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Human Rights, Self-formation and Resistance in Struggles Against Disposability: Grounding Foucault's 'Theorizing Practice' of Counter-conduct in Bhopal

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Abstract

Theorizing how human rights function as a liberal governing technology has undoubtedly been an important contribution of 'governmentality studies'. Such theorization, however, has largely eschewed concerted examination of the mobilization and impact of human rights in historically specific struggles. This has tended to divorce the theoretical concerns of critical rights scholarship from the specificity of political struggles, reifying rights and obscuring the agency of 'the governed' in struggles against socio-economic disposability. Calling for greater attention to human rights' potential destabilisations of conduct, the article examines Foucault's work into forms of resistance to 'power that conducts' -- 'counter-conduct' -- which is increasingly inspiring wide-ranging analyses of resistances to conducting power. Bringing together the 'theorizing practice' of counter-conduct and the enduring campaigns for justice by survivors and activists of the 1984 Bhopal gas disaster, the article examines how human rights enable forms of self-formation that interrupt the subjectification of those constructed as disposable subjects. Illuminating their intervention in their ethical self-transfiguration mitigates the occlusion of the agency of the governed. Moreover, it argues, the thinking of counter-conduct recalibrates Foucault's own methodological orientations away from an overwhelming focus on mechanisms of governmental power, towards the study of the counter-conductive practices of co-governing subjects.

Keywords: counter-conduct, human rights, disposability, resistance, Bhopal

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Introduction: Human Rights, Power and Resistance

Critical scholarship on human rights finds itself in an unfortunate conundrum. Eager to eschew the overly optimistic and ideologically inflected assessments of human rights that one finds in contemporary world political and non-governmental practice,¹ such scholarship has tended to dismiss rights as ‘a priori normalizing’, concerned that their positive ‘social effects’ are little more than ‘a discursive imposition from above’.² In International Relations (IR) literature well-rehearsed concerns revolve, for example, around the symbolic mobilization of rights by powerful state and non-state actors to shame and discipline those recalcitrant states and groups, which are seen to be violating individual or group rights. Moreover, scholars regret the legally comprehensible but politically problematic priority of justiciable civil and political rights over aspirational economic and social rights.³ More recently, scholars broadly working within the subfield of ‘governmentality studies’ have also examined the normalizing and governing effects of human (and also constitutional) rights.⁴ Such studies have primarily focused on how rights create new categories of, and engender, rights-holder subjectivities that enable the furtherance of (neo)liberal rationalities and mentalities of directing and governing socio-economic and political life.⁵ As such, they have importantly shown how rights are a privileged liberal technology for directing and channelling our political ‘conduct’,⁶ which calls into being rights-bearing subjects and structures their political possibilities for resistance. At the same time, however, such theoretical concern has not been combined with empirical examination of the impacts of human rights on practices of dissent and

¹ For a critique, see David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ: Princeton University Press, 2005).

² Lois McNay, ‘Self as Enterprise: Dilemmas of Control and Resistance in Foucault’s The Birth of Biopolitics’, *Theory, Culture & Society*, Vol. 26, no. 6 (2009), p. 70; see also, Duncan Ivison, ‘The Disciplinary Moment: Foucault, Law and the Reinscription of Rights’, in Jeremy Moss (ed.) *The Later Foucault: Politics and Philosophy* (London: Sage, 1998), pp. 129–48; Paul Patton, ‘Foucault, Critique and Rights’, *Critical Horizons* Vol. 6, no. 1 (2005), pp. 267–87.

³ Daniel J. Whelan and Jack Donnelly, ‘The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight’, *Human Rights Quarterly*, Vol. 29, no. 4 (2007), pp. 908–49.

⁴ Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton, NJ: Princeton University Press, 1995); Barbara Cruikshank, *The Will to Empower: Democratic Citizens and Other Subjects* (Ithaca, NY: Cornell University Press, 1999).

⁵ Louiza Odysseos, ‘Human Rights, Liberal Ontogenesis and Freedom: Producing a Subject for Neoliberalism?’, *Millennium: Journal of International Studies*, Vol. 38, no. 3 (2010), pp. 747–72; Bal Sokhi-Bulley, ‘Governing (Through) Rights: Statistics as Technologies of Governmentality’, *Social & Legal Studies*, Vol. 20, no. 2 (2011), pp. 139–55.

⁶ In the sense of ‘government’ given by Michel Foucault, ‘The Subject and Power’, in Hubert Dreyfus and Paul Rabinow (eds), *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2nd Revised Ed. (Chicago: University of Chicago Press, 1983), pp. 208–26.

forms of mobilisation in historically specific struggles.⁷ As a result, the diverse theoretical concerns of critical rights scholarship appear divorced from the specificity of political struggles, resulting in potentially reifying rights ‘as an abstract category’.⁸

Scholars reasoning through situated socio-economic and political struggles have recently highlighted the undeniable significance and complex effects of human rights’ legal frameworks and discourses for the politics of resistance. Their struggle-oriented research calls for a reversal of the striking neglect of struggles in recognition the multifarious and ‘illimitable’⁹ ways human rights are invoked to contest political oppression and socio-economic disposability¹⁰ and to forge a situated and non-legalistic conception of justice.¹¹

This productive debate about human rights and struggle revisits internal critiques of earlier governmentality studies across the social sciences, which had attributed this negligible attention to the ‘agonism of politics’ to their ‘univocal...overly coherent and systematic’¹² conception of the exercise of governmental power. Such a monolithic reading of Foucault’s notion of diffuse, adaptive and potentially reversible power *that governs* tended to reduce politics to “‘mentalities of rule” to the virtual exclusion of understanding politics as social relations’.¹³ This had serious repercussions for the study of resistance within earlier governmentality scholarship: though heralding resistance as co-emergent with power, it paid little more than mere ‘lip service’ to ‘resistances’, falling short of a concerted incorporation of ‘struggles into its analysis’.¹⁴ Combined with the predominantly ‘textual’¹⁵ methodologies of governmentality approaches to human rights, the near-exclusive focus on mechanisms of power largely led to a blindness to (the

⁷ Anna Selmezi, ‘Who Is the Subject of Neoliberal Rights? Governmentality, Subjectification and the Letter of the Law’, *Third World Quarterly*, Vol. 36, no. 6 (2015), pp. 1076–91.

⁸ McNay, *op. cit.*, p. 70.

⁹ Ben Golder, ‘Foucault’s Critical (Yet Ambivalent) Affirmation: Three Figures of Rights’, *Social & Legal Studies*, Vol. 20, no. 3 (2011), pp. 283–312.

¹⁰ Louiza Odysseos, ‘The Question Concerning Human Rights and Human Rightlessness: Disposability and Struggle in the Bhopal Gas Disaster’, *Third World Quarterly*, Vol. 36, no. 6 (2015), pp. 1041–59.

¹¹ Lara Montesinos Coleman, ‘Struggles, over Rights: Humanism, Ethical Dispossession and Resistance’, *Third World Quarterly*, Vol. 36, no. 6 (2015), pp. 1060–75.

¹² Pat O’Malley, Lorna Weir, and Clifford Shearing, ‘Governmentality, Criticism, Politics’, *Economy and Society*, Vol. 26, no. 4 (1997), p. 501.

¹³ *Ibid.*

¹⁴ Justus Uitermark, ‘The Genesis and Evolution of Urban Policy: A Confrontation of Regulationist and Governmentality Approaches’, *Political Geography*, Vol. 24, no. 2 (2005), p. 147.

¹⁵ Selmezi, *op. cit.*, note 7, p. 1078.

priority of) resistance, which persists in different forms to date. Such imbalance potentially has serious detrimental effects: it occludes the agency of the governed and obscures the resistive possibilities within power relations; equally worryingly, it unwittingly betrays the indubitable critical commitment of governmentality scholarship toward ‘the very dynamics of governmental power’.¹⁶

This article accepts the important theoretical insights advanced by governmentality approaches to human rights. At the same time, it recognizes their failure historically to see beyond the governing effects of rights -- through diverse processes of legal, political and ethical subjectification of rights-bearers -- to the destabilisations of conduct, which struggles *through* rights can bring about.¹⁷ In direct response to this concern, the article calls for greater attention to the resistive potential of human rights in struggle, which often renders the governing of our conduct unstable and reversible. The article examines how rights enable ways of escaping, subverting and evading the ‘processes implemented for conducting others’¹⁸ by turning, first, to Foucault’s analysis of ‘counter-conduct’ in the Christian pastorate as a crucial resource in illuminating forms of resistance to ‘power that conducts’.¹⁹ Second, the article surveys recent appropriations of Foucault’s ‘counter-conduct’ in cognate social science fields. Ranging from sociology of medicine to urban studies, such recent analyses contribute to our understanding of contemporary mobilizations of ‘counter-conduct’ and illuminate ‘certain forms of contestation ... that go beyond open protest or direct confrontation’, which are frequently neglected by conventional accounts of resistance and social movements.²⁰ Engaging with Foucault’s thinking of counter-conduct, and its recent appropriations, expands our understanding of subjects’ struggles, bringing to the fore the significance of ethical and political self-formation in destabilising predominant modes of subjectification ²¹ and the resulting

¹⁶ *Ibid.*

¹⁷ *Ibid.*; See also, Coleman, *op. cit.*

¹⁸ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978*, trans. Graham Burchell (Basingstoke: Palgrave Macmillan, 2007), p. 201.

