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Liberal Theory, Human Rights and Water-Justice: Back to
Square One?

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Abstract

In the wake of the Fukuyama's 'end of history': liberal theory's triumph over its soviet/communist other, and the subsequent march of 'globalisation' and the ascendancy of neo-liberal ideology, this article interrogates the theoretical developments on the 'Left', the academic and activist led critiques of liberal triumphalism, by analysing the demands for recognition of water rights as human rights particularly in regard to the Global Justice Movements that arose from disenchantment with globalisation and neo-liberal ideology. In the context of water-justice and human rights, the article investigates the substantial underpinnings of both liberal theory and the languages of the 'Left' tradition in regard to the development of the human right to water to reveal the shared foundations that divorce them both from the geo-historical terrain of emancipatory politics today.

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1. Introduction

When Francis Fukuyama proclaimed the 'end of history' in 1992 it would be fair to say there was an unequivocal response from academics and activists alike on the 'Left' against what came to be described as 'liberal triumphalism'. Writing in the wake of the end of the Cold War and the incorporation of the Socialist Bloc into capitalist style democracies, Fukuyama argued that there was no ideological alternative to liberal theory and that human society had come to the end of their philosophical evolution (Fukuyama, F. 1992). The critique of 'liberal triumphalism' came from a range of theoretical perspectives on the 'Left' including politicians like Hugo Chavez (Barber, R. B. 1995; Chavez, H. 2006; Derrida, J. 1994; Halliday, F. 1992; McCarney, J. 1993; Miliband, R. 1992). Indeed Fukuyama himself backed off somewhat from his earlier position in the wake of the visible triumph of global inequities and human misery that followed the end of the Cold War (Fukuyama, F. 2002, 2004).

The end of the Cold War was followed by the march of 'globalisation' and the ascendancy of neo-liberal ideology within International Organisations (IO) and States that exacerbated already entrenched social polarisation, economic inequality and feeling of disempowerment across wide cross sections of societies. An outcome of the disenchantment with 'globalisation' and neo-liberal ideology was the emergence of what is loosely described as 'Global Justice Movements' (GJM). The GJMs are profoundly influenced by theoretical developments on the 'Left' that seek to combine the critique of the Socialist bloc by the New Left and the New Social Movements of the sixties and seventies in the pre-Cold War era with the critique of 'globalisation', neo-liberal ideology and the rolling back of the Welfare States in the Western/Capitalist bloc. The GJMs have made 'activism' an acceptable practice and create a buzz from time to time, with dramatic protests, language of struggle and resistance, and challenges to the ethical underpinnings of the policies and practices of States and IOs. Their practices and praxiological concerns, however, appear to be deeply embedded in the very 'liberal triumphalism' that has been denounced by the 'Left' theoretically. This article interrogates the theoretical developments on the 'Left' and the practices of the GJMs by analysing the demands for recognition of water rights as human rights by GJMs. The 'Left' refers to an intellectual tradition that is critical of capitalism in the broadest possible sense and seeks inspiration from the works of Karl Marx to a greater or lesser degree. The article highlights the hiatus in the demands by GJMs for recognising access to water as a human right and the theoretical critique of human rights by the 'Left'.

2. Global Justice Movements and the Human Right to Water

The first phase of protest movements for water-justice arose in the nineteen eighties and centred around large dams and their effects on marginalised sections of society such as displacement, ecological and environmental destruction, rehabilitation and ethical questions about the beneficiaries of large dams who were invariably the rich farmers, industries, and urban middle classes, in other words, the 'modern' sector. These movements arose from the failure of the development agenda to deliver on promises of poverty alleviation, three UN Development Decades notwithstanding. Although centred on dams, the anti-dam movements of the eighties challenged the development agenda of IOs and States since the end of World War II from class, race, gender, ecology, environment, democratic politics and indigenous people's standpoints. The movement against the Sardar Sarovar dam on the Narmada River in India exemplifies the first phase of social mobilisation against dams (Fisher, W. F. 1995). The International Rivers' Network, an international non-governmental organisation based in the United States that links movements similar to the one against Sardar Sarovar worldwide also emerged around the same period.ⁱ The first phase of struggles for water-justice occurred *before* the World Trade Organisation (WTO) was established and before the full onslaught of 'globalisation' and neo-liberalism in all their manifestations became apparent to many.

During the first phase, anti-dam movements focused on the World Bank (WB) which had become the largest financier of large dams; and Third World States which ignored the conditions of the poor in the modernisation and industrialisation agenda of nations. Large dams were seen by the movements as a technological question, no doubt a technology with a distinct bias for the 'modern sectors' that impoverished and marginalised people dependent on subsistence economies. The anti-dam movements viewed the solutions to the developmental impact of dams *also* as a technological solution arguing that by managing water resources on different principles (Paranjape, S. and Joy, K. J. 1995), or bringing back traditional technologies such as tank irrigation (Agarwal, A. and Narain, S. 1997), it will be possible to meet the water needs of the poor and the marginalised sections of society. These technological solutions

fitted within the conceptual framework of 'sustainable development' already popularised by the Brundtland Commission report in 1983 and adopted by various UN agencies following international summits such as Agenda 21, although located at the more radical end of the spectrum of 'sustainable development' debates.ⁱⁱ

