, including those professions and institutions charged with survivors' care, masked 'from the powerless the manner in which their suffering may have been manufactured and distributed by an unjust society', shifting responsibility from themselves to the gas-affected residents.⁸⁴ At the same time, discourses of

development in India fixated on ‘the slum as pathology and excess’,⁸⁵ renewing forms of repression in the name of law and order and translating the rights of survivors rearticulated in the Bhopal Act as *charity* towards the ‘undeserving poor’.⁸⁶

How can a social order ‘allow such a disposal of the other, without indicting itself’⁸⁷ and how might rights problematize the legitimacy of social institutions and attitudes, and disrupt collective modes of ethico-political negligence that lead to disposability and rightlessness? Can human rights, this article asks, function as an ‘optics’, a sort of mirror through which the social order takes a hard look at its own processes of sustaining rightlessness? Stories and life narratives play an important role in this potentiality of human rights as an optics of rightlessness. Richard Rorty, for example, long held the view that sentimental education of publics through stories of suffering were more likely to succeed in reforming social institutions and attitudes at home and abroad than condescending judgements of societies’ irrationality or backwardness.⁸⁸ In Bhopal, projects of collecting and reflecting on survivor-activists’ oral histories aimed to generate discussion on future themes and directions of the movements⁸⁹ but may also function as an optics that ‘disrupts the normal flow of social life’ while at the same time ‘creat[ing] windows on normality’ that reveal the ‘political and social processes’ of rightlessness:⁹⁰ ‘Bhopal reveals the truth of the system as it has revealed it to me’, says a Bhopali activist.⁹¹ Finally, personal narrations of human rights abuses are seen as positively enhancing ‘public mobilisations of concern’ and enabling narrators to transcend their private worlds of suffering to speak out as political subjects against injustice.⁹² In other words, this not only facilitates the castigation of the social order but also works to resubjectivise those constructed as disposable resources by state, society and capital, as we explore below in the third element of the analytics.

3.3 Contesting constructions of citizens as disposable resources through resubjectivisation

Analyses of the subjectivising effects of human rights discourses and practices of rights claiming investigate the ways in which human rights contest the subjectification of disposable subjects by state, society and capital, aiding them in challenging, and to some extent ‘unworking’, their voicelessness within the law, the active creation of their suffering within the social order and their constructed disposability. Truth discourses of human rights convey the “vital” character of living human beings’ as articulated by ‘an

array of authorities considered competent to speak that truth'.⁹³ They identify human rights-bearers as subjects of equal moral worth and dignity, and as such enable those deemed disposable by the social order to work to recover new ways to be. In other words, human rights discursively intervene in the everyday suffering of Bhopal survivors and rearticulate this 'accidental and unfortunate' suffering into both morally abhorrent and politically actionable grievances. Human rights allow Bhopal survivors -- as legitimate *political* subjects of grievance with identifiable paths for attributing responsibility to duty bearers for rights protection, namely, states, -- to make demands of the state in a register that is audible internationally.

Moreover, this political subject is also a legal subject, whose rights states have undertaken to protect and guarantee through ratification of international covenants.⁹⁴ Importantly for Bhopal survivors, human rights claiming practices reawaken a subject of entitlement within a subject constituted by its very *lack*: of fulfilled rights, of healthcare justice, of value. Emphasising the entitlement of human beings predicated on the moral value of human life aims to resist the devaluation of *some* life, best captured by the retort of a Dow Chemical spokesman's to US activists fasting in solidarity with Bhopal survivors: '\$500 plenty for an Indian'.⁹⁵ Hence, discourses of human rights and practices of rights claiming remind the international and domestic social order that '...life that no longer has any value for society is hardly synonymous with a life that no longer has any value for the person living it'.⁹⁶

Acknowledging the potentiality of countering the subjectivisation of Bhopalis as disposable cannot ignore the complex relationship of rights to power, which raises important concerns. First, local mobilisations of rights are understood to rearticulate local suffering into globally audible articulations of rights claims and it is this internalisation of rights that resubjectivises them as dissenting subjects.⁹⁷ At the heart of such local mobilisations productive of rights-holding subjectivities, however, remains a kernel of the liberal autonomous individual – the ontological assumptions of a morally equal, dignified and autonomous rights-holder.⁹⁸ This raises the concern, among others, that *assuming* moral worthiness and dignity as innate, risks occluding both the systematic processes of rendering people disposable that entrench rightlessness⁹⁹ and also their pre-existing struggles for justice.