¹⁹ Following Foucault, *ibid.*, the article distinguishes resistance to power that conducts from resistance to forms of oppression associated with the sovereign state and the exploitative tendencies of the market, which we formed the traditional focus of human rights scholarship. Regarding the latter, see, for example, Jack Donnelly, ‘The Relative Universality of Human Rights’, *Human Rights Quarterly*, Vol. 29, no. 2 (2007), pp. 281–306.

²⁰ Marit Rosol, ‘On Resistance in the Post-Political City: Conduct and Counter-Conduct in Vancouver’, *Space and Polity*, Vol. 18, no. 1 (2014), p. 71.

²¹ Arnold I. Davidson, ‘In Praise of Counter-Conduct’, *History of the Human Sciences*, Vol. 24, no. 4 (2011), pp. 25–41; Amy Allen, ‘Foucault and the Politics of Our Selves’, *History of the Human Sciences*, Vol. 24, no. 4

attempts of subjects to co-govern. Focusing on counter-conduct, then, helps us better grasp the creative agency of the governed that mobilizes human rights to engender inventive, self-transfiguring practices against ‘governmental power’.

The article, in particular, examines how ethical discourses and claiming practices of human rights invoke new forms of self-formation that interrupt, if not entirely rescind, modes of subjectification emerging from colonial and contemporary processes of disposability.²² How do such new types of self-formation through human rights intervene in the ethical self-transfiguration of those constructed as ‘non-pertinent’,²³ ‘minority individuals’,²⁴ disposable subjects of the global political economy? The article, then, argues that the counter-conductive potential of human rights hinges precisely in the incitement of subjects who claim their right and ability to ‘co-govern’, resisting and distancing themselves from the governing assumptions and objectives of existing socio-economic discourses and practices.

The thinking of counter-conduct, I argue, begins to assuage existing concerns that governmentality approaches to human rights unwittingly erase the agency of the governed. Reasoning through counter-conductive struggles, moreover, has potentially far-reaching repercussions for Foucault’s own methodological orientations to the study of disciplinary and governmental power,²⁵ explored in the final section. The thinking of counter-conduct, I suggest, recalibrates the methodological orientations themselves away from an overwhelming focus on rationalities of rule and mechanisms of power, seen in later governmentality studies, towards an openness to the counter-conductive potential of self-forming and ‘not so governable’ subjects.

(2011), pp. 43–59; Odysseos, ‘Human Rights, Liberal Ontogenesis and Freedom’, *op. cit.*; Louisa Cadman, ‘How (not) to Be Governed: Foucault, Critique, and the Political’, *Environment and Planning D: Society and Space*, Vol. 28, no. 3 (2010), pp. 539–56; Mitchell Dean, “‘A Social Structure of Many Souls’: Moral Regulation, Government, and Self-Formation”, *Canadian Journal of Sociology*, Vol. 19, no. 2 (1994), p. 145.

²² Odysseos, ‘The Question Concerning Human Rights’, *op. cit.*, note 10; see also, Anna Selmeçzi, “... We Are Being Left to Burn Because We Do Not Count”: Biopolitics, Abandonment, and Resistance’, *Global Society*, Vol. 23, no. 4 (2009), pp. 519–38; Neferti X. M. Tadiar, ‘Life-Times of Disposability within Global Neoliberalism’, *Social Text*, Issue 115, Vol. 31, no. 2 (2013), pp. 19–48.

²³ Foucault, *Security, Territory, Population*, *op. cit.*, note 18, p. 42.

²⁴ Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979*, trans. Graham Burchell (Basingstoke: Palgrave Macmillan, 2008), p. 259.

²⁵ Michel Foucault, ‘Two Lectures’, in Colin Gordon (ed.), *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (Hemel Hempstead: Harvester Wheatsheaf, 1980), pp. 78–108.

Epistemologically committed to theorising through struggles, I discuss the potential of human rights for counter-conduct through the activism and campaigns for justice in Bhopal, India, following the December 1984 Bhopal gas leak disaster. Widely regarded as the world's worst industrial accident, the leak led to the emergence of various 'fronts', associations and unions, as well as to evolving movements and campaigns, by survivors, activists and their international 'next of kin'.²⁶ Their enduring campaigns and struggles continue with renewed urgency in the third decade since the disaster and illuminate the reversibility of conduct and tenacity of counter-conductive, self-transfiguring agency.

Counter-Conduct in Foucault's Examination of the Christian Pastorate

In *Security, Territory, Population*, Foucault locates the emergence of practices of counter-conduct within an episodic history of the Christian pastorate: 'counter-conducts' denote dissent against a variety of pastoral 'governing' practices, all aimed to shape, regulate and refine religious and spiritual conduct. In other words, the term 'counter-conduct' refers to those efforts whose aim was to invoke new directions, priorities, or objectives, and to chart ways of escaping direction by the subjects of power themselves. Foucault's extensive discussions of the limitations of the existing vocabulary that confronted his efforts 'show how careful he was in wanting to find a concept that neglected neither the ethical nor the political dimensions and that made it possible to recognize their nexus'.²⁷ None of the usual terms employed in relation to resistance – 'revolt', 'disobedience', 'insubordination', 'dissidence', 'misconduct' – were particularly appropriate, Foucault argued, being alternately 'either too strong, too weak, too localized, too passive, or too substance-like'.²⁸

Settling on the 'badly constructed'²⁹ term 'counter-conduct', which at least maintained the inseparable link to conduct, Foucault presages the discussion of countering conduct by emphasising the multiple nuances of the verb 'to govern'. 'To govern' held a broad range of meanings, from 'imposing a regimen', as a doctor does to a patient, to governing

²⁶ A phrase used to capture 'the fluctuating consortia of human rights and environmental activists', Upendra Baxi, 'Writing about Impunity and Environment: The "silver Jubilee" of the Bhopal Catastrophe', *Journal of Human Rights and the Environment*, Vol. 1, no. 1 (2010), p. 29.

²⁷ Davidson, *op. cit.*, p. 28.

²⁸ *Ibid.*

²⁹ Olga Demetriou, in this issue.

one's spouse in the sense that a husband, Foucault explains, 'support[s], provide[s] for and give[s] means of subsistence'.³⁰

The semantic field covered by the concept of government includes...the notions of a movement in space, of material subsistence, of medical and spiritual direction towards health and salvation, and finally it always refers to an intercourse, to processes of exchange between individuals.³¹

Thus, in the context of the pastorate, to govern connoted a range of 'pre-political', pastoral meanings that indicate the improving and regulative dimension of governing.³² Counter-conduct in its historical emergence within the Christian pastorate, therefore, aimed to 'redistribute, reverse, nullify and partially or totally discredit pastoral power in the systems of salvation, obedience, and truth...'³³ and Foucault examines the various manifestations of these, such as for instance asceticism and mysticism. It is important to grasp, however, that counter-conducts did not always take the form of rejection or refusal of conduct, as I discuss extensively below. They also manifested variably as a questioning, reworking and elaboration of pastoral power, which at times eroded but also at other times reinforced, redirected or improved the mechanisms, as well as the evolving objectives, of conducting power.³⁴

Anti-pastoral counter-conducts through doctrinal struggle and individual and group actions regarding spirituality sought to bring about 'a whole new attitude, [religious] comportment, way of doing things and being and a whole new way of relating to God, obligations, morality, as well as civil life'.³⁵ In the evolution of the pastorate and its institutionalisation there emerged, then,

movements whose objective is a different form of conduct, that is to say: wanting to be conducted differently, by other leaders (*conducteurs*) and other shepherds, towards other objectives and forms of salvation, and through other procedures

³⁰ Foucault, *Security, Territory, Population*, *op. cit.*, note 18, p. 121.

³¹ Paolo Savoia, 'Foucault's Critique of Political Reason: Individualization and Totalization', *Revista de Estudios Sociales*, No. 43 (2012), p. 17.

³² Foucault, *Security, Territory, Population*, *op. cit.*, note 18, p.126.

³³ *Ibid.*, p. 204.

³⁴ *Ibid.*, p. 202.

³⁵ *Ibid.*, p. 204.

and methods. They are movements that also seek, possibly at any rate, to escape direction by others and to define the way for each to conduct himself.³⁶

There is a danger that such an overview casts conduct as originary and ontologically prior to counter-conduct. That would be misleading however: resistances, redirections and refusals of conduct – counter-conducts -- were not purely responding to, i.e. secondary or subsequent, to pastoral forms of guidance. Rather, pastoral conduct evolved, transformed and intensified in the midst of, and in response to, anxieties, concerns and resistances about its evolving operations and functions. Its evolution emerges in a co-constitutive and circular fashion as both a response to, and resulting in, distinct counter-conducts. This elucidates the ‘immediate and founding correlation between conduct and counter-conduct’.³⁷ In other words, ‘the diffuse centres of power do not exist without the points of resistance that are in some way primary; and that power does not take life as its objective without revealing or giving rise to a life that resists power’,³⁸ a term we might broadly understand as processes that ‘render immobile and untouchable’, that fix and stabilize ‘those things that are offered to us as real, as true, as good’.³⁹

Foucault ends his 1977-78 lecture course without explicitly returning to ‘counter-conduct in the modern system of governmentality’.⁴⁰ The significance of the analysis of ‘counter-conduct’ for scholarly concern with ‘technologies of domination of individuals over one another’ is nevertheless clear.⁴¹ Accounting more fully for the wide range of relations of conduct, requires consideration of the multifarious ‘processes by which the individual acts *upon himself*’, engaging in inventive, questioning and/or disruptive self-formation.⁴² The study of conducting power and its processes would remain partial and incomplete if it highlighted only the potentially coercive and repressive means through which those who govern ‘force people to do what the governor wants’.⁴³ Understanding processes of conducting requires more concrete engagement with how governed subjects transform,

³⁶ *Ibid.*, p. 194.