The second phase of water-movements emerged after the end of the Cold War with the establishment of the WTO, 'globalisation', structural adjustment programmes of International Monetary Fund (IMF), new lending conditions imposed by the WB and WTO agreements like GATS that pushed for privatisation of public water works. The second round of water movements emerged in the context of an emergent GJMs campaigning against the WTO and 'globalisation'. In the second round the focus shifted to privatisation of public water supply, commodification of water, the emergence of corporations that owned and traded in water creating 'water markets', and the impact of user-pay principles on the poor (Barlow, M. and Clarke, T. 2002; Shiva, V. 2000). The struggles against water privatization in Cochabamba in Bolivia exemplify the second phase (Olivera, O. and Lewis, T. 2004). The articulation of the demand for recognition of access to water as a human right emerges prominently during the second phase. During the second phase the emphasis shifted to the *legal* right to water. The phase saw a proliferation of organisations and groups engaged in struggles on water-justice for ordinary people in the Third World. A number of large global Non-governmental Organisations (NGOs) usually based Western capitalist nations emerged as advocates of water-justice for the 'global poor'.ⁱⁱⁱ A number of water networks like the Right-to-Water network and the Fresh Water Action Network also emerged.^{iv} These networks, listservs, lobbying and advocacy groups and protest organisations mobilized opinion for the recognition of water as a human right. More established development NGOs like Water Aid, a UK based charity working in the water sector since 1981 also added their voice to the demand for human rights to water (Calaguas, B. U. 1999). Influential organizations like Amnesty International supported the demand for recognizing access to water as a human right (Amnesty International 2003). Epistemic communities also wrote in support of human rights to water (Darrow, M. 2003; Gleick, P. H. 1998).

The demand for human rights to water calls for inscribing a legal right to water within legal frameworks: as constitutional or statutory rights in national law, and an international water treaty or UN convention in international law (Barlow, M. and Clarke 2002; Bar, R. 2004). The NGOs at the World Water Forum held in March 2006 in Mexico articulated the human rights to water by calling on governments to:

Adopt a resolution at the UN Human Rights Council to strengthen the right to water.
Establish an international mechanism to monitor implementation of the right to water, such as a UN Special Rapporteur on the right to water.
Bring, as a matter of priority, their national water and sanitation laws and policies in line with the UN General Comment 15 on the Right to Water
(Centre on Housing Rights and Eviction (COHRE) 2006).

By articulating the human rights to water as legal rights, the activists and NGOs in the GJMs *invite* the 'global poor' to believe that by having legal rights to water recognized within a human rights framework in national and international law, the peoples in the Third World *will* have access to water for subsistence. This promise is informed theoretically by liberalism and is conceptually problematic.

The NGOs comprising the GJMs were not the only voices calling for recognition of access to water as a human right within a legal and constitutional framework however. Within IOs, development agencies and epistemic communities, initiatives were already underway for recognizing human rights to water. The demands of the GJMs for recognising water as a human right in law converged with similar proposals emerging from UN agencies, IOs and Western States.

3. Convergence on Human Rights to Water

The evolution of rights to water within UN agencies and IOs can be traced back to the UN Conference on the Human Environment which resulted in the Stockholm Declaration of 1972 and created the United Nations Environment Programme (UNEP) as the institutional vehicle for giving effect to the Declaration. The Stockholm Declaration included water as one of the resources to be safeguarded in environmental protection. It was followed by the United Nations Water Conference and the Mar de Plata Action Plan in 1977 which focused only on water. In 1992 the UN organised the United Nations Conference on Environment and Development in Rio de Janeiro which adopted Agenda 21 and the World Meteorological Organisation organised the International Conference on Environment and Development

(ICEW) which ended with the Dublin Statement which stated amongst other things that water is an economic good and a limited resource. These UN initiatives resulted in a plethora of activities, plans, programmes, initiatives and special UN decades^v on water that are well known in the literature on water resources. What is important to note is that in the nineteen nineties there are two distinct developments in the international arena for addressing water issues.

First, at that stage the UN initiatives continued to conceive of rights to water as a development issue which the Third World States needed to address in national economic policies and programmes with supporting bilateral and multilateral assistance (Lee, T. 1992). The reliance on Third World States and multilateral and bilateral development assistance was at tandem with the States-led development paradigm of the pre-Cold War era. The water-justice movements during that time also focused on States, IOs and the 'sustainable development' paradigm as discussed above.

Second, although the two international conferences proposed 'multi-stakeholder' water NGOs and coalitions of UN agencies on water, the real impetus for creating water NGOs came *after* the formation of the WTO. The WTO was formed in January 1995 with a mission to promote global trade and to bring other UN agencies on board the new global trade agenda. Two influential 'multi-stakeholder' organisations followed in 1996: the World Water Council (WWC) and the Global Water Partnership (GWP). The WWC proposed in 1992 and formed in 1996, is a water-NGO based in France, forty percent of whose members are from private sector water-industry and the rest from International Organizations, representatives of States and NGOs. The GWP was formed under the leadership of the WB, the United Nations Development Program (UNDP) and the Swedish International Development Agency (SIDA) in 1996.

