Toward a *Democratic* Conception of Human Rights

Abstract

It has been repeatedly stated that human rights have become the lingua franca of contemporary politics, and that the notion of human rights is mobilized in resistance to contemporary forms of exploitation and oppression. However, at the same time this perception of human rights as a form of politics has been accompanied by skepticism about the value and political efficacy of human rights. In this essay, I investigate which philosophical conceptions of human rights are appropriate for an analysis of the justification and political efficacy of human rights within real-life rights struggles. Against the dominant conceptions of human rights, I argue for an alternative democratic conception of human rights which embraces the political significance of human rights within democratic politics. This conception of human rights moves the debate about the praxis of human rights beyond the opposition between the naturalistic and political conceptions of human rights that is prevalent in the mainstream philosophical literature on human rights.

KEYWORDS: *Human rights; rights struggles; political conception; naturalistic conception; democratic conception; Claude Lefort, Jürgen Habermas; Rainer Forst.*

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I. Introduction[*1]

The demand for basic human rights has historically played an important role in social and political movements and continues to play an important role in contemporary political life. The labor movement, civil rights movement, feminist movement and LGBT (lesbian, gay, bisexual and transgender) movement have all won important political battles by framing their demands in terms of human rights. Their emancipatory struggles attest to the efficacy of the language of human rights. The language of human rights, especially after the end of the Cold War, has become the *lingua franca* of any legitimate resistance to contemporary forms of exploitation and oppression. Once the appeal to rights establishes a firm ground within the discourse of political legitimation (as is the case in modern democracies), there is room for their continuous expansion and reformulation.[1] At the same time, there are those who are skeptical of the emancipatory power of 'rights talk'. This skepticism is raised by both supporters and opponents of human rights discourse. Supporters are concerned about the inflation and consequent debasement of human rights language whereas opponents of rights discourse are critical of the whole framework of rights talk because they believe it is individualistic or that it reflects and helps to sustain the existing forms of dominance.

This paper is a philosophical engagement with the *praxis* of human rights: it is about the ways in

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which the notion of human rights is used in real-life rights struggles. By real-life rights struggles I mean *political* conflicts and contestations during which claims against the political and social order are expressed in the *currency* of rights, both as a resource for critique (basic rights are violated) and as goals to be pursued (everyone has those basic rights and they should be recognized). Everyday rights struggles are situations of social conflict and contestation in which a claim for human rights protection is made, or an outcry is raised that the rights of some people are violated. The participants in those rights struggles face the question of what it means to claim that one has a particular set of rights. They also have to think about the efficacy of rights talk for social change in their day-to-day political practice (perhaps implicitly and provisionally). Whether it is a group of workers who lost their jobs, some local groups who are forcefully evicted from their houses, farmers protesting against the construction of dams or hydroelectric power plants on rivers, these people take the policies and conditions imposed on them by the political authorities to be illegitimate and violating their basic rights (to work, to adequate housing, to water, to education, to health care, etc.) and they protest against those policies. For the people participating in these rights struggles, the question whether they have those rights is a question of a lived experience, a question asked in practical contexts or situations. What does it mean that a person (or a group of people) is *justified* in claiming a right? This is the first main question of this paper.

However, posing the question what people take it to be when they claim that they have a right in their day-to-day political practice, raises a second question in view of the philosophical literature on human rights. A standard classification in the human rights literature, at least in the analytic tradition, is to make a distinction between the *naturalistic* and *political* conceptions of human rights. Adherents of the naturalistic conception take the philosophical task to be providing an account of the *nature*, *justification* and *content* of human rights as a part of the best available moral theory. Within the naturalistic approach the question of 'whether there is a right to X?' is a question to be answered in theory by finding the right principles or 'existence conditions'[2] of that right and thereby providing a theoretical justification of human rights norms. Yet defenders of the political conception claim that this dominant interpretation of the philosophical task as one of providing a justification of human rights norms is irrelevant to or even distortive of the human rights *practice*. However by the *practice* of human rights, these theorists mostly refer to the place of human rights within international law and doctrine rather than the practice of people involved in rights struggles. Therefore the second main question of this paper is: can questions about the nature, content and justification of human rights be taken in a different philosophical manner than the two dominant positions such that it illuminates real-life rights struggles? And what difference does it make if we do so?