³⁷ *Ibid.*, p. 196.

³⁸ Gilles Deleuze, *Foucault* (New York: Continuum, 2006), p. 94.

³⁹ Michel Foucault, ‘Power, Moral Values and the Intellectual, an Interview with Michael Bess’, *History of the Present*, Spring 1988, p. 1.

⁴⁰ Foucault, *Security, Territory, Population*, *op. cit.*, note 18, p. 355.

⁴¹ Michel Foucault, *Religion and Culture*, Jeremy Carrette (ed.), (Manchester: Manchester University Press, 1999), p. 162.

⁴² *Ibid.*

⁴³ *Ibid.*

redirect, evade and, possibly, also subvert pastoral governing; that is, how ‘the self is constructed and modified *by oneself*’.⁴⁴

Specifically, our accounts of human rights need to illuminate concretely and simultaneously how they both contribute to our ‘governing’ and also how they might question and counter such complex processes. The connection of counter-conduct to ethical self-formation calls into question prevalent variations of Kantian philosophy’s moral subjectivity, whose freedom is manifested ‘as autonomy and self-legislation’.⁴⁵ Counter-conducting, I argue, marks the emergence of a self-transfigured, critical and ethical existence: ethical in the sense and practice of reflective self- and other-regarding care,⁴⁶ and critical because as a practice [*askesis*] it ‘reveal[s] and resists[s] the intertwining, intensification, and mutual reinforcement of relations of power, knowledge, and subjectivity’.⁴⁷ Foucault’s thinking of counter-conduct, and counter-conduct through human rights, questions ‘anything as definitive, and untouchable, obvious, or immobile’ in an attempt to ‘bring things back to their original mobility, their openness to change’.⁴⁸ In this sense, counter-conduct speaks of a situated practice that enables subjects in the context of specific struggles to ‘escape oneself’⁴⁹ in the sense of ‘allowing refusal, and curiosity, and innovation’.⁵⁰ I return to the concern with self-formation below in the discussion of recent analyses that mobilize notions of counter-conduct.

Contemporary Manifestations of Counter-Conduct

How have recent discussions of counter-conduct in social scientific fields illuminated contemporary empirical manifestations of resisting conducting power? The engagement with on-going practices of counter-conduct in diverse social domains helps locate such practices as responding to, and themselves further shaping, the conducting of conduct

⁴⁴ *Ibid.*, emphasis added.

⁴⁵ Edward F. McGushin, *Foucault’s Askesis: An Introduction to the Philosophical Life*, Annotated Edition (Evanston, Ill.: Northwestern University Press, 2006), p. 284, see also, pp. 242–53.

⁴⁶ Louiza Odysseos, ‘On the Way to Global Ethics? Cosmopolitanism, “Ethical” Selfhood and Otherness’, *European Journal of Political Theory*, Vol. 2, no. 2 (2003), pp. 183–207; As Foucault claims, ‘The only ethics you can have, with regard to the exercise of power, is the freedom of others’, in Foucault, ‘Power, Moral Values and the Intellectual’, *op. cit.*, note 39, p. 13.

⁴⁷ McGushin, *op. cit.*, p. 287, brackets added.

⁴⁸ Foucault, ‘Power, Moral Values and the Intellectual’, *op. cit.*, note 39, pp. 1–2.

⁴⁹ Michel Foucault, *The Use of Pleasure: The History of Sexuality, Vol. 2* (London: Vintage, 1990), p. 50.

⁵⁰ Foucault, ‘Power, Moral Values and the Intellectual’, *op. cit.*, note 39, p. 13.

within the neoliberal milieu.⁵¹ Research into contemporary forms of counter-conduct highlights critical and resistive responses to modes of subjectification that aim at the incitement of self-responsible subjects. As has been extensively noted, processes of ‘self-responsibilization’ render ‘autonomy’ a technique of governing, which reverses the conception of ‘autonomy’ found in liberal thought as the very boundary of social and state control.⁵² This has at least two notable repercussions: first, that frequently responsibility is internalised, such that counter-conduct is not so much a refusal but a critically informed demand to co-govern, to redirect or change processes and objectives of governing. Second, and related, that the subtle and non-declaratory⁵³ forms that counter-conduct takes signify the kind of resistance that emerges in a post-political age, in which a ‘post-political consensus denies the “political”, neutralises dissent and depoliticises deeply antagonistic social relations’.⁵⁴ This second, important concern requires discussion of whether counter-conduct itself contributes to such depoliticisations through its ‘unorganised and nonstrategic’ expressions.⁵⁵

Self-responsibility and co-governing

Contemporary analyses of neoliberal⁵⁶ modes of subjectification note a politically significant transformation of ‘individual autonomy’ into one of ‘[the] central technologies’ of government and self-government; this subverts the classical liberal account of autonomy as ‘an obstacle or limit to social control ... so that it is compatible with governance rather than ... its absolute limit or the point at which governance falters’.⁵⁷ Ideas of active self-regulation and self-government facilitate conducting

⁵¹ Which Foucault appears not to address explicitly in *The Birth of Biopolitics*, *op. cit.*, note 24; see Davidson, *op. cit.*.

⁵² McNay, *op. cit.*, p. 62.

⁵³ For a discussion of declaring rights in the history of human rights, see Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2008), pp. 113–145.

⁵⁴ Rosol, *op. cit.*, p. 72.

⁵⁵ *Ibid.*

⁵⁶ I take ‘neoliberalism as a background epistemic or ideological context that sets the parameters within which specific practices are meaningful (they make sense) and functional (they work correctly)...neoliberalism is one of the primary epistemological frameworks that shape structures of subjectivity, relations of production, gender and race politics, even artistic practices and aesthetics’, see Robin James, ‘Neoliberal Noise: Attali, Foucault & the Biopolitics of Uncool’, *Culture, Theory and Critique*, Vol. 55, no. 2 (2014), p. 139.

⁵⁷ McNay, *op. cit.*, p. 63.

through ‘the very freedom of individuals’ and constitute a significant inflection of the notion of freedom itself.⁵⁸ This attitude is not necessarily contrary to the improving impulse of pastoral governmentality. One might more accurately argue that caring and improving shifts towards self-responsibility, such that the work of conduct becomes to call into being *self*-responsible and *self*-caring subjects. Evidence of this tendency towards ‘responsibilization’ is found in a very broad range of social domains, ‘from criminal justice to workplace safety, and from social insurance systems to the labor market’; its effect is first and foremost manifested ‘as an obligation to accept personal responsibility for the outcomes related to certain actions’.⁵⁹ As scholars concerned with contemporary forms of abandonment and disposability have also shown, ‘non-pertinent’ subjects are often encouraged ‘to assume responsibility for states of affairs for which they are not responsible’, such as failures of the market, entrenched structural inequalities and the often disastrous social effects of neoliberalisation of international trading regimes and national economic structures.⁶⁰

Given the special role of self-responsibility in the production of governable subjects,⁶¹ it is not surprising that contemporary manifestations of counter-conduct also revolve around the subversion, redirection and potential evasion of processes of responsibilization. For example, researchers of ‘somatic’ and health governing processes have noted how individual subjects cultivate practices of ‘irresponsibilisation’, that is, behaving ‘irresponsibly’ in their social interactions, engaging in risky ‘health’ behaviour and/or pursuing unhealthy and socially undesirable lifestyles, as defined by historically contingent governmental objectives.⁶² Such behaviour shows the circularity of conduct and counter-conduct: processes of self-responsibilization engender not only responsibly acting subjects as intended but, at the same time, a range of inventive ‘irresponsible’ practices. The emergence of the latter calls on conducting technologies, in turn, to evolve to counter and manage them.⁶³

⁵⁸ Thomas Biebricher, ‘(Ir-)Responsibilization, Genetics and Neuroscience’, *European Journal of Social Theory*, Vol. 14, no. 4 (2011), p. 471; for a discussion of the meaning of freedom in such processes, see also, Odysseos, ‘Human Rights, Liberal Ontogenesis and Freedom’, *op. cit.*, p. 753; Ben Golder, ‘Foucault, Rights and Freedom’, *International Journal for the Semiotics of Law*, Vol. 26, no. 1 (2013), pp. 5–21.

⁵⁹ Biebricher, *op. cit.*, p. 470.