It could be argued that the UN Summit on Social Development in Copenhagen in 1995 was a turning point as it marked the coming of age of the 'NGOisation' of social justice. From that point onwards incrementally IOs, Western governments, bilateral and multilateral aid and lending organizations began to see NGOs not as vehicles for delivering aid programmes at the grass-root level overseen by Third World States as they had done previously, but as participants in global policy on development issues, as 'stakeholders' in development *alongside* Third World States.

The U.S Vice President Al Gore signalled the shift in aid policy at the UN Social Development Summit in 1995 by announcing the New Partnership Initiative under which forty percent of U.S. development assistance would be channelled through NGOs in the U.S and abroad in place of existing bilateral aid delivery. Together with the changes in domestic policy the U.S also launched the Developmental Partnership Working Group to 'engage bilateral and multilateral donors and the NGO community.' The purpose of the initiative was to promote market oriented development policies (United Nations Department of Economic and Social Affairs (DESA) 1995).

The UN World Social Summit invited a large gathering of accredited NGOs from different countries (United Nations World Summit for Social Development 1995). Since then attempts to align aid and development programmes with the neo-liberal market agenda announced at the UN World Social Forum in Copenhagen have continued through funding, grants and prominent media profiles of Third World poverty. There is a perceptible shift in the status of NGOs in 'globalisation' since then. Many IOs including influential organizations like the WB and WTO have developed eligibility criteria and rules on who can and cannot get consultative status and accreditation at global policy-making gatherings. Many influential NGOs previously engaged in development work under state-centred development of the pre-WTO era redefined and realigned the organizations to 'globalisation' and neo-liberal ideology by staking a claim to be 'stakeholders' in development and the voice of 'global civil society' in the post Cold War world order. The shift in aid and development policies created new funding opportunities, opened spaces for new NGOs, international and national, and created a new role where NGOs became 'stakeholders' alongside Third World States.^{vi}

Alongside these developments a number of UN agencies and IOs also began to propose the need for recognising the human right to water as a legal right in international law and argued that having such a right could open up the space for pushing Third World States to recognise human rights to water within domestic jurisdictions. The human right to water would be enshrined in 'rule of law' and recognise all 'stakeholders' in water from global water companies, Third World States to subsistence farmers and urban poor in the Third World. Under the human rights regime, all 'stakeholders' would have access to water, the contradictions in the interests of the 'stakeholders' in water notwithstanding. Global

corporations would need to concede water for basic survival of the poor and the 'global poor' would have to concede corporate rights to withdraw water globally for private profit, at least those were the arguments for conceding human rights to water.

In 1998 the WWC in co-operation with other UN agencies: FAO, UNEP, UNDP, UNESCO, UNICEF, WHO, WMO and the WB established a World Commission on Water for the 21st Century, a think-tank comprising twenty-one 'outstanding thinkers and opinion leaders' chaired by the Vice President of the WB who was also Chairman of the GWP.^{vii} The WWC has organized four World Water Forums since 1997 and a fifth will be held in 2009. The WWC also publishes Water Policy Journal. The World Water Forums bring together a wide range of NGOs and GJMs from different parts of the world to debate and discuss water issues. The resolution of the GJMs for human rights to water quoted above was adopted at the 2006 World Water Forum organised by the WWC.

In 2002 the United Nations Committee on Economic, Social and Cultural Rights adopted the General Comment on Article 11 and 12 of the 1966 International Covenant on Economic, Social and Cultural Rights. The General Comment clarified that the human rights to water is a 'prerequisite for the realization of other human rights' and should be read into Article 11 and 12 of the 1966 International Covenant on Economic, Social and Cultural Rights which was ratified by a 146 States. The Committee was established by the UN Economic and Social Council (ECOSOC) resolution 17/1985 dated 28 May 1985 and comprises eighteen independent experts who monitor the implementation of the International Covenant on Economic, Social and Cultural Rights. The need for the comment arose because of privatisation of water in many countries pursuant to WTO's GATS agreements and the deprivation of subsistence water in many Third World countries highlighted by the GJMs.

In 2003 the G8 published an action plan that stopped short of recognising water as a human right but nevertheless agreed to 'develop appropriate legal, regulatory, institutional and technical frameworks' (G8 Summit (Evian Summit F. 2003)). The same year the World Health Organisation (WHO) argued for human rights to water (World Health Organisation 2003). In 2003 the UN announced the International Year of Freshwater which helped to bring different actors to the table and highlight the need for water sector reforms in the context of the problems thrown up by neo-liberalism for international law.

In 2004 the Human Development Report published by WB was on the theme of 'Making Services Work for the Poor' where the WB argued that the poor should be enabled to monitor and discipline service providers by providing space for their voices in policymaking and by improving incentives for service providers for delivery of services to the poor (World Bank 2004). The same year the IUCN-the World Conservation Union founded in 1948, and speaking in the name of 83 States, 110 government agencies, more than 800 NGOs, and some 10,000 scientists and experts from 181 countries published a legal policy paper arguing for recognising human rights to water in international and national law (Scanlon, J. A. et. al. 2004).