In this paper, I make a preliminary attempt to articulate an alternative theoretical framework that expresses what it means when people in rights struggles claim that they have a right to X. For this aim, I will provide a conception of human rights that a) accounts for the *internal* connection between democracy and human rights and b) grounds human rights on a particular interpretation of Rainer Forst's 'the right to justification', namely interpreted as a negative right of resistance. By perceiving human rights and democracy to be internally connected, this conception perceives human rights to be the outcome of political struggle; people are *authors* as well as subjects of rights. Hence, it accounts for the political efficacy of human rights. Moreover, according to this conception human rights have normative import; the moral justification of human rights on 'the right to justification' provides us with normative criteria to judge different rights struggles. As such, the political importance of human rights is taken into account without thereby losing their moral authority.

The structure of the paper is as follows. In order to clarify the difference between the framework I will defend and other conceptions, I begin with analyzing two main approaches to human rights and their

main differences in section II. In discussing these points, my aim is to forge a synthesis, a middle-ground, out of the controversy between the naturalistic and the political conceptions of human rights. This alternative approach will be outlined in section III. Inspired by the analysis of human rights pursued by Claude Lefort and Jürgen Habermas I will argue that we need to take a *democratic turn* in our theorizing of human rights which underlines their internal connection with democracy (III. i). I will also provide an original reading of Rainer Forst's right to justification as incorporating a negative right to resistance that grounds human rights (III. ii). With these building blocks, a democratic turn in thinking about human rights allows us to account for the political significance of human rights within democratic politics. It also moves the debate on the praxis of human rights beyond the opposition between the naturalistic conception and political conception that is prevalent in the analytic political philosophy of human rights. In section IV, I conclude with some reflections on the difference this democratic turn makes in our understanding of contemporary rights struggles.

II. Two conceptions of human rights

The main argument of this paper is that we need to take a *democratic turn* in our way of philosophical thinking about human rights if our goal is to understand what the participants of social struggles *do* when they claim a right and in what sense struggles for rights constitute a form of politics? However, we first need to examine what we mean by the term 'human rights'. Much of the philosophical literature in the Anglo-American tradition endorses a perspective on human rights that depicts two stylized views. Can these two dominant conceptions of human rights be helpful for understanding the actions and claims of those groups who demand their human rights?[3] Or should we move beyond those two conceptions? In order to answer that question, we will now turn to a discussion of those two conceptions.

The two dominant philosophical conceptions of human rights are concerned with three main questions: *What are human rights? Which rights qualify as human rights?* and *How can human rights be justified?* The first question concerns the nature of rights, the second question concerns the content of rights whereas the third question concerns the justification of human rights. Several philosophical accounts of human rights are advanced, especially in the analytic tradition, each giving specific answers to the questions about the nature, content and justification of human rights; each account also combines the moral, political and legal aspects of human rights in a particular way (or gives priority to one or more of these aspects). Hence, given the diversity of the aspects of and questions about human rights, there is no straightforward way to classify the philosophical views of human rights. Nevertheless, two approaches are often perceived to be dominant in the contemporary analytic political philosophy of human rights, and it is generally believed that they are opposing and mutually exclusive views. There is, on the one hand, the conception which is identified as the 'traditional', 'humanist' or 'naturalistic' conception of human rights. On the other hand there is the 'political', 'practical' or 'institutional' conception.[4]

According to the naturalistic perspective, human rights are pre-institutional claims that all individuals have against all other individuals by virtue of being human. This view emphasizes the moral aspect of human rights in the sense that human rights are (a subset of) moral rights articulating particularly weighty moral concerns, especially those valuable goods or interests that all human beings have.[5] Two elements form the core of the naturalistic view. First, in contrast to positive rights, human rights are not contingent on existing laws and social practices. The second element that forms the core of the naturalistic view of human rights is the idea that the grounds for making a right-claim inhere somehow in each person's nature or status as a human being.[6]

There are different versions of the naturalistic conception including Griffin's account of normative agency, Hart's account of freedom or the conception of basic interests by Finnis.[7] Yet the literature is unclear on what exactly counts as a naturalistic conception. Charles Beitz, one of the prominent critics of the naturalistic conception of human rights, acknowledges this point by saying that there is not an unambiguous target of the naturalistic conception because i) the idea of natural rights has a long history and has changed over time, and ii) there are different interpretations of the sense in which natural rights may be said to be 'natural'.[8]