⁶⁰ McNay, *op. cit.*, p. 65; see, importantly, Selmeczi, “... We Are Being Left to Burn”, *op. cit.*, note 22; João Biehl, *Vita: Life in a Zone of Social Abandonment* (Berkeley, Calif.: University of California Press, 2012).

⁶¹ Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 2010).

⁶² For example, not altering behaviour based on genetic self-knowledge, Biebricher, *op. cit.*, p. 484.

⁶³ See Foucault on invigilation, ‘The Subject and Power’, *op. cit.*, note 6.

The view of self-responsible subjects as inventive and creatively resistive brings our attention to the versatility and malleability of subjective formation, refuting the reduction of subjects by scholarly analyses to ‘passive objects of ever more refined and efficient practices that aimed at an optimum level of docility and productivity’.⁶⁴ I suggest that existing discussions of ‘irresponsibilization’ processes are significant but ought to be more heuristically viewed: rather than read as highlighting the re-emergence of the ‘dangerous and incorrigible individual’,⁶⁵ such practices exceed the thwarting or evasion of conduct. Behaving irresponsibly may well signify a critical attitude to the imperative of responsibility or, even, its failure, giving expression to a somatic and ethical self-relation that points to a ‘different form of conducting oneself’: ‘irresponsibly’ avoiding conduct may illuminate attempts to redirect it.⁶⁶

A second notable manifestation of counter-conduct involves questioning of the objectives, directions and mechanisms of conduct for the purpose of improving them. Here, too, counter-conduct emerges in relation to responsibility. Studies of communities interacting with urban policy and regeneration initiatives, for example, have analyzed the solution-seeking origin and purpose of many counter-conducts. In cases of housing initiatives in South Africa,⁶⁷ responses to urban re-designation in the United States,⁶⁸ and management of urban shrinkage in the former German Democratic Republic,⁶⁹ subjects resist by critiquing plans and approaches, formulating new options, influencing and redrafting objectives, or demanding the implementation of existing principles and policies that align with their desires and concerns, frequently holding governance to the ‘letter of the law’.⁷⁰ In such manifestations, subjects embody self-responsibility by employing it towards (what they consider to be) the betterment of policy, governing goals and mechanisms. Rather than refusing conduct, in a sense, they seek to ‘co-govern’,

⁶⁴ Biebricher, *op. cit.*, p. 473.

⁶⁵ *Ibid.*, 480.

⁶⁶ *Ibid.*, 474; See also, Carlos Novas and Nikolas Rose, ‘Genetic Risk and the Birth of the Somatic Individual’, *Economy and Society*, Vol. 29, no. 4 (2000), pp. 485–513.

⁶⁷ Ruth T. Massey, ‘Exploring Counter-Conduct in Upgraded Informal Settlements: The Case of Women Residents in Makhaza and New Rest (Cape Town), South Africa’, *Habitat International*, Vol. 44 (2014), pp. 290–96.

⁶⁸ Rosol, *op. cit.*

⁶⁹ Nina Gribat, *Governing the Future of a Shrinking City: Hoyerswerda, East Germany* (PhD Thesis, Sheffield Hallam University, 2010), <http://shura.shu.ac.uk/7027/>.

⁷⁰ Anna Selmecci, ‘Who Is the Subject of Neoliberal Rights?’, *op. cit.*, note 7.

wresting from power their incitement as self-responsible subjects,⁷¹ and turning this self-responsible ethos towards the ‘art of government’ itself. These counter-conducts are best grasped as ‘alternative attempts at governing’,⁷² often inspired by habitual attachments or ideological leanings to previously privileged ways of thinking about politics and society, offering critical, historically-informed, reflection on present modes of being governed.

Hence, counter-conduct as a critical demand for co-governing may eschew the form of an explicit and intentional ‘rejection of governing objectives [in an] open protest or direct confrontation’.⁷³ Moreover, it might not necessarily involve ‘suggesting radically different approaches...’ in terms of policy content, programme direction or sweeping political demands.⁷⁴ Rather, counter-conduct as co-governing may be ‘adopted to manipulate and benefit from what is available’ in order to ‘ensure the survival of social networks and other livelihood strategies’,⁷⁵ reworking self-responsibility in its own ways. As Nina Gribat makes clear, often what is coined ‘counter-conduct’ is ‘constituted by the dominant governmental rationalities and not by the subjects who act in these ways’ who, far from rejecting conduct, are in fact advancing its critique, putting forward ‘diverging ideas and partaking in shaping and improving current practices.’⁷⁶ The ethical stance underlying such counter-conducts involves subjects ‘defin[ing] for themselves what is good for them’.⁷⁷

Resistance for a ‘post-political age’?

The intervention of *critically* self-responsible subjects in the diverting and/or co-governing of their own conduct frequently adopts and adapts the very same tools and policy instruments of conducting power. This has led some to question whether such ‘non-confrontational and individual, unorganised and nonstrategic’ practices, signify the emergence of, and further contribute to, a ‘post-political’ era characterized by consensual

⁷¹ Massey, *op. cit.*, p. 295; see also, Rosol, *op. cit.*

⁷² Gribat, *op. cit.*, p. 216.

⁷³ Rosol, *op. cit.*, p. 72; brackets added.

⁷⁴ Gribat, *op. cit.*, p. 216.

⁷⁵ Massey, *op. cit.*, p. 295.

⁷⁶ Gribat, *op. cit.*, p. 248.

⁷⁷ Foucault, ‘Power, Moral Values and the Intellectual’, *op. cit.*, note 39, p. 12, brackets added.

politics.⁷⁸ In the context of this article the question is whether the mobilization of rights in counter-conduct signals lack of contestation and growing acquiescence to a ‘post-political’ consensus.⁷⁹ This view would cohere with the assessment of rights as normalizing, which tends to discount the mobilization of rights both for ‘confronting governments’⁸⁰ and also, importantly, for imagining new futures and transforming one’s self.

The question that co-governing indicates a diminishing attitude towards, and aptitude for, resistance articulates a serious concern. I argue, however, that privileging this anxiety remains part and parcel of the tendency to over-determine the effects of conducting power, which unwittingly occludes the agency of subjects and effaces the indeterminacy of rights in struggles.⁸¹ Moreover, such a view is in danger of stabilizing which practices we may regard as resistive, historically reducing them to those which are explicitly organized, political and strategic: in one word, visible. How do we contest the terms of this concern? In my view, this entails recognizing as political both refusals and resistances that take the form of rejection, or which speak in the registers of *political* expression, but also more subtle forms of questioning how current regimes of conduct render us ‘thus’, attempting to stabilize, for good or ill, our self-formation.

Bringing into view ‘the ethical relationship of the self to itself’, which conducting aims to author and authorise, is one such form of resisting. For Louisa Cadman this is closely associated with the recovery of ‘the critical attitude found in pastoral counter-conducts’, which fuels ‘the experience of desubjugation’.⁸² Foucault defined the critical attitude ‘as the movement by which the subject gives [it]self the right to question’.⁸³ For Cadman, rights are an important political practice whose ‘active and performative role ... is achieved through another understanding: “the right to question” governmental regimes of truth’.⁸⁴ The ‘right to question’ helps us view counter-conducts as practices of the

⁷⁸ Rosol, *op. cit.*, p. 72.

⁷⁹ As an example, see Jacques Rancière, ‘Who Is the Subject of the Rights of Man?’, *South Atlantic Quarterly*, Vol. 103, nos. 2–3 (2004), p. 297.

⁸⁰ Michel Foucault, ‘Confronting Governments: Human Rights’, in *Power: Essential Works of Foucault, 1954–1984*, trans. James D. Faubion, Vol. 3 (New York: The New Press, 2001), pp. 474–75.

⁸¹ Golder, *op. cit.*, note 9; Coleman, *op. cit.*

⁸² Cadman, *op. cit.*, p. 553.

⁸³ Michel Foucault, *The Politics of Truth*, trans. Sylvère Lotringer and Lysa Hochroth (Los Angeles, CA: Semiotext(e), 2007), p. 32.

⁸⁴ Cadman, *op. cit.*, p. 550; Foucault, *The Politics of Truth*, *op. cit.*, p. 32.

‘freedom to think (and act) otherwise -- by bringing forth and questioning the regime of truth through which [individuals] are engaged as objects and subjects of government’.⁸⁵

‘The freedom to think (and act) otherwise’ illuminates how human rights enable diverse and context-specific practices of ethical self-formation; contra Cadman, however, who regards as counter-conducts as distinct from those ‘self-transformations required to suit the current governmental regime of truth’,⁸⁶ I argue that self-formation cannot be restricted to rejecting or oppositional practices. In order to grasp contemporary counter-conduct we must accept that it involves practices of the self working to challenge, redirect or modify techniques of power that govern our conduct, without the requirement of intentional rejection or explicitly political expression. Indeed, one might say that modes of self-formation that suit ‘the current governmental regime of truth’,⁸⁷ and practices of counter-conductive self-formation are two distinct moments of conducting processes.