In 2006 the UNDP in its annual Human Development Report reiterated the need for human rights to water (United Nations Development Programme 2006) in line with its 2000 report on Rights and Human Development (United Nations Development Programme 2000). Nevertheless its 2003 Report emphasised that the Millennium Development Goals of the UN adopted in 2003 would be achieved via the private sector/privatisation route (United Nations Development Programme 2003). These proposals were debated and refined in the four World Water Forums organised by the WWC with participation of NGOs from the GJMs. In 2006 the British Government announced that it recognised water as a human right in law (Department for International Development 2006). By 2006 the high profile world summits, publications, media publicity and NGO participation had produced a consensus amongst Western Governments, the large Western NGOs and the IOs on need for legal recognition of human rights to water.

GJMs, speaking in the name of 'civil society' and 'international community', highlighted the human deprivation caused by lack of water and basic sanitation in the Third World. The 'multi-stakeholder' water-NGOs through their activities canvassed for the need for 'efficient' use of water which could be achieved through user-pays market mechanism. Given the two types of 'stakeholders' lobbying IOs and Western governments: the GJMs armed with moral/ethical arguments and the 'multi-stakeholder' NGOs with economic arguments, the UN agencies facilitated the resolution of the ethical and economic dimensions of water appropriation and use under the neo-liberal ideological framework of the WTO. Their solution was to recognise human rights to water in international and domestic law.

However it is important to note that the recognition of human rights to water in law does not impinge upon the economic principles of user-pays and market instruments to increase 'efficiency' in the water sector. The United Nations in the International Year of Freshwater in 2003, referring to the 2002 Sustainable Development Summit in Johannesburg, stated:

Thus, while world leaders have acknowledged that access to drinking water is a basic human right, they also recognize that the cost recovery principle should be applied for water use beyond those needs (United Nations 2003).

The context of these developments is significant as they occurred alongside UN initiatives to restructure the United Nations mechanisms for promoting and protecting human rights. The Commission on Human Rights (UNCHR), a subsidiary body of the UN ECOSOC (assisted by the Office of the United Nations High Commissioner for Human Rights (UNHCHR)), which was the UN agency responsible for the promotion and protection of human rights was disbanded and replaced with the UN Human Rights Council by a General Assembly Resolution adopted on 15 March 2006.^{viii} These changes occurred because of the perception that the UNHCR was 'politicised'. The politics of human rights within the UN and the reasons for the changes need not be digressed into here save to point out that the Human Rights Council has been elevated to the status of a subsidiary body of the General Assembly removing it from economic and social development concerns of the ECOSOC of the pre Cold War era. It is now an international law and policy issue within the UN framework instead of an economic and social development issue.

On 27 November 2006 the newly constituted UN Human Rights Council adopted a unanimous decision requesting the UN Commissioner for Human Rights to conduct a study on the 'scope and content of the relevant human right obligations related to equitable and safe drinking water and sanitation in human rights instruments' (Human Rights Council 2006). These developments in different UN agencies and IOs occurred under the larger WTO mandate to bring about 'interagency' cooperation within the UN in line with the objectives of the WTO which was primarily to promote world trade (United Nations 1976). The convergence on human rights to water occurred within wider context of global institutional transformations the guiding principles of which were: market instruments, global trade, rolling back the state and 'rule of law' where law driven market mechanisms would govern apportionment of wealth and resources between people.

The actors in the water sector followed very different routes and converged on human rights to water as the answer to water-deprivation amongst large sections of Third World populations. All actors were responding to the wider neo-liberal transformations in demanding and/or proposing and/or accepting human rights to water. The GJMs saw recognition of human rights in law as a way of establishing a stake for water-justice in the legal regime for water. The industry organisations saw a legal regime on water as a way of replacing Third World States with 'rule of law'. Recognition of human rights to water would be a necessary component of 'rule of law' and a more reliable one than the vagaries of political processes implicit in State actions. The IOs saw human rights to water as a way of aligning the economic and social policies of IOs with the neo-liberal agenda of WTO, in other words, 'interagency cooperation' within the UN. The Western States saw it as ways of ethically and morally justifying privatization and liberalisation of the water sector, in neo-liberal speak, the 'social dimensions of globalisation'. Notwithstanding the different routes, the convergence on recognition of human rights to water in international and domestic law became possible because of the common conceptual premises that the actors in the water sector shared. The shared premises relate to assumptions about law, human rights and the role of States under capitalism in liberal theory, all of which have been critiqued from a range of theoretical, class, gender, race perspectives by the 'Left' over many years.

4. Liberal Theory and the 'Left' Tradition

Liberalism is a general philosophical world view as well as a political theory and political practices comprising a set of ideas about the relationships between law, state, economy and the individual. Liberalism is by no mean a homogenous tradition and includes a range of different interpretations of core ideas. The regime of rights in liberal theory as we know it today parallels the emergence and development of capitalism in Western societies and was developed initially by Enlightenment philosophers and later during and after the World Wars. Indeed liberalism may be seen as the 'philosophy of capitalism' as the core ideas about a) 'rule of law', b) the state as an institutional framework for markets, c) sanctity of private property, d) citizenship as condition of membership of a State and e) individualism are necessary conditions for capitalism to exist and flourish. The *critique* of rights *also*

parallels the critique of capitalism of which Marx's critique of bourgeois liberalism is most strident. It would be fair to say that most intellectuals on the 'Left' will agree that there are serious limitations to the emancipatory potential of liberal theory generally.