One specific theory of human rights which is almost without exception counted as a contemporary version of the naturalistic conception is Griffin's personhood or agency account of human rights which conceptualizes human rights as protections of our human standing or our personhood.[9] Griffin himself refers to his account as naturalistic in the sense of an expansive naturalism which has a wider interpretation of the notion of 'nature' which "includes both features such as basic human interests and also events such as their being met or not met".[10] While we should acknowledge the differences between particular versions of the natural conception of human rights, when defenders of the political conception refer to a very wide range of human rights theories as naturalistic, they refer to the views that offer an understanding of the nature of human rights conceived independently of institutional structures and their embodiment in international practice.[11]

The purportedly alternative political conception of human rights, on the other hand, takes the nature of human rights to be "claims that individuals have against certain institutional structures, in particular modern states, in virtue of interests they have in contexts that include them".[12] The political conception stresses the *political-legal* aspect of human rights and it starts from the *role* human rights play in international doctrine and practice.

The paradigmatic case of a political conception is John Rawls's account of human rights and most versions of the political view adopt Rawls's formulation of the main role human rights play in international legal and political practice. In his *Law of Peoples*, Rawls criticizes grounding the idea of human rights on "a theological, philosophical or moral conception of the nature of the human person".[13] Instead he argues, one should start from the role human rights play in the Law of Peoples – a set of principles and norms (including human rights) of international law and practice that well-ordered people (both liberal as well as non-liberal but decent societies) can accept as the standard for regulating their behavior toward one another.[14] For Rawls, the role of human rights is that their violation brings sovereignty's legitimacy into question and justifies an intervention. Because of the fact of the "reasonable pluralism" of peoples, Rawls suggests that there is not a single normative ground for a conception of human rights, but there are liberal grounds for liberal conceptions of human rights and other grounds for other conceptions.[15] Moreover, since human rights specify limits to a regime's internal autonomy, the list of human rights as part of an account of a law of peoples for an international order must be constructed minimally. Rawls restricts human rights to a list of a few fundamental rights: "the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly)".[16]

Despite the fact that Rawls's restriction of the function and content of human rights are criticized, the basic insight implicit in Rawls's thought has been utilized in recent developments of the political conception of human rights. This insight is that we might frame our understanding of the nature and content of the idea of human rights by identifying the role this idea plays in the public reason of international society. Following Rawls, for example, Charles Beitz defends a 'practical' conception of human rights

against 'naturalistic' ones. His approach tries to grasp the concept of a human right by starting from the functional role of human rights in international discourse and practice.[17] Beitz follows Rawls in defining the function of human rights as the justifying grounds of interference by the international community in the internal affairs of states although he takes a broad view of the forms that such interference may take.[18] Similarly, Joseph Raz argues for a political account of human rights which takes human rights to be rights whose violation provides a reason for taking an action against the violators in the international realm.[19]

Thus, the two major conceptions of human rights can be summarized as follows. Under the *naturalistic conception*, human rights are pre-institutional claims/entitlements that all individuals have against other individuals in virtue of *moral* rights/interests/values characteristic of their common humanity, while under the *political conception*, human rights are claims/entitlements that individuals have against certain institutional structures, in particular modern states, in virtue of interests/values they have in contexts that include them.

What is the implication of these conceptions of human rights with respect to contemporary rights struggles? Are the people in rights struggles *justified* in speaking of a human right to work, to housing, to education, to natural resources, etc.? The route taken by the naturalistic conception in order to answer this question is to develop a philosophical account of human rights with ground, justification and content of human rights and then compare it with the main human rights documents. First, a basis or ground which delineates the important features of human beings is identified.[20] Then, in a second step, this basis leads to a list of human rights. For instance, after developing his personhood account of human rights, Griffin describes the three highest-level rights: to autonomy, liberty and minimum provision.[21] In a further step, he reflects on the discrepancies between the lower-level human rights that emerge from his philosophical account and the lists derived from the main declarations in international law. He checks the items in major international documents to identify the *acceptable*, *unacceptable* and *debatable* items on these documents seen through the lens of his personhood account.[22] Different versions of the naturalistic conception can arrive at different lists of human rights and a right (such as a right to work) can be denied as a human right by one account (i.e. Griffin's personhood account) whereas it is accepted as a human right by another version of the naturalistic conception (i.e. Tasioulas's pluralist account).