Second, and related, assuming a legally *entitled* subject of rights may similarly obscure that what is needed to make this entitlement concrete and to disrupt the expendability of Bhopal survivors is the pluralisation and intensification, through rights,

of their long-standing and multifarious struggle for justice and everyday subsistence, health, and environmental safety. Put otherwise, assuming rights as *the* legal solution, views human rights as a ‘practice, in which politics is understood as law’, a conception that risks ‘beguiling socially disadvantaged groups with the false promise of a legal remedy for their grievances, if only they articulate them as rights’,¹⁰⁰ and may be in tension with local visions of rights inextricable from struggles for social and distributive justice.¹⁰¹ In part, this risk hinges on the extent to which subjectivisation emerges from, and further shapes, locally grounded mobilisations of rights for struggle, in the absence of which, reframing local problems through rights may ‘displace alternative visions of social justice that are less individualistic and more focused on communities and responsibilities’.¹⁰² This questions whether elite and NGO analyses of Bhopal in terms of human rights work to displace or support preexisting local visions and paths of justice, although the two are not mutually exclusive.

A third, and again related, concern surrounds the impact of privileging adjudicatory and litigation processes of human rights as a site for activism.¹⁰³ The location of human rights in such processes potentially narrows ‘what types of action may be imagined’ by Bhopal activists.¹⁰⁴ In other words, in providing the ‘infrastructural’ and discursive parameters in which survivors may resist or strategic litigation may be pursued, human rights tends to reduce problems into rights violations and, partly, constrains and channels subjects’ practices of dissent through the law.¹⁰⁵

Finally, returning to the liberal subject of rights, does the compatibility of human rights law, ‘particularly that part that emphasizes civil and political rights,’ and at least the partial coherence of rights-holding subjectivities with neoliberalism, weaken the radical contestations of lived experiences of disposability which human rights are able to engender?¹⁰⁶ Yet, as scholars have argued, when social movements mobilise human rights for social justice and against diverse operations of power they refute this compatibility.¹⁰⁷ In the context of Bhopal, the struggle ‘makes demands of the law, but also it calls for something more – something that is difficult to articulate’ which is a questioning of the histories of disposability against the poorest citizens by state, society and capital.¹⁰⁸

3.4 Challenging the exercise of power

The final element of the analytics of rightlessness focuses on the ways in which human rights challenge the operations of governmental and sovereign power. Taking the latter

first, the state-centred mechanisms of attribution of responsibility for violations are both a drawback and a strength of the international human rights regime. In Bhopal, where direct attribution and redress for human rights abuses against corporations remains an aspiration,¹⁰⁹ the human rights legal framework determines ‘what [state] obligations under international law have been breached and what protective standards failed’.¹¹⁰ The mechanisms of attributing responsibility to states, and the symbolic castigation that this enables, are especially significant for the campaigns for justice in Bhopal, where the state failed to regulate UCC’s operations and to protect the lives and health of citizens.

Indeed, the broader difficulties with pursuing private actors directly for violations have led to the reassertion of state attribution mechanisms in the recent United Nations ‘Protect, Respect and Remedy’ Framework, which articulates a strong duty for states to protect human rights and pursue corporations in the event of violations by business.¹¹¹ Emphasising state attribution in the invocation of human rights in Bhopal appears to have cemented existing local critiques of the Indian state amongst activists: ‘My priority at that time was to punish the offenders and get compensation. Now I would also put more emphasis on the Government because it is as much their fault that all this has come this far. It is the Government’s responsibility if they permit such factories...’¹¹²

Nevertheless, serious concerns question the faith placed on the state-centred mechanisms of attribution. Significantly, the state centric vocabularies of human rights fail to grasp the ‘state like but non-state’ agency of multinational corporations.¹¹³ Human rights organisations increasingly recognise this and have long urged creating direct mechanisms for attribution for corporations.¹¹⁴ Moreover, the state-centricity of human rights frameworks may render them blind to the diffusion of corporate material and normative power within state institutions and bureaucracies, brought about by neoliberal socio-economic reforms and a broader ‘generalisation of the economic form of the market’ across many social domains, which sets market truth as the yardstick by which to judge policy and bureaucratic activity.¹¹⁵ Moreover, rights may fail to grasp and to respond to the ways in which neoliberalising states are becoming hybridised with exigencies and interests of business.¹¹⁶ Post-independence India’s ‘fear of exploitation’ gradually transformed into a fear of ‘exclusion’ from the international order, affecting the state’s perceptions of its need and search for multinational capital, technology and international legitimisation.¹¹⁷

Relatedly, human rights obligations for business remain voluntary. The UN ‘Protect, Respect and Remedy’ Framework articulates a responsibility, rather than a legal

duty, for business to ‘avoid infringing on the human rights of others...’¹¹⁸ Such voluntariness relax the ethical obligations of corporations, and do little to pierce the ‘corporate veil’, permitting multinationals like Dow Chemical to denounce responsibility for the liabilities of subsidiaries, as in its 2001 acquisition of UCC.¹¹⁹ This assertion of the corporate veil enables Dow Chemical to maintain that ‘efforts to directly involve [Dow] in legal proceedings in India concerning the 1984 Bhopal tragedy are without merit’, which it recently claimed in response to a third summons to present UCC to the courts issued by the Chief Judicial Magistrate of Bhopal in August 2014.¹²⁰ In other words, human rights’ state-centric attribution and voluntary standards for corporate conduct fail to challenge the practices of multinational capital to evade responsibility for the extreme human suffering it produces.