Necessarily generalising, Marx's critique of bourgeois liberalism may be summarised as: (a) the 'empty shell' argument, i.e. liberal rights are negative endowments that promise the possibility of their fulfilment but do not create the conditions for their fulfilment; (b) the 'preconditions for liberty' argument i.e. that individualism, commodification and production relations of capitalism do not create the real social conditions necessary for flourishing of human freedoms, if anything the conditions of capitalist production creates bondage and oppression. Therefore real freedoms require a radically different type of production relationships as the basis of social organisation; (c) the 'means to an end' argument i.e. that while bourgeois democracy may free labouring people from old feudal oppression, they do not liberate them from capitalist oppression and have limited value to the extent they allow limited political space for labouring people to pursue their own political emancipation; therefore bourgeois democracy is a means to freedom and not an end in itself.

Writing about what we would call a secular democratic state today, Marx writes:

When the political state has achieved its true completion, man leads a double life, a heavenly one and an earthly one, not only in thought and consciousness but in reality in life. He has a life both in the political community, where he is valued as a communal being, and in civil society, where he is active as a private individual, treats other men as means, degrades himself to a means, and becomes the plaything of alien powers. The political state has just as spiritual an attitude to civil society as heaven has to earth. It stands in the same opposition to civil society and overcomes it in the same manner as religion overcomes the limitations of the profane world, that is, it must likewise recognise it, reinstate it, and let itself once more be dominated by it. Man in the reality that is nearest to him, civil society, is a profane being. Here where it counts for himself and others as a real individual, he is an illusory phenomenon. In the state, on the other hand, where man counts as a species-being, he is an imaginary participant in an imaginary sovereignty, he is robbed of his real life and filled with an unreal universal (Marx, K. 1987, p 45-46).

Thus bourgeois liberalism premised on the false separation of citizenship from the economy, puts a halo around the State as the messiah and points to the heavens, but delivers little because it has to constantly pander to 'The Economy' as sacrosanct. Here the very method of presenting the problem of rights is worth noting: rights as a universal claim appears in conjunction with an exploitative economy, 'civil society' in Marx's words. Equally the State as the institution to deliver on the promises of universal rights is problematic because the 'empty shell' of universal rights is filled invariably by the propertied classes.

Bourgeois liberties, rights, constitutionalism and rule of law attach riders that limit the enjoyment of those rights. Referring to bourgeois constitutional rights and liberties such as personal liberty, liberty of the press, of speech, of association, of assembly, of education and religion, etc., in the context of the rise of Louis Bonaparte in France, Marx writes:

Each of these liberties is proclaimed to be the *unconditional* right of the French citizen, but there is always a marginal note that it is unlimited only in so far as it is not restricted by the '*equal rights of others*' and the '*public safety*', or by 'laws' which are supposed to mediate precisely this harmony of the individual liberties with each other and with the public safety (Marx, K. 1977, p 159-160).

The fine print of the Constitution takes away what the bold headings promise. Consequently those who deny freedom and those who demand it, both, appeal to the Constitution.

For each paragraph of the Constitution contains its own antithesis, [...]. In this way, as long as the *name* of freedom was respected and only its actual implementation was prevented (in a legal way, it goes without saying), its constitutional existence remained intact and untouched however fatal the blows dealt to it in its actual physical existence (Marx, K. 1977, p 159-160).

For Marx it is important to understand and interpret contemporary events by analysing and uncovering the class interests of different actors and asking why social actors take the positions they take. Extending Marx's approach to water-justice, one would presume the questions at least the Marxists in the GJMs

should be asking is: what interests do IOs and the Western States, the very actors that cause water-injustice, have in including human rights to water within a legal framework? While GJMs are wary about the proliferation of 'multi-stakeholder' organisations and the influence that the water industry exercises through them in international development policy (Barlow, M. and Clarke, T. 2002, p. 158), the question still remains: why are they interested in human rights as the legal framework for water. GJMs will answer the question readily by saying: 'because we campaigned and lobbied hard and people on the ground protest and struggle against water privatisation'.

For political theorists on the 'Left' such claims need to be analysed by taking into account the interests of different actors and the structural contexts of their actions. No doubt GJMs have played an important role in drawing attention to the human consequences of neo-liberal transformations and thereby contributed to changes in international law (Balakrishnan, R. 2003; Baxi, U. 2007; Törnquist-Chesnier, M. 2004). *Equally* the very neo-liberalism critiqued by the GJMs is responsible for opening up of the international spaces for NGOs, the shifts in policies on development funding and recognition of NGOs by Western States. To explain the incorporation of human rights to water within an international legal framework *exclusively* in terms of the role of GJMs, to the exclusion of the interests of economic actors, IOs and States tells only half the story about the politics of human rights in regime changes (D'Souza, R. 2008).