This assessment of specific rights claims by the naturalistic conception can be perceived as what Raymond Geuss calls "the ethics-first reading" of the slogan "politics is applied ethics''.[23] According to this view, we should start studying politics by first trying to get to what is sometimes called the "ideal theory" of ethics and historically invariant general principles (such as human beings are rational, they seek pleasure and avoid pain, the principle of utility, the categorical imperative, etc.). Then, in a second step, one can apply that ideal theory to the action of political agents. One can also derive judgments about how political actors should behave from the theory. According to this view, "pure" ethics as an ideal theory comes first. Then comes applied ethics and politics is a kind of applied ethics.[24] When the naturalistic conceptions assess whether a specific rights claim is a genuine human right, it is putting into practice this 'ethics first' view of politics. According to this perception of politics, the realm of politics is subordinated to ethics; politics is the application of abstract moral or ethical principles (principles of right in this case) to specific contexts. Whether the people in rights struggles are justified in demanding a human right to X is a matter of theoretical resolution; whether there is a human right to X is a matter to be decided by the best available moral theory. The practice or actions of political agents enter into the picture, at best, as a matter of application of moral principles to specific contexts.

The defenders of the political conception object to the naturalistic conception's subsuming the political aspect of human rights to their moral aspect. Beitz and Raz, for example, argue that the idea that all

human beings at all times and places have human rights seems to be *timeless*. If we look at some of the human rights currently recognized by international practice such as the right to education or the right to social security, these rights presuppose certain social structures and practices and they play a role in a certain range of societies. Therefore, they claim, that it does not make much sense to say that all human beings – at all times and places – have them.[25] Raz also objects to the naturalistic theories of human rights (like those of Griffin and Gewirth) for not giving a convincing argument why human rights practice should confirm their theories: "There is no point in criticizing current human rights *practice* on the ground that it does not fit the traditional human rights *ethical doctrine*. Why should it?"[26]

In short, proponents of the political conception argue that the discourse of human rights makes sense only if one considers the historical contexts and social practices in which they are embedded or to which they refer. However, although in the political approach the emphasis shifts from the 'essentially human', or an adherence to 'human nature', to the 'practice', what is perceived as the relevant practice of human rights is their setting the standards of legitimate sovereignty in the international arena and law. According to this conception, human rights are *political* in the sense of having a role of setting standards to interstate relations and international politics. In my view, perceiving human rights in this sense of political is misleading, for at least two reasons, for an appropriate understanding of the contemporary political significance of human rights. Firstly, without doubt, human rights serve as an important standard and foreign policy tool in international relations and law with a well-developed institutional system of treaties and basic mechanisms for the international protection of human rights. However, the focus on the role of human rights as setting limits to sovereignty and standards for legitimate intervention misses the *intra-national* purpose of human rights, namely their role in setting standards of *internal* political legitimacy.[27] Most versions of the political conception, for instance, deny that there is a human right to democracy.[28] In this sense they perceive the role of human rights to be mainly putting constraints on the power relations between states and are inter-state relations centric. They ignore or downplay the role of human rights in establishing internal legitimation of political systems as well as their putting constraints on the power relations in the processes of state and policies formation. This is especially important for understanding real-life rights struggles because for the participants in these struggles, the primary perspective of human rights is from *inside*; human rights provide *reasons* for demanding the power to be involved in the arrangement of the social and political contexts they are concerned with.

Secondly, the attempt of proponents of the political conception to tilt the balance from the moral towards the political might result in being "political in the wrong sense": a mere *modus vivendi*.[29] This is because, if international practice is believed to provide its own justification, this would risk resulting in a problematic form of conventionalism.[30] The consequence of such reasoning would be that human rights are not grounded in a fundamental moral concern but depend on the contingencies of the current system of international relations.[31] This would mean sacrificing the critical function of human rights which is that they serve as a normative referent for objecting to and transforming existing unjust social formations.