To put this in rather polemical terms, if a governmentality approach ‘refuses the reduction of political power to the actions of the state’,⁸⁸ then a counter-conduct approach contests the reduction of resistance to discernible actions that resist oppression in expressly political registers and in visible and organized forms. Hence, irresponsibilisation and co-governing are not post-political or apolitical signs of the times, but an integral aspect of ethico-political engagement with governing: ‘contestations, resistances and social antagonisms shape rule through systematic provision of alternatives’.⁸⁹ As Foucault emphasized, ‘the most intense point of lives, the one where their energy is concentrated, is precisely where they clash with power, struggle with it, endeavour to utilize its forces or to escape its traps’.⁹⁰ Attempts to co-govern,

⁸⁵ Cadman, *op. cit.*, p. 550; citing Michel Foucault, ‘Truth, Power, Self: An Interview with Michael Foucault, October 25, 1982’, in Luther H. Martin, Huck Gutman, and Patrick H. Hutton (eds), *Technologies of the Self: A Seminar with Michael Foucault*, (Amherst, Mass.: University of Massachusetts Press, 1988), p. 330.

⁸⁶ Cadman, *op. cit.*, p. 553.

⁸⁷ *Ibid.*

⁸⁸ Peter Miller and Nikolas Rose, ‘Governing Economic Life’, *Economy and Society*, Vol. 19, no. 1 (1990), p. 3.

⁸⁹ O’Malley, Weir, and Shearing, *op. cit.*, p. 510.

⁹⁰ Michel Foucault, ‘The Life of Infamous Men’, in Paul Patton and Meaghan Morris (eds), *Michel Foucault: Power, Truth, Strategy*, trans. Paul Foss and Meaghan Morris, Working Papers Collection, Vol. 2 (Sydney: Feral Publications, 1979), p. 80; cited in Deleuze, *op. cit.*, p. 78.

that is, to reflexively participate in, redirect and modify our own conduct, are inextricably tied to ‘etho-poetic’⁹¹ practices of self-formation.

In the next section I ground the above observations in the struggles against disposability in Bhopal, the site of the world’s most catastrophic industrial accident, which has engendered a thirty-one year long search for legal accountability, economic survival and restorative social justice. I examine the evolving practices of Bhopal activists and survivors in order to continue Foucault’s ‘theorizing practice’ of counter-conduct.⁹² Reflecting on the Bhopal survivors’ self-transfiguring practices and invocations of rights shows their agency to far exceed their being conducted as disposable subjects of global capitalism. Reasoning through the diverse counter-conductive struggles of Bhopali survivors, I argue, inflects Foucault’s own methodological orientations to the study of power and arrests their potentially overwhelming focus on rationalities of rule and mechanisms of power, which tends to over-determine governed subjects as hermetically enclosed within power relations. Importantly, such a move highlights that, and how, the thinking of counter-conduct compels us to reconsider the complexity, indeterminacy and irreducibility of human rights as a governing technology.⁹³

Human rights, Self-formation and Co-governing: human rights and counter-conduct against disposability in Bhopal

In this section I locate the counter-conductive potential of human rights within the ongoing campaigns for justice following the 1984 toxic gas leak from Union Carbide Corporation’s pesticide-manufacturing subsidiary in the city of Bhopal, Madhya Pradesh, India.⁹⁴ In the night of 2-3 December an estimated forty tonnes of extremely toxic

⁹¹ McGushin, *op. cit.*, p. 287.

⁹² Foucault, ‘Power, Moral Values and the Intellectual’, *op. cit.*, note 39, p. 11.

⁹³ I thank Anna Selmececi and Lara Montesinos Coleman for their productive critique and discussions on this point.

⁹⁴ Union Carbide Corporation (UCC) was the majority owner of the subsidiary Union Carbide India Limited (UCIL), which operated the plant, whilst the central role of UCC in design and evolving ‘safety’ procedures has been documented by lawyers, engineers and academics, see for example, Tara Jones, *Corporate Killing: Bhopals Will Happen* (London: Free Association Books, 2002); Nichol Bryan, *Bhopal: Chemical Plant Accident*, (Environmental Disasters) (New York: Gareth Stevens Publishing, 2003); Rosaline Dhara and V. Ramana Dhara, ‘Bhopal: A Case Study of International Disaster’, *International Journal of Occupational and Environmental Health*, Vol. 1, no. 1 (1995), pp. 58–69; Paul Shrivastava, *Bhopal: Anatomy of a Crisis*, Illustrated Edition (New York: HarperBusiness, 1987); Paul Shrivastava, *Managing Industrial Crises: Lessons of Bhopal* (New Delhi: Vision Books, 1987). Following the global notoriety of the gas disaster and its failure to accept responsibility, UCC became a wholly owned subsidiary of Dow Chemical in 1999. Dow

methyl isocyanate (MIC) and other yet unspecified gases leaked into the atmosphere in an explosion in the MIC processing unit of the chemical plant. Conservative estimates suggest that 3,000 residents of the neighbouring colonies [*bastis*] died within days of the leak and 20,000 more have died of various effects of gas-exposure to date.⁹⁵ Moreover, half a million people, including survivors of the leak itself, as well as those born in the thirty one years since, continue to suffer from the health impacts of both direct gas exposure and what affiliated organisations are calling ‘the second poisoning’⁹⁶ -- the soil and ground-water contamination of ever larger areas surrounding the non-remediated, and abandoned plant site.⁹⁷ The ‘unending Bhopal gas disaster’⁹⁸ is now widely regarded as the world’s most serious industrial catastrophe and, amongst analysts of its legal aftermath in India and internationally, increasingly considered a gross violation of human rights.⁹⁹ The continuing activist campaigns for legal and political accountability and fair reparations have mobilized a variety of discursive understandings to wage their fight, which has comprised of anti-systemic critiques of development and global capitalism, labour mobilization and unionization, as well as alternative modes of self-care in the search for work and healthcare suitable to their little understood and under-researched needs.¹⁰⁰

Chemical has disavowed any liabilities and responsibility for the disaster and its worsening ecological and human consequences.

⁹⁵ Amnesty International contests these low figures and places the immediate death toll at 10,000, see *Clouds of Injustice: Bhopal Disaster 20 Years on* (London: Amnesty International UK, 2004); The International Campaign for Justice in Bhopal, following research amongst the municipal workers who collected the bodies, estimates that 8,000-15,000 died within days of the gas leak, see ‘The Death Toll’, 2015, <http://www.bhopal.net/what-happened/that-night-december-3-1984/the-death-toll/> (accessed 22 June 2015).

⁹⁶ The Bhopal Medical Appeal, ‘Bhopal’s Second Poisoning’, <http://bhupal.org/second-poisoning/bhopal-second-poisoning/>, (accessed 9 July 2015).

⁹⁷ Greenpeace International, *The Bhopal Legacy: Toxic Contaminants at the Former Union Carbide Factory Site Bhopal, India, 15 Years after the Bhopal Accident* (London: Greenpeace International, 1999), <http://www.greenpeace.org/international/en/publications/reports/the-bhopal-legacy-toxic-cont/> (accessed 13 January 2015).

⁹⁸ Bridget Hanna, ‘Bhopal: Unending Disaster, Enduring Resistance’, in Michel Feher (ed.), *Nongovernmental Politics* (Cambridge, Mass.: Zone Books, 2007), pp. 488–523.

¹⁰⁰ Suroopa Mukherjee, *Surviving Bhopal: Dancing Bodies, Written Texts, and Oral Testimonials of Women in the Wake of an Industrial Disaster* (New York: Palgrave Macmillan, 2010); Eurig Scandrett and Suroopa Mukherjee, ‘Globalisation and Abstraction in the Bhopal Survivors’ Movement’, *Interface: A Journal for and about Social Movements*, Vol. 3, no. 1 (2011), pp. 195–209; Stephen Zavestoski, ‘The Struggle for Justice in Bhopal: A New/Old Breed of Transnational Social Movement’, *Global Social Policy*, Vol. 9, no. 3 (2009), pp. 383–407; Satinath Sarangi, ‘The Movement in Bhopal and Its Lessons’, *Social Justice*, Issue 66, Vol. 23, no. 4 (1996), pp. 100–108.

Resort to human rights' analysis of the disaster and its consequences came quite late and were initially advocated by NGOs and elite members of India's legal profession.¹⁰¹ Human rights discourses found resonance with local survivors and activists in the midst of undeniable failures of tort litigation pursued in the United States' courts.¹⁰² Rights offered a way to attribute responsibility to Union of India for its complicity in the making of the initial disaster and its lax pursuit of Union Carbide since the Indian Supreme Court 1989 settlement, which has allowed UCC to continue to escape its responsibilities in Bhopal.¹⁰³ Indeed, the case of Bhopal has allowed advocates to lobby for improving direct mechanisms of attribution for multinational corporations.¹⁰⁴

Here I am not seeking to replicate their analyses; rather, I mobilise the above insights regarding counter-conduct to explore the ways in which human rights contribute to the emergence of subtle practices of self-formation that are nevertheless hugely significant for survivors' ethical self-regard and on-going political struggle. Discussing human rights and/as counter-conduct in Bhopal illuminates how such practices enable self-formation against disposability, without denying the role of rights in materially constituting rights holding subjects at the same time. Avoiding either/or assertions -- either human rights conduct our conduct or they make it possible for us to resist incitements of ourselves as disposable -- elucidates that they do both and at the same time.