Taking cue from the critique of the regime of rights critiqued by Marx, a critique that aided and abetted the revolutionary upheavals of the early twentieth century, the question to ask would be: has the class character of the States, the equations between the institutions of capitalism such as the IOs and the 'multi-stakeholder NGOs' and the regimes of expropriation changed is so fundamentally that the 'Left' can abandon its scepticism of human rights in political activism?

Marx notes in his essay on the Jewish Question:

It is in no way sufficient to inquire: Who should emancipate? Who should be emancipated? A proper critique would have a third question - *what sort of emancipation* is under discussion? What preconditions are essential for the required emancipation? (Marx, K. 1987, p 42).

The nuanced critique of liberal theory on the 'Left' offers little assistance to the GJMs or indeed to the development of radical political theory in debating contemporary social questions.

5. The 'Left', Liberal Philosophy, Political Theory and Political Activism

In his thorough-going philosophical critique of human rights Costas Douzinas (Douzinas, C. 2000) traces the history of the idea of human rights in the Greco-Roman traditions and the ways in which the march of modernity severs rights from nature and society and interpolates them into social contract and property relations as natural rights (Douzinas, C. 2000). Douzinas makes the important point that when people argue something violates human rights, they are invoking their *moral* sense to make the argument. But they end up calling for human rights to be recognised as law, a formal right with limited material equality. By doing that they discover at the end the liberal principle they started with (Douzinas, C. 2000, p 248).

Our age suffers from what could be called "legal techno- nihilism": the more law we have the freer we are supposed to be, the more legal-technical relations define humanity, the more we should be able to order and control our lives. Like technocratic nihilism, metaphysical legalism turns against humanity in the name of freedom (Douzinas, C. 2000, p 243).

Nonetheless human rights need to be valued because:

Human rights are not the trump cards against collective goals, as liberal theory has it, but signs of a communal acknowledgment of the openness of society and identity, the place where care, love and law meet. [...] Thus rights protect the ability of people to participate in the life of the community as a whole, and the struggle for new rights is a struggle for changing the meaning of equal participation and extending it from political life to the workplace, to the environment and the private domain (Douzinas, C. 2000, p 295).

The history of human rights however points to structural, theoretical and ideological disjuncture between a privileged 'Economy' and values/ethics, a disjuncture on which the edifice of capitalism rests. What is missed by political theorists canvassing for human rights as a means of mitigating the problems of privatisation in the wake of 'globalisation' is the fact that the struggle for new rights come with recognition of new market prerogatives. The human right to water arises *because* water is brought into a private property regime in which it was not included before. What is at stake here is the entrenchment of water as part of a property regime. The history of 'rights' as we understand it today begins with property as 'natural right', and the transformation of labour, a natural endowment, into property for sale in the labour market, themes extensively traversed in the literature on capitalism and class. Over two hundred years at least both of these 'natural' rights and 'freedoms' in capitalist democracies have entailed colonialism, slavery, plantation economies and breakdown of social structures in the Third World. Should not the question for politics then be: do we really need to add water to the list of property rights, and must communities in the Third World first concede to property rights in water within the new WTO regime so that they may struggle for human rights to water in the new economic context of neo-liberalism? Does not the excellent critique and limitations of human rights and liberalism then return a full circle in asking us to accept an idealised version of it?

More pertinently what should a political activist committed to the water-justice in the Third World do: vote with the WWC, GWP, the IOs and the UN agencies on human rights to water (at a time when the UN credibility amongst the people of the Third World is at its lowest (see Alleyne, M. D. 2003) to create a global property regime in water so that they can then struggle for human rights to water? And why should they expect human rights to water to succeed given the experiences of colonised people everywhere with land rights, self-determination, labour rights and environmental rights over the past sixty years since the end of the World Wars, and over two centuries and more of colonial history? Human rights without transformations in the social architecture founded on hiatus between Economy-State-Civil society becomes moral exhortation and yet another means of recasting regimes of appropriation to changes in regimes of capitalist appropriation (D'Souza R. 2006). Transformations in the way Economy-State-Civil society are envisioned and effectuated make the Economy-Ethics disjuncture itself redundant. Baxi's (Baxi, U. 2007) arguments that human rights must encompass the Economy do not challenge the philosophical underpinnings of the Economy-ethics disjuncture. Consequently the exhortations to respect human rights become yet another attempt to put a human face to capitalism in the context of neo-liberal transformations comparable to similar efforts during the different phases in capitalism and its crises, efforts that have generated, by now, a history for human rights.

Writing about the boundaries inscribed by capitalism on morality and ethics in contemporary society, Jiwei Ci argues that liberal theory conceptualises freedom and justice as absence of restraint, formal rules of procedure, possibility of choices etc. Consequently from the fact that 'something is allowed to happen' liberal theory invites us to conclude that 'it is likely to happen or even cause it to happen', and:

In this way, [...] manage[s] to impart a moral halo to capitalism by inviting us to evaluate capitalism not in terms of what it requires but in terms of what it permits, and by subtly leading us to ignore the distinction between the necessary and the enabling or sufficient conditions of virtue (Ci, J. 1999, p. 416).