In terms of contesting governmental power, it is hoped that human rights can help us *see* ‘individual biographies of human and social suffering’ and convert them ‘into social texts problematizing governance’.¹²¹ Does problematizing governing by translating the suffering of Bhopal survivors into human rights violations, however, not at the same time colonise that suffering, potentially leading to the emergence of a ‘human rights governmentality’ which articulates objectives, collates data, monitors observance and governs the conduct of states and citizens?¹²² Much like the ‘imperial techniques of emergent green governmentality’ in India after Bhopal, which aimed to operationalize the ‘lessons of Bhopal’ for safety improvements in industrial activity, a human rights governmentality too may ‘construct a future regime of law reform...in a parasitical relation to’ and doing ‘little to ameliorate the plight of the Bhopal-violated’.¹²³

4. Conclusion: from amelioration to an optics for rightlessness?

This article questioned the assumption that human rights -- as law, discourse and practices of rights claiming -- can ameliorate rightlessness. Developing a heuristic analytics of rightlessness as intimately connected to processes of abandonment and disposability, it examined in the context of the campaigns for justice in Bhopal the potential and risks of pursuing the amelioration of rightlessness, understood heuristically, through human rights. The concerns with human rights’ mobilisation and the excessive focus on amelioration itself leads us to shift our hopes for human rights towards their potentiality to act as an optics of rightlessness that reveal the processes through which the law, the social order, state power and modern governmental rationalities entrench

rightlessness as disposability. Rather than assuring a transitional path away from rightlessness, rights as an optics of rightlessness illuminate, and potentially disrupt, the practices of state, society and capital that treat humans as potential waste after use, transforming availability into disposability. This potential of rights to disclose the entrenchment of rightlessness emerged in each of the analyses above: as an optics of the domestic legal system's and international tort law's responsibility for the injustices perpetuated on the Bhopal survivors since 1984; as an optics of the role of the social order in the processes of keeping-rightless those people it regards and treats as waste and in 'excess of necessity'; and as disclosure of the potentiality of aiding survivors own contestation of these disposable subjectivities; and as a view into the work abandonment by sovereign and governmental power. Mirroring Das's hope for the anthropological gaze, might we reconstitute human rights *as* an optics -- 'forming one body, providing voice, and touching victims, so that their pain may be experienced in other bodies as well'¹²⁴ -- as yet one other means for Bhopal survivors to teach us what struggle against and within rightlessness means.

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Notes

- ¹ See, Hopgood, *The Endtimes of Human Rights*.
- ² Brysk, *Speaking Rights to Power*.
- ³ Levitt and Merry, "Vernacularization on the Ground," 460.
- ⁴ For instance, Milne, *Human Rights and Human Diversity*.
- ⁵ Fraser, "Becoming Human."
- ⁶ Beitz, "What Human Rights Mean," 44.
- ⁷ Winston, "Human Rights as Moral Rebellion," 279.
- ⁸ Turner, *Vulnerability and Human Rights*.
- ⁹ Zivi, *Making Rights Claims*.
- ¹⁰ Gundogdu, "Rightlessness in an Age of Rights," 6.
- ¹¹ Baxi, "Protection of Human Rights," 385–386.
- ¹² Ibid., 386.
- ¹³ The plant was run by Union Carbide India Limited (UCIL) a majority owned subsidiary (at 50.9%) of the US multinational Union Carbide Corporation (UCC).
- ¹⁴ Amnesty International contests these low figures and places the immediate death toll at 10,000, see *Clouds of Injustice*; The International Campaign for Bhopal, following research amongst the municipal workers who collected the bodies, estimates between 8-15,000 died within days of the gas leak, see "The Death Toll."
- ¹⁵ Greenpeace International, *The Bhopal Legacy*.
- ¹⁶ Cummings, "International Mass Tort Litigation," 111.
- ¹⁷ Baxi, "Writing about Impunity," 33.
- ¹⁸ Bhopal Survivors Movement Study Group, *Bhopal Survivors Speak*.
- ¹⁹ Edwards, Sarangi, and Sinha, *The Bhopal Marathon*, 68.
- ²⁰ Ibid., 45.
- ²¹ Quote by Verma, "Bhopal Disaster"; see also, Amnesty International, *Clouds of Injustice*.
- ²² See the extensive analysis in Odysseos, *The Subject of Coexistence*.
- ²³ Arendt, *The Origins of Totalitarianism*, 297.
- ²⁴ Benhabib, *Transformations of Citizenship*, 16.
- ²⁵ Wilke and Willis, "The Exploitation of Vulnerability"; Pérez, "Human Rights and the Rightless."