The self-transfigurative potential of human rights is clearly evident in the ways in which people in struggle call upon their truth discourses and legal instruments to resist the assignment of disposability.¹⁰⁵ Human rights offer Bhopal survivors 'authoritative' and

¹⁰¹ Amnesty International, *op. cit.*; Verma, *op. cit.*

¹⁰² Marc Galanter, 'Law's Elusive Promise: Learning from Bhopal', in Michael Likosky (ed.), *Transnational Legal Processes: Globalisation and Power Disparities* (Cambridge: Cambridge University Press, 2002), pp. 172–85; Marc Galanter, 'Legal Torpor: Why So Little Has Happened in India after the Bhopal Tragedy', *Texas International Law Journal*, Vol. 20 (1985), pp. 273–94.

¹⁰³ Dow Chemical has to date ignored a number of summons to present its subsidiary UCC to the District Court in Bhopal, most recently on 19 December 2015. See Amnesty International, 'Dow Chemical Must Comply with New Indian Court Summons on Bhopal Disaster', *Amnesty International*, 4 August 2014, <http://www.amnesty.org/en/news/dow-chemical-must-comply-new-indian-court-summons-bhopal-disaster-2014-08-04> (Accessed 20 October 2014);

Dow Must Attend Criminal Case Hearing In Bhopal', The Bhopal Medical Appeal, 18 December 2015, <http://bhopal.org/dow-must-attend-criminal-court-hearing-in-bhopal/> (Accessed 20 December 2015).

¹⁰⁴ Amnesty International, *op. cit.*, note 95; see also, Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (London: Amnesty International, 2014).

¹⁰⁵ For a longer theoretical discussion of the various facets of disposability, see the discussion in Odysseos, 'The Question Concerning Human Rights', *op. cit.*, note 10, pp. 1043–46.

internationally coherent accounts¹⁰⁶ of themselves as rights-holders of equal moral worth, with which to subvert their subjectification as disposable subjects of neoliberal global economy. Eschewing an understanding of their suffering as the result of fate,¹⁰⁷ rights' mechanisms of attribution contribute to on-going processes of subjectification of themselves as subjects of rights to legal remedy and compensation, a safe environment and health. Rights-claiming practices of equal moral worth facilitate, moreover, ethical and political resubjectivization, which works to counter the practices of a capitalist global economy, which assigns people value *because* of 'their lack of access to rights'.¹⁰⁸ As against neoliberal global constitutionalism, the Bhopal survivors and activists contest the privileging of multinational investor rights over both human rights and the positive rights of citizenship.¹⁰⁹ Their specific demands and aspirations for a non-legalistic -- political, social, economic and health -- conception of rights and justice are reinforced by the truth discourses of rights and the 'letter of the law'.¹¹⁰ Far from essential, timeless and abstract principles, human rights offer paths of action that aid in 'constructing and reconstructing different social and political visions, ... in agonistic combat...with other rights and indeed with other political idioms and visions'.¹¹¹

The conducting of Bhopal's residents as disposable involved a series of structural reforms, policy objectives and concrete decisions by multinational corporation and state. Various legal, techno-scientific, business ethics and political analysis discussions have notably documented the pursuit of cost-cutting-led regulatory arbitrage by Union Carbide,¹¹² made possible by the neoliberalizing state's desire for technology transfer

¹⁰⁶ In the sense given by Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2005).

¹⁰⁷ Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India* (Delhi: Oxford University Press, 1996), pp. 138–139.

¹⁰⁸ Alicia R. Schmidt Camacho, 'Ciudadana X: Gender Violence and the Denationalization of Women's Rights in Ciudad Juarez, Mexico', *CR: The New Centennial Review*, Vol. 5, no. 1 (2005), p. 258.

¹⁰⁹ Upendra Baxi, 'Geographies of Injustice: Human Rights at the Altar of Convenience', in Craig Scott (ed.), *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Oxford: Hart Publishing, 2001), pp. 197–212. See also, Stephen Gill and A. Claire Cutler (eds), *New Constitutionalism and World Order* (Cambridge: Cambridge University Press, 2014).

¹¹⁰ Selmezi, *op. cit.*, note 7.

¹¹¹ Golder, *op. cit.*, note 9, p. 290.

¹¹² Shrivastava, *Bhopal, op. cit.*; Kim Fortun, *Advocacy after Bhopal: Environmentalism, Disaster, New Global Orders* (Chicago: University of Chicago Press, 2001); Jones, *op. cit.*; Mark Boden, 'Neoliberalism and Counter-Hegemony in the Global South: Reimagining the State', in Sara C. Motta and Alf Gunvald Nilsen (eds), *Social Movements in the Global South: Dispossession, Development and Resistance* (Basingstoke; New York: Palgrave Macmillan, 2011), pp. 83–103.

and lack of enforcement of lax legislation and procedures for ultra-hazardous production.¹¹³

Mobilizing human rights to contest their material constitution as disposable by acting upon themselves, Bhopali survivors illuminate how counter-conduct emerges, not at ‘the regulated and legitimate forms of power in their central locations’ but, ‘at [power’s] extremities, in its ultimate destinations, with those points where it becomes *capillary*, that is, in its more regional and local forms and institutions’.¹¹⁴ Counter-conduct, therefore, expands our analytical gaze beyond ‘the legitimate use of monarchic, public, or individual powers’,¹¹⁵ calling doubly for the study of those

point[s] where power *surmounts the rules of right* which organise and delimit it and extends itself beyond them, invests itself in institutions, becomes embodied in techniques, and equips itself with instruments...¹¹⁶

What I call Foucault’s ‘capillary orientation’ enables a freeing of relations of power ‘from the institution’, in favour of analyzing them ‘from the point of view of technologies’,¹¹⁷ in which self-transfiguration plays a crucial role. Prevalent materialist and liberal accounts grasp human rights either as products of historical material struggles between citizens and states or as liberal values constraining the reach and expansion of sovereign power.¹¹⁸ A capillary view of rights, however, additionally reveals how they enable subjects to redirect, transform and occasionally subvert historically contingent mechanisms of conduct that seek to constitute them as disposable subjects; rights enable them to ‘act on themselves’ at the levels of individual self-perception and subject

¹¹³ Space does not permit a full exposition of such investigations in the present article, see, Bhopal Survivors Movement Study Group and Eurig Scandrett, ‘Editor’s Preface and Acknowledgements’, in *Bhopal Survivors Speak: Emergent Voices from a People’s Movement* (Edinburgh: Word Power Books, 2009), p. 2; R. Clayton Trotter, Susan G. Day, and Amy E. Love, ‘Bhopal, India and Union Carbide: The Second Tragedy’, *Journal of Business Ethics*, Vol. 8, no. 6 (1989), pp. 439–54.

¹¹⁴ Foucault, ‘Two Lectures’, *op cit.*, note 25, pp. 96 and 94, emphasis added in second quote.

¹¹⁵ Cadman, *op. cit.*, p. 540; See the discussions in Patton, *op. cit.*; Ivison, *op. cit.*; Roger Mourad, ‘After Foucault A New Form of Right’, *Philosophy & Social Criticism*, Vol. 29, no. 4 (2003), pp. 451–81.

¹¹⁶ Foucault, ‘Two Lectures’, *op cit.*, note 25, p. 94; emphasis added.

¹¹⁷ Foucault, *Security, Territory, Population*, *op. cit.*, note 18, p. 118.

¹¹⁸ See, for example, Charles Tilly, ‘Where Do Rights Come From?’, in Lars Mjøset (ed.), *Contributions to the Comparative Study of Development* (Oslo: Institute for Social Research, 1992), pp. 9–37; Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, Calif.: University of California Press, 2008).

formation.¹¹⁹

Conducting is never complete or irreversible, however. The gaps, fragilities, inadequacies or even unintended consequences of conduct¹²⁰ make possible the emergence of counter-conduct, which in turn expands these very same gaps and fragilities. In Bhopal struggles, as the example below highlights, such gaps in conduct facilitate inventive self-formation that leads to the counter-conduct of subjects agitating to co-govern *against* their other-constructed disposability. The Bhopal Act of 1985, which came into law a few months after the disaster, designated the Union of India as the legal and formal representative of those who perished in the gas leak and of gas-affected survivors, and as such provides the socio-legal context.

To respond to the challenge of representing the thousands of victims and survivors, the Bhopal Act adapted the doctrine of *parens patriae*, ‘parent of the fatherland’, a principle invokes the power of the state to act as guardian to those who are deemed unable to care for themselves, most commonly children, the elderly, and the disabled or mentally and otherwise legally incompetent persons.¹²¹ The Union of India deemed this legal tactic a practical necessity that would allow it to pursue UCC, and gain reparations, in the US Courts, given that the corporation would otherwise have been outside of its jurisdiction. As Bridget Hanna notes in her ethnography of Bhopal, there was additionally broad acknowledgement that this was morally necessary, as survivors and relatives of casualties lacked the ‘resources or even the language (in this case, English) necessary to fight the legal battle for themselves’.¹²² Moreover, the Act intended to shield the Bhopal survivors from US litigators who arrived in Bhopal after the gas leak, signing up new ‘clients’ and promising huge sums in tort compensation in the US Courts.¹²³

Well-meaning legal advisors did not foresee at the time that this amounted to a declaration of Bhopal survivors as legally incompetent; nor that, in the years to come, the government’s ‘rhetorical monopolization of the poverty and acute suffering of the

¹¹⁹ See a longer discussion in Odysseos, ‘The Question Concerning Human Rights’, *op. cit.*, note 10.