The moral/ethical terms of the human rights discourse today is problematic because as J. Ci argues, liberalism:

[...] *redescribes* the existing behaviour of economic actors within the morally neutral frame of capitalist ethic. [...] What happens here may be described as *willing after the fact*. Among the facts after which [the] willing takes place are the fact that negative freedom has as important parts of its historical background the need for free labour on the capitalist market and the increasing dominance of exchange value and the fact, [...] that '[c]apitalism, as a system of contractual freedom and technical innovation, historically required the weakening of rigoristic morality and the toleration of external effects. Willing after these facts is willing one's self-interest, not willing moral freedom. It testifies to the power of bourgeois ideology that the case is often thought to be otherwise, that the positions of horse and carriage are reversed without being noticed most of the time (Ci, J. 1999, pp. 432-433) (italics added).

B. d'Souza Santos's (Santos B. S. 2002) call for 'the reconstructive management of the excesses and deficits of modernity', which could well 'cease to exist before capitalism dies', through transformations in science and law does not problematise the complicity of science and law in the capitalist enterprise and modernist knowledge. It is not clear how the extension of capitalism beyond modernity which is

envisaged as 'scientific depoliticization of social life [to be] be achieved through the juridical depoliticization of social conflict and social rebellion' (Santos B. S. 2002) will transform regimes of expropriation on which capitalism is founded and what it might mean for the peoples of the 'Third World'. The problem for emancipatory political theory then is what kind of politics ought we to canvass in order to achieve *real* freedom.

This question requires interrogating the 'self-interest' that Ci (1999) refers to, and the interests of those in whose names human rights to water is sought to be inscribed in international law. GJMs usually identify three actors, the capitalists/corporations, the States and the IOs, and hold them responsible for the water deprivation and water-injustice in the Third World, which is empirically true. The emancipatory task of political theory lies in its ability to decipher the relationships between the actors and the ways in which liberal philosophy creates a bond between them that appears inevitable and natural. In today's context that kind of engagement in political theory is not possible without revisiting the ways in which colonialism and imperialism sustained the development of liberal philosophy and political theory and how (neo)colonial expropriation continues to sustain liberal political practices in capitalist societies. Such a theoretical project remains to be proposed. The problematique for emancipatory 'Left' political theory is: what is the way out of the stranglehold of liberalism? To lapse back to liberalism as the answer and the antidote to capitalism is not an answer at all. Yet that is what as see happening in much of 'Left' critique of liberalism.

'Globalisation' and the activism of the GJMs generally acknowledge that the end of the Cold War has strengthened imperialism and many describe 'globalisation' as re-colonisation. Heuer (1998) a political activist and scholar recognises that in many cases human rights are used as justification for armed aggression by the United States; that capitalist States do not respect UN law; that the separation of the sphere of law and human rights from the sphere of state and politics leads to its mythification. Heuer (1998) sees the problem as the gap between theory and practice, a widely prevalent view on the 'Left' amongst political theorists and activists alike. The solutions lie therefore in reaffirming human rights but ensuring better implementation. Given Heuer's critique of imperialism, the poor record human rights record of states, the delinking of human rights from economic and social rights; and given that the record of the UN agencies and IOs (founded on liberalism) how do we ensure that human rights are realized, besides appealing to moral virtue? Like Douzinas once again a sound critique of liberal/human rights ends up by advocating more of the same.

GJMs claim to represent 'civil society', a term that is associated with liberal theory and one that 'Left' scholars have critiqued. Ellen Meiksins-Wood writes:

'Civil society' has given private property and its possessors a command over people and their daily lives, a power enforced by the state but accountable to no one, which many an old tyrannical state would have envied. [...] The rediscovery of liberalism in the revival of civil society thus has two sides. It is admirable in its intention of making the left more sensitive to civil liberties and the dangers of state oppression. But the cult of civil society also tends to reproduce the mystifications of liberalism, disguising the coercions of civil society and obscuring the ways in which the state oppression itself is rooted in the exploitative and coercive relations of civil society (Wood, E. M. 1995, pp. 254-256).

Writing about the need to find alternatives to 'capitalist triumphalism' Meiksins-Wood writes:

Capitalist triumphalism on the right is mirrored on the left by a sharp contraction of socialist aspirations. Left intellectuals, if not embracing capitalism as the best of all possible worlds, hope for little more than a space in its interstices and look forward to only the most local and particular resistances. At the very moment when a critical understanding of the capitalist system is most urgently needed, large sections of the intellectual left, instead of developing, enriching and refining the required conceptual instruments, show every sign of discarding them altogether. [...] Intellectuals on the left, then, have been trying to define new ways, other than contestation of relating to capitalism. The typical mode, at best, is to seek out the interstices of capitalism, to make space within it for alternative 'discourses'. Activities and identities (Wood E. M. 1995, pp. 1-2).

After these important observations and analysis Meiksins-Wood's proposes an expanded democracy as the alternative to capitalism.

I now want to suggest that *democracy* needs to be reconceived not simply as a political category but as an economic one. What I mean is not simply 'economic democracy' as a greater equality of distribution. I have in mind democracy as an economic regulator, the *driving mechanism* of the economy (Wood, E. M. 1995, p. 290).