These two concerns suggest that the naturalistic conception and the political conception of human rights each have an important advantage over the other conception. The crucial question therefore becomes: is it possible to develop a conception of human rights that succeeds in uniting the strengths of the naturalistic and the political conception while avoiding their weaknesses? In other words, is it possible to find a middle ground between politics as 'applied ethics' on the one end and politics as 'existing practice' on the other?

III. Toward a democratic conception of human rights

The two dominant ways of conceptualizing human rights do not properly account for the political significance of human rights as they slide into either pole of human rights as 'pure' moral principles or human rights as contingent standards of real politics. As much as they are a moral idea, human rights are also sites of political practice. In order to integrate both the moral and political aspect of human rights within a single conception of human rights, we need to take a *democratic* turn in our philosophical thinking on human rights. The democratic perspective on human rights that I want to put forward, has two main building blocks. First, it conceives an *internal* connection between democratic legitimacy and human rights. Second, it grounds human rights on the principle of justification – read as a principle of resistance. In the following, I will examine these two building blocks in turn.

i. The internal connection between democracy and human rights

As I mentioned before, some prominent versions of the political conception of human rights do not count democratic rights as human rights.[32] Democratic rights are not included in Rawls's list of human rights (as part of a law of peoples). Similarly, Joshua Cohen makes a distinction between rights implied by justice and human rights and then he argues that there is not a human right to democracy.[33] However, it is not necessarily the case that only political conceptions deny the right to democracy to be a human right. For instance, Griffin, the prominent example of a naturalist theorist, also claims that it is unlikely that there is a human right to democracy.[34]

In the Universal Declaration, democratic participation is in fact recognized as one of the human rights, whether in the less explicit form that it takes in Article 21 of the Declaration of Human Rights or in its fuller formulation in Article 25 of the International Covenant on Civil and Political Rights, although neither article uses the term 'democracy' itself. Article 21 of the Declaration approaches a conception of democratic political participation by stating that:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

What is important for my purposes here is to go beyond the truism that democracy is one of the human rights or the question of whether (liberal) democracies are the most effective means of securing human rights. Instead, I aim to examine the *conceptual* relation between democracy and human rights.[35] Is it possible to develop a conception that accounts for the political role of human rights as an interior criterion of legitimacy without thereby losing their moral importance?

An analysis of the conceptual link between democracy and human rights, formulated variously as 'co-originality', 'equiprimordiality', and 'mutual constitution', has been pursued by different philosophical traditions. The basic insight that connects law and popular sovereignty, namely the idea that if people are subjects of the law (i.e. if the law binds them) they must also be the makers of it is closely associated with classical and contemporary republican positions. In *The Social Contract*, Rousseau persuasively defended that political legitimacy rests on the will of the people. However, Rousseau also maintained that there must be some constraints on democratic decisions. It was Jürgen Habermas in the contemporary republican (Kantian) tradition, who argued for a reconciliation between the principle of (democratic) republicanism – the public autonomy of citizens – and the liberties of private individuals, between popular sovereignty and

human rights.[36] In *Between Facts and Norms*, Habermas pursues an analysis of the "co-originality of rights and democracy".[37] In this work, he employs the discourse principle within the context of morality and law. He tries to solve the age-old tension between subjective rights (rights enjoyed by the citizens) and objective law (the law as the command of the sovereign) by using the discourse concept of law. He grounds the system of rights with the help of the discourse principle. Sparing the details of Habermas's historical analysis of the co-originality of human rights and popular sovereignty in constitutional democracies, I will here examine his argument that, *at a conceptual level*, subjective rights emerge co-originally with objective law.