¹²⁰ Kendall R. Phillips, ‘Spaces of Invention: Dissension, Freedom, and Thought in Foucault’, *Philosophy and Rhetoric*, Vol. 35, no. 4 (2002), pp. 331–332.

¹²¹ Baxi, *op. cit.*, note 26, p. 36.

¹²² Hanna, *op. cit.*, p. 495.

¹²³ Tim Edwards, Sathyu Sarangi, and Indra Sinha (eds), *The Bhopal Marathon: A Cry for Bhopal* (Brighton: The Bhopal Medical Appeal, 2012), p. 16.

survivors became a way to rob them of their rights by declaring them *non sui juris* (without the legal capacity to act for themselves).¹²⁴ Without the ability to seek redress for inadequate representation and with no prescribed means of communicating with the state, the Bhopal survivors were produced as voiceless subjects in the legal domain privileged in the quest for legal accountability and compensation. 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’.¹²⁵

Yet, in this incitement of Bhopalis as ‘juridically incompetent’ and voiceless subjects, gaps of conduct were seized and counter-conducts developed that disrupted the survivors’ prescribed paths of *legal* silence and (non)action. In 2002 a number of women activists launched a new campaign [*andolan*] to commemorate the 18th anniversary of the gas leak: ‘Hit Dow with a Broom’ [*Jhadoo Maro Dow Kol*]. A group of gas-affected women marched 800 kilometres to New Delhi brandishing their contaminated brooms [*jhadoos*], usually used to sweep their homes and yards in the shadow of the abandoned chemical plant site. Handing these to government officials, they were articulating anew the consciousness amongst activists and survivors -- who had set up the Bhopal People’s Clinic in Spring 1985 to administer sodium thiosulphate (the antidote for cyanide poisoning) to their own community -- that ‘the fight for medical care is a fight for our rights’.¹²⁶ These *jhadoo* ‘actions’ were also taken abroad, partly with the aid of ‘next of kin’, to Italy, Belgium, The Netherlands, and the US, where the *jhadoos* were handed to Dow Chemical [owner of UCC since 1999] executives, and continued intermittently for several years.¹²⁷

The symbolic slogan ‘we demand clean up for Bhopal (since the government will not)’ of legally voiceless subjects rang quite loud and clear. Seizing competence where it was erased by the doctrine of *parens patriae* the women needed few words. They challenged their subjectification as voiceless and worked on their own conduction to render their voicelessness insignificant to their condemnation of the state and the corporation. Receiving the *jhadoos* rendered state officials and business executives *speechless* (most likely

¹²⁴ Hanna, *op. cit.*, p. 498.

¹²⁵ Sheela Thakur, gas survivor cited in Mukherjee, *op. cit.*, note 99, p. 81.

¹²⁶ See the Clinic’s ‘manifesto’, Edwards, Sarangi, and Sinha, *op. cit.*, p. 27.

¹²⁷ Survivors and activists, Rashida Bee and Champa Devi Shukla won the *Goldman Environmental Prize* in 2004 for their campaign.

because they were confronted with contaminated items one should touch only with gloves, as well as due to the disastrous public relations implications that the symbolic action meant for Dow). The campaign enabled the women to attribute responsibility to Union Carbide directly for the disaster, instantiating them as spokespeople advancing the cause for direct attribution for human rights violations to business. The *jhadoo* activists 'vowed that Dow would be made to accept Union Carbide's Bhopal liabilities and clean up the contamination, or be *swept out* of India',¹²⁸ recovering their voice outside of the legal space in which they were deprived it. Invoking their enduring battle for freedom, they reworked their own selves with the battle cry:

'Not flowers but flames are we
Take the broom to Dow!
To a new battle for a new freedom
Take the broom to Dow!
Hit from this side, hit from that
Take the broom to Dow!'¹²⁹

Through their 'etho-poetic' symbolic practice, they demanded clean up and accountability, co-governing in this way by reasserting their calls for justice and articulating their own conducting objectives and aspirations.

Claiming the rights to health, a safe environment, remedy and political representation in one symbolic action, the *jhadoo maro Dow ko* campaign enabled distinct and powerful self-transfigurations. Reclaiming voice and tonality (not 'meekly' and 'with wit' continues the *jhadoo* chant) in demanding their rights, survivors marked the struggle as a new 'site of veridiction'¹³⁰ on justice and accountability and constituted themselves, not as victims but as competent social critics of systemic injustices, as analysts of state policy and as judges of capitalist development. In their sweeping they articulated both a verdict on the legality of limiting their access to their human rights and also a demand to 'define for themselves what is good for them',¹³¹ in short, to co-govern. The Bhopali women with

¹²⁸ 'A Jhadoo Action from Last December', *Bhopal.net*, 9 March 2005, <http://news.bhopal.net/2005/03/09/a-jhadoo-action-from-last-december/> (Accessed 3 December 2015).

¹²⁹ See the full chant, Edwards, Sarangi, and Sinha, *op. cit.*, p. 108.

¹³⁰ Foucault, *The Birth of Biopolitics*, *op. cit.*, note 24, p. 30.

¹³¹ Foucault, 'Power, Moral Values and the Intellectual', *op. cit.*, note 39, p. 12.

their brooms spoke, and spoke without words, as ethical subjects of rights, whose legal silencing created other possibilities for contesting their incitement as disposable and expectedly docile subjects. They transformed the gaps created by the adaptation of *parens patriae* into a space ‘within which the possibility of new actions (or utterances or selves) can be imagined’.¹³² These possibilities were not refusals of conduct as such, but refusals of being conducted *as* disposable, rendered visible in the very exercise of problematization and co-governing.

Counter-conduct and Foucault’s methodological orientations

The article began with the concern that governmentality critiques of rights unwittingly occluded the agency of governed subjects in struggle. Seeking to restore our openness to the indeterminacy of human rights and the creative agency of subjects in struggle, it explored the possibilities for resistance *within* the very same view of rights as a subjectivizing and governing technology. It examined what opportunities for self-formation human rights afford, which exceed, subvert or redirect their conducting role. As the Bhopali women’s *jhadoo* campaign makes visible, self-formation is pivotal to the thinking of counter-conduct, just as counter-conduct is expressive of Foucault’s ethos of ‘refusal, curiosity, innovation’.¹³³ Moreover, Foucault’s insights on counter-conduct inflect in important ways his *own* methodological precautions to the study of power, as I argue with respect to each orientation below.

First, investigations of counter-conduct reinforce conducting power’s often-neglected reversibility and fragility, which allows us to write the agency of the governed back in to our accounts. The thinking of counter-conduct shows the ‘direct and immediate relationship’ with what Foucault calls ‘[power’s] object, its target, its field of application...where it installs itself and produces its real effects’,¹³⁴ to be open to redirection, evasion and failure. Counter-conduct enables us to pay more thorough attention into how rights call forth modes of subjectification that counter processes of conduct, whilst remaining a significant governing technology in global politics, which

¹³² Phillips, *op. cit.*, pp. 331–332.

¹³³ Foucault, ‘Power, Moral Values and the Intellectual’, *op. cit.*, note 39, p. 1.

¹³⁴ Foucault, ‘Two Lectures’, *op. cit.*, note 25, p. 97, brackets added.

rhetorically, epistemically, performatively and structurally constitutes particular governable political and moral subjectivities.¹³⁵ The ‘theorizing practice’ of counter-conduct examines how individuals and groups mobilize rights discourses and rights-claiming practices to infuse and rework their subjectification with alternative forces, energies, visions, aspirations and desires.

Specifically in the Bhopal case, analyzing counter-conductive agency makes visible how human rights *interrupt* technologies of conduct that promote, shape, and entrench disposability; how they lead to the development of other capacities, aspirations and desires that influence survivors’ and activists’ paths of struggle. As the women’s campaign shows, human rights contribute to ‘the “folding” back of exterior relations of power and governance to create an “interiority” that can act of itself’,¹³⁶ and *on* itself, as a co-governing subject, whose judgement and inventive counter-conduct disregards and contravenes a legally-constructed and state-endorsed voicelessness.

Second, the *Jhadoo Maro Dow Kol* campaign shows both moments of conduct and counter-conduct and highlights the circular relationship between the two: it reveals how ‘individuals circulate between [power’s] threads; they are always in the position of simultaneously undergoing and exercising this power’.¹³⁷ While not denying Foucault’s methodological insistence to grasp subjects as ‘the vehicles of power’, the focus on counter-conduct resists an *a priori* theorization of subjects as power’s ‘inert or consenting target’.¹³⁸ Power does not crush a preformed individual, whose constitution through ‘certain gestures, certain discourses, certain desires’¹³⁹ is inseparable from the potentiality of the same subject to inventively unwork that very subjectivity. The *jhadoo* campaign speaks to Bhopali women’s mobilization of symbolic and non-legal ways to ‘fight for rights’, ‘wrest[ing] them from the government because we are not begging, we are taking what is rightfully ours’.¹⁴⁰ It worked to ‘redistribute, reverse, nullify and partially or

¹³⁵ For example, with regards to human rights, see Odysseos, ‘Human Rights, Liberal Ontogenesis and Freedom’, *op. cit.*, note 5, pp. 754–766; Bal Sokhi-Bulley, ‘Government(ality) by Experts: Human Rights as Governance’, *Law and Critique*, Vol. 22, no. 3 (2011), pp. 251–71.