26 Ogle, "State Rights against Private Capital," 226.
 27 Wacquant, "Constructing Neoliberalism," 1.
 28 Cf. the essays on neoliberal constitutionalism, Gill and Cutler, *New*
 29 *Constitutionalism and World Order*.
 30 See Maldonado-Torres, "On the Coloniality of Being."
 31 Cacho, *Social Death*.
 32 Biehl, *Vita*, 381.
 33 Das, *Critical Events*, 138; emphasis in original.
 34 Foucault, *Security, Territory, Population*, 42.
 35 Selmeczi, "... We Are Being Left to Burn," 520.
 36 Biehl, *Vita*, 23.
 37 Cacho, *Social Death*, 6.
 38 Ibid., 6–7.
 39 "Disposability," 184.
 40 Yates, "The Human-As-Waste," 1682; See also, Wright, *Disposable Women*;
 41 Bauman, *Wasted Lives*.
 42 Khanna, "Disposability," 184.
 43 This denotes an existential "readiness to hand" or availability of beings, see
 44 Heidegger, *Being and Time*.
 45 Heidegger, "The Question Concerning Technology."
 46 Khanna, "Disposability," 185.
 47 Foucault, "Governmentality," 208.
 48 Khanna, "Disposability," 185–186.
 49 Tadiar, "Life-Times of Disposability."
 50 National Network of Lawyers for Rights and Justice (India), "Bhopal Gas Leak."
 51 Amnesty International, *Clouds of Injustice*, 27.
 52 Cassels, *The Uncertain Promise of Law*, 112.
 53 Baxi and Dhanda, *Valiant Victims and Lethal Litigation*.
 54 Justice Verma quoted in National Network of Lawyers for Rights and Justice
 55 (India), "Bhopal Gas Leak."
 56 See the account given in Galanter, "Law's Elusive Promise."
 57 Galanter, "Legal Torpor."
 58 Baxi, "Writing about Impunity," 36; The Bhopal Act was first challenged by
 59 survivors with the help of Indira Jaising, now Solicitor General of India. "Indira
 60 Jaising."
 61 Hanna, "Bhopal," 495.
 62 Ibid.
 63 Ibid., 498. At the time, 'none of the groups of victims that had been formed by
 64 then realised the enormous implications of surrendering vital decision-making
 powers to the UOI.' Jaising and Sathyamala, "Legal Rights and Wrongs," 106–
 107.
 Sheela Thakur, gas survivor cited in Mukherjee, *Surviving Bhopal*, 81.
 Hanna, "Bhopal," 494.
 Ibid.
 Ibid.; International Campaign for Justice in Bhopal, "The Death Toll."
 Greenpeace International, *The Bhopal Legacy*.
 See Cowan and Billaud, in this issue; Goodman and Pegram, *Human Rights, State*
Compliance, and Social Change.
 National Network of Lawyers for Rights and Justice (India), "Bhopal Gas Leak"
 brackets added; Amnesty International, *Clouds of Injustice*, 78.

65 Meeran, "Tort Litigation against Multinational Corporations," 3.
 66 Cummings, "International Mass Tort Litigation"; Darmody, "An Economic
 Approach to Forum Non Conveniens Dismissals".
 67 Kapur, "From Human Tragedy to Human Rights," 2.
 68 Meeran, "Tort Litigation against Multinational Corporations," 4.
 69 Kapur, "From Human Tragedy to Human Rights," 3.
 70 Fleischer, "Regulatory Arbitrage."
 71 Jones, *Corporate Killing*, 17; Recall the cynical statement of a senior World Bank
 employee that, "the economic logic behind dumping a load of toxic waste in the
 lowest wage country is impeccable" Lawrence Summers cited in Mukherjee et al.,
 "Generating Theory," 152.
 72 Shrivastava, *Bhopal*, 54.
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 94 For a broader philosophical treatment, see Rancière, "Who Is the Subject of the
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 95 Cited in Edwards, Sarangi, and Sinha, *The Bhopal Marathon*, 104.
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 98 Merry, *Human Rights and Gender Violence*, 137–8.
 99 Khanna, "Indignity," 258.
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 103 This is not to imply that activist practices have become limited to the law. See the
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104 Anderson, "Litigation and Activism," 186.
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 106 Levitt and Merry, "Vernacularization on the Ground," 461; Odysseos, "Human
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 107 Stammers, *Human Rights and Social Movements*; Levitt and Merry,
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 121 Baxi, "Protection of Human Rights," 405.
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