Drawing attention to "the intersubjective character of rights", Habermas emphasizes that rights are not things possessed by atomistic and estranged individuals but elements of the legal order constituted by collaboration among subjects who mutually recognize one another with their reciprocally related rights and duties.[38] More specifically, Habermas claims that the "system of rights" can be developed by the "interpretation of the discourse principle and the legal form" – this interpretation is understood as a "*logical genesis of rights*" by Habermas.[39] The legal form states that the function of law is to permit legal subjects the right to pursue their ends in a legally defined manner, free from interference. The discourse principle states that "just those action norms are valid to which all possibly affected persons could agree as participants in rational discourse".[40] According to the discourse-theoretic justification of Habermas, this genesis of rights occurs in two-stages: The first level involves a philosophical deduction of basic categories of rights from the functional concept of modern law (legal form) and the normative idea of rational justification (the discourse principle), thus securing the minimal liberal requirement (the rule of law in which rights apply to everyone equally).[41] The second level involves the political process of turning (or interpreting) these abstract principles of right into a system of rights in accordance with the principle of democracy. In other words, the discourse principle is transformed into a principle of democracy; human rights are the legal manifestation of the communicative conditions for reasonable political will-formation.[42]

A comparable analysis of the internal link between rights and democracy has also been pursued by Claude Lefort. In an original interpretation of Marx's critique of rights, Lefort suggests that Marx himself is "captivated by the bourgeois ideology of the rights of man" which he criticized.[43] Lefort argues that Marx is at fault in confusing the ideological dimension of rights with the idea of rights, or in his terminology with the "symbolic dimension of rights". Marx was rightly pointing out the ideological function of rights-talk in transposing and disguising the relations of domination and exploitation. However he ignored its symbolic dimension. From the moment the rights of man are posited as the ultimate reference, Lefort argues, the language of rights (and with it a certain abstract and indeterminate conception of man as the bearer of rights) has become a constitutive element of political society. They bear an internal and indissoluble relation to a conception of democracy. In fact, they are "one of the generative principles of democracy".[44]

Moreover, and most important for our purposes here, the struggle for human rights makes a new relation to politics possible. Lefort, emphasizes that once rights are 'declared', they belong to the sphere of the political and provide a critical principle for their constant reformulation and introduction of new rights. For Lefort, democracy and rights mutually suppose one another in a way that the relation between the universal (the abstract idea of human rights) and the particular (particular needs, demands, identities) are open to continuous contestation, revision and reformulation.

> [T]he democratic state . . .tests out rights which have not yet been incorporated in it, it is the theatre of a contestation, whose object cannot be reduced to the preservation of a tacitly established pact but which takes form in centres that power cannot entirely master. From the legal recognition of strikes or trade unions, to rights relative to work or to social security, there has developed on the

basis of the rights of man a whole history that transgresses the boundaries with which the state claimed to define itself, a history that remains open.[45]

Discourse-theoretic approaches to human rights are special in connecting the legitimacy of human rights to democratic deliberation and consensus.[46] The basic insight of the discourse theory of rights is that principles and norms (including principles of rights and duties) can claim validity only if they are the outcome of a rational discourse in which all possibly affected persons participate equally. In this sense, democracy and human rights are internally connected; democratic participation is not perceived as a separate right, but rather as an (institutionalized) procedure in the construction of rights in the first place. In contrast, the interpretation of rights by Lefort suggests a more dynamic relation between rights and democracy; struggles for rights are constitutive of democratic politics understood as an open-ended process.

This conceptual link between democracy and human rights, which I call the *internal link between democracy and human rights*, is one of the building blocks of the conception of human rights which I argue for. This is because making the connection between human rights and democracy allows incorporating a principle or procedure that accounts for right-holders not only being subjects but also *authors* of rights. I label this conception of human rights as *democratic* to refer to this internal connection between popular sovereignty and human rights. This means that a principle and procedure of collective decision making is incorporated at the center of the justification of human rights. As I will explain in more detail in the next section, a democratic justification of a human rights norm means that it has the general and reciprocal consent of those who are influenced by the norm. So construed, the specific meaning and force of human rights is perceived to be the outcome of a political struggle. Moreover, to the extent that the principle of justification on which human rights is grounded includes a *veto* right —against basic norms, arrangements, or structures that cannot be justified reciprocally and generally[47]—democracy is understood as involving not only consensus and agreement but also conflict and contestation. Hence, the term democratic also signifies that the authorship of rights claims is an open process of continuous contestation, transformation and revision rather than a closed system of principles and procedures.[48] I will examine the right to justification in the section below.