¹³⁶ Dean, “‘A Social Structure of Many Souls’”, *op. cit.*, note 21, p. 156.

¹³⁷ Foucault, ‘Two Lectures’, *op. cit.*, note 25, p. 98, brackets added.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ These are the words of Hazra, a survivor and activist in the women’s struggle, in Edwards, Sarangi, and Sinha, *op. cit.*, p. 133.

totally discredit' the assignment of disposability.¹⁴¹ The wielding of contaminated brooms by Bhopali women in struggle allows us to see more clearly how counter-conduct, like conducting power, 'enter[s] into play at the most basic levels' of life, such that power's 'own techniques and tactics' come to be 'colonised, utilised, involuted, transformed, displaced, extended etc.'¹⁴² The counter-conductive potential revealed at the 'most basic levels' speaks of the routine, self-forming, labour of human rights in their everyday problematization of our self-understandings, where they manifest in everyday 'rituals'¹⁴³ and practices of 'getting free of oneself' as constructed, an aspect of rights often missed in the focus on the symbolic politics of condemnation and state castigation.

Finally, the campaign also illuminates how conduct and counter-conduct both necessitate the development of techniques for the production and collation of knowledge. Foucault rightly refers to *knowledges* in the plural, as the plurality and diversity of knowledge facilitates an 'insurrection of knowledges', that is, contestation generated by those not regarded as authoritative agents.¹⁴⁴ Bhopali survivors deprived of human rights have had to develop their own processes of observation, data collection and collation, and analysis. Their struggle is in large part 'diagnostic' in the medical and social senses of the word, 'problematizing who we are in terms of power, knowledge, and subjectivity'.¹⁴⁵ As activist Alok Pratap Singh explains, scientific knowledge played a crucial role in the organization and self-definition of activists since the early years of the disaster: 'the principal slogan of the Front [*Morcha*] was evolved: "struggle for people's rights, people science, people's Unity"'.¹⁴⁶ Similarly, and despite later tensions,¹⁴⁷ Greenpeace International's research into the health and environmental impacts of the Bhopal disaster also supported local lived experiences by authoritatively bringing knowledge to bear 'against the institutions and against the effects of knowledge and power that invests scientific discourse'.¹⁴⁸ Moreover, as seen in the International Medical Commission on

¹⁴¹ Foucault, *Security, Territory, Population*, *op. cit.*, note 18, p. 204.

¹⁴² Foucault, 'Two Lectures', *op. cit.*, note 25, p. 99. The meanings of the verb 'to involute' pertain to thinking about counter-conduct: in botany: 'having the margins rolled forward'; also, 'having whorls that obscure the axis or other volutions, as the shell of a cowrie'; as an intransitive verb: 'to curl inward' and also 'to return to a normal or former condition'. See <http://www.thefreedictionary.com/involute>.

¹⁴³ Dean, 'A Social Structure of Many Souls', *op. cit.*, note 21, p. 157.

¹⁴⁴ Foucault, 'Two Lectures', *op. cit.*, note 25, p. 81.

¹⁴⁵ McGushin, *op. cit.*, p. 287.

¹⁴⁶ Edwards, Sarangi, and Sinha, *op. cit.*, p. 95.

¹⁴⁷ Tomás Mac Sheoin, 'Power Imbalances and Claiming Credit in Coalition Campaigns: Greenpeace and Bhopal', *Interface*, Vol. 4, no. 2 (2012), pp. 490–511.

¹⁴⁸ Foucault, 'Two Lectures', *op. cit.*, note 25, p. 97.

Bhopal's investigation into the suppression of crucial chemical information and survivors' medical histories, such insurrections of knowledge reinforce demands for appropriate and effective treatment of the impact of gas and subsequent contamination exposure.¹⁴⁹

Insurrections of knowledge have been crucial to the Bhopal struggle. Under the human right to health, moreover, new types of relation to one's community and to oneself as insistent co-governors of one's own health can be engendered. As Satinath Sarangi, a leading activist of the International Campaign for Justice in Bhopal and founder of the Bambhavna Trust, argues, 'in many ways the survivors are the experts in their conditions. Not only is it vital to use therapies which can be controlled by the recipient, it is also important to gather the people's knowledge for the purposes of research.'¹⁵⁰ UCC's refusal to disclose the exact composition of gases released in the explosion, or to advise on their effects and appropriate treatments, as well as the Indian Medical Council's failure to effectively research and recommend an appropriate treatment protocol for the gas-affected population after 20 years of research, led to new forms of local knowledge production: '[a]t Sambhavna we have pioneered the use of "verbal autopsies", so that the bereaved are given the dignity of an assessment of cause of death when their loved ones die without reliable medical contact'.¹⁵¹ Moreover, in the long years since the leak, survivors had to commission their own 'proper, peer-reviewed research on the ongoing effects of the gas'.¹⁵²

In the contaminated brooms action, too, insurrectional knowledges show conduct to be contestable, contributing to the creation of 'disjuncture[s] between the field of conduction and the relationship the individual has to herself or himself as conducted subject' in which 'counter-conducts develop'.¹⁵³ In part, the campaign of handing contaminated brooms to state officials and Dow Chemical executives was made possible

¹⁴⁹ See the statement of the International Medical Commission on Bhopal, Edwards, Sarangi, and Sinha, *op cit.*, p. 68.

¹⁵⁰ Bhopal Survivors Movement Study Group, *Bhopal Survivors Speak: Emergent Voices from a People's Movement* (Edinburgh: Word Power Books, 2009), pp. 119–120.

¹⁵¹ *Ibid.*

¹⁵² 'Interview: Satinath Sarangi - Bhopal Hero', *The Scotsman*, 7 July 2009, <http://www.scotsman.com/news/interview-satinath-sarangi-bhopal-hero-1-759209> (Accessed 14 May 2013); see also, C. Sathyamala and Nishith Vohra, *Against All Odds: Continuing Effects of the Toxic Gases on Health Status of the Surviving Population in Bhopal: Preliminary Report of a Medical Study Carried out Five Years after the Disaster* (New Delhi: C.E.C., 1989).

¹⁵³ Cadman, *op cit.*, p. 549.

by the counter-conductive search for alternative knowledges that revealed the effects and extent of gas exposure, as well as worsening soil and water contamination, produced by local activist groups and by NGOs such as Greenpeace and Amnesty.¹⁵⁴

Conclusion

Acknowledging human rights as a conducting technology entailing diverse processes of legal, political and ethical subjectification of rights-bearers, the article discussed the tendency to ignore the destabilisations of conduct, which struggles *through* rights can bring about.¹⁵⁵ The article investigated Foucault's thinking of 'counter-conduct' as a particularly pertinent and productive aspect of his polysemic thinking on governmentality. It argued that the thinking of counter-conduct can be brought to bear on our understanding of human rights and helps us grasp them more fully as essential to both our conduct and our ability to redirect and displace mechanisms and processes of conducting power in our on-going constitution of ourselves.

Looking at the possibilities afforded for counter-conduct by the mobilization of human rights in the context of the 1984 Bhopal gas disaster revealed the processes and mechanisms of governing Bhopalis as disposable to be unstable, variable, and reversible. It showed human rights to enable modes of self-formation that reconstitute survivors as co-governors, contributing to conduct's reorientation, subversion or evasion. At the same time, the discussion of Bhopal survivors' self-formation through struggle offers a more substantial conception of rights grounded in social, health and environmental justice.¹⁵⁶ At the same time, counter-conduct is 'never completely autonomous...':¹⁵⁷ it does not aim to produce new universals or stabilized counter-subjectivities, nor does it deny conducting power's resilience and adaptability.¹⁵⁸

¹⁵⁴ For example, Greenpeace International, *op cit.*; Barbara Dinham and Satinath Sarangi, 'The Bhopal Gas Tragedy 1984 to? The Evasion of Corporate Responsibility', *Environment and Urbanization*, Vol. 14 (2002), pp. 89–99.

¹⁵⁵ Selmeczi, *op cit.*, note 7; See also, Coleman, *op cit.*

¹⁵⁶ Joan Martinez-Alier et al., 'Between Activism and Science: Grassroots Concepts for Sustainability Coined by Environmental Justice Organizations', *Journal of Political Ecology*, Vol. 21 (2014), pp. 19–60.

¹⁵⁷ Corey McCall, 'Ambivalent Modernities: Foucault's Iranian Writings Reconsidered', *Foucault Studies*, No. 15 (2013), p. 46.

¹⁵⁸ Phillips, *op cit.*, p. 336.

Finally, the thinking of counter-conduct called for a recalibration of Foucault's broader methodological orientations regarding the study of power from the perspective of counter-conduct. Such a reworking of methodological commitments contests univocal perspectives human rights and governing, eschewing both a view of rights-holders as over-determined by conducting power and also a view that ignores their conduct through human rights.

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