Socialist movements of the early twentieth century set out to replace bourgeois democracy by proletarian democracy with extensive participation of working people in economic decision making. If 'democracy as an economic regulator' follows in the socialist traditions what should the GJMs do in order to ensure democratic decisions over water? Must the struggle for economic democracy not be a political one similar to the socialist movements? What stand should they take on the proposal to include water rights within the scope of human rights in international law? While there are many GJMs who see the limitations of human rights end up advocating it nonetheless because of the perceived need 'to do something' (Brody, R. et al. 2001). Writing in support of the World Social Forum, one of the more prominent networks of GJMs, Michel Hardt and Antonio Negri write that the WSF exemplifies that NGOs can be brought together to make another more democratic world possible. Not surprisingly they turn to eighteenth century liberalism for inspiration:

Well, to all these various sceptics we say, back to the eighteenth century! One good reason to go back to the eighteenth-century is that back then the concept of democracy was not corrupted as it is now. [...] It is also useful to recognize that if the eighteenth-century revolutionaries were utopian, it is simply in the sense that they believed another world was possible (Hardt, M. and Negri, A. 2004, p. 307).

We are where we started, back to eighteenth century when liberalism developed as the ideology of capitalism. Isn't this precisely Fukuyama's point, when he says 'liberal democracy may constitute the end point of mankind's evolution'? Fukuyama's argument is not that modern day democracies are without injustices or serious social problems:

But these problems were ones of incomplete implementation of the twin principles of liberty and equality on which modern democracy is founded, rather than of flaws in the principles themselves. While present-day democracy, and others might lapse back into other, more primitive forms of rule like theocracy or military dictatorship, the *ideal* of liberal democracy could not be improved on (Fukuyama, F. 1992, pp. xi).

In this age of activist scholarship with permeable borders between the academe and activism where scholars are activists and activists are scholars is it not intriguing that 'Left' political theory does not marry 'Left' philosophy to political activism?

6. Conclusion

What the 'Left' and the 'Right' share in common is that both have developed their political theories based on the history and sociology of Western capitalist nations and seek to transpose those theories to problems of the Third World. The difference lies in the fact that the consequences of the extension has served the Right well historically and continues to serve them well in contemporary times as the moral arm of imperialism. The 'Left' does not wish the outcome of liberalism yet is caught in the conundrum of philosophy/political activism trap which political theory is unable to mediate.

What we are witnessing is that the geo-historical ground beneath the feet of 'Left' philosophy and political theory has shifted. Problems of 'Left' philosophy continue to be formulated, debated and addressed predominantly within Western intellectual traditions, as abstract propositions de-linked from or contextualised within Western geo-histories that prompted the philosophical questions and their answers. Problems of political activism however focus predominantly on the Third World because there is an implicit agreement in politics today that contemporary emancipatory politics is primarily about the conditions of peoples in the Third World. 'Left' political theory thus acts as the go-between in attempts to marry Western philosophy to Third World emancipatory politics without taking on board the sociology and history of the Third World in the transplant of 'Left' philosophy.

In the absence of a geo-historical ground to stand on, 'Left' philosophy and political theory lapses back into liberalism and liberal categories of analysis. This is not simply a question of personal inadequacies of philosophers, political theorists and activists in that they do not practice what they preach (a complaint heard all too often from more radical activists in GJMs) but rather that what they preach is flawed at

worst and inadequate at best because 'Left' philosophy and political theory are divorced from the geo-historical terrain of emancipatory politics today. Consequently 'Left' political theory interprets the world, often with excellent 'impact assessments' – viz. the effects of 'globalisation' and water privatisation on the 'global poor', the complicity of IOs and Western governments in the conditions of the 'global poor', a lot of it is grounded in sound critique of capitalism and liberal theory, but fails to recognise that the conceptual tools used for the critique has a long imperial history; is loaded with very different ramifications for 'global poor' in the Third World; and develops few radical and new concepts and theoretical principles that address the needs of human emancipation in the age of mature imperialism.

Endnotes:

ⁱ For struggles against dams in different countries and the issues involved see: International Rivers Network at www.irn.org.

ⁱⁱ Sustainable development as a paradigm encompasses a range of different theoretically informed views, and the meaning and scope of sustainable development continues to be debated within Global Justice Movements and by policy-makers.

ⁱⁱⁱ For example see: Public Citizen, at <http://www.citizen.org/> in the U.S.A; Centre on Housing Rights and Evictions (COHRE), Netherlands, <http://www.cohre.org/>; Women's Environment & Development Organisation (WEDO), U.S.A, <http://www.wedo.org>; World Development Movement (WDM), U.K, <http://www.wdm.org>; Food & Water Watch, U.S.A, <http://www.foodandwaterwatch.org/water>;

^{iv} See Right to Water, at <http://www.righttowater.net/>; Fresh Water Action Network, at <http://www.freshwateraction.net>

^v E.g. The International Drinking Water Supply and Sanitation Decade (1980-1990).

^{vi} The proliferation of NGOs in Eastern Bloc countries in the context of Socialist states is another strand in the "NGOisation" of social justice, however that strand is not relevant here except to the extent that it strengthened the rise of NGOs.

^{vii} See history of World Water Council at www.worldwatercouncil.org.

^{viii} (UN General Assembly Resolution A/RES/60/251 on Human Rights Council adopted at the Sixtieth session on 3 April 2006)

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