ii. The right to justification

As I mentioned in the previous section, the naturalistic conception of human rights subordinates the political aspect of human rights to their 'moral nature' whereas the political conception emphasizes the political practice of human rights at the cost of not accounting for their moral significance. And, I claimed that we should take a democratic turn in our thinking on human rights and take a balanced view of the moral and political significance of human rights. The analyses by Lefort and Habermas of the internal determination of democracy and human rights provide us with the means of understanding the significance of human rights within democratic politics. There is also the classic problem of accounting for both the moral and political aspects of human rights: human rights norms need to be endorsed by the relevant political communities, and at the same time give a moral-critical scrutiny of that community. The recent conception of human rights provided by Rainer Forst is a promising case in this sense because it integrates the moral and political aspects of human rights in a systematic way.[49] I shall therefore discuss Forst's conception of human rights below. First, I will examine his idea of 'the right to justification' and spell out the differences between a democratic conception grounded on the right to justification and the naturalistic and political approaches. Then, I will offer an interpretation of the principle of justification as incorporating a principle of resistance to unjust structures and rights violations.

Forst has pursued what he calls a 'constructivist' conception of human rights and he has provided a reflexive argument for the justification of human rights based on *the right to justification*.[50] The moral basis for human rights, as Forst reconstructs it, is "the respect for the human person as an autonomous agent who possesses a right to justification, that is, a right to be recognized as an agent who can demand acceptable reasons for any action that claims to be morally justified and for any social or political structure or law that claims to be binding upon him or her."[51] This means that *one* claim, namely, human beings' claim to be respected as autonomous agents who have a right not to be subjected to actions and institutional norms that cannot be adequately justified to them, underlies all human rights.[52] Forst argues that *the right to justification* and the criteria of *reciprocity* and *generality* serve as the basis for the moral construction of a conception of human rights. Human rights are seen as the result of an intersubjective, discursive construction of rights claims that cannot be reciprocally and generally denied between persons who respect one another's right to justification. According to Forst's view the ground of human rights is this moral recognition of the other as having a right to justification and that kind of recognition is an imperative of moral practical reason.[53]

Without being able to do justice to the complex and systematic argument for a constructivist conception of human rights Forst has provided, I propose the following reconstruction and interpretation of Forst's account:

First, a constructivist conception *provides a justification.* Rather than leaving the moral grounding of human rights open, the constructivist conception provides a justification of human rights. Moreover, in contrast to the political conception of human rights which is "political in the wrong way" (in the sense of a mere *modus vivendi* or practice that justifies itself), the constructivist account provides a *moral* justification of human rights.

Second, a constructivist conception *provides a moral (not an ethical) justification of human rights.* Similar to Griffin's account, a notion of normative agency lies at the center of the idea of human rights in Forst's account. However Forst's notion of normative agency differs from Griffin's in the sense that it is a *deontological* notion rather than a teleological one. In other words, a notion of personal agency is morally important for human rights not because of its contribution to the good life but independently of that. The normative notion of agency or personhood that lies at the center of the idea of human rights, Forst argues "is one of an agent as a reason-giving and reason-deserving being ― that is, a being who not only has the ability to offer and receive reasons but has a basic right to justification."[54]

Third, and most important for our purposes here, unlike the political conception, the constructivist conception accounts for the political significance of human rights without ignoring their moral importance as well as their role as standards of internal political legitimacy. As mentioned before, Rawls's refraining from a justification of human rights was deliberate in order not to be susceptible to the ethnocentrism charge. Given the fact of reasonable pluralism, grounding human rights on a religious and comprehensive worldview would not be acceptable to people holding different comprehensive worldviews. However, in order to avoid the ethnocentrism charge, the political conception has left the justification of human rights open and reduced human rights to a minimum list. As such human rights have been reduced to a foreign policy tool for liberal societies. Forst argues that by focusing on the role of human rights as setting limits to sovereignty and standards for legitimate intervention is misleading as it misses the intranational purpose of human rights, namely their role in setting standards of *internal* political legitimacy. He states: "one must be careful not to assume the role of an international lawyer or judge who presides over certain cases of human rights violations and who at the same time wields global executive power."[55] Rather, he argues, the primary perspective of human rights is from *inside*; human rights provide reasons for arranging a social and political structure in the right way; they do not provide concrete specifications for the arrangements of a society.

Even the views labelled as political tend to neglect that the primary perspective of human rights is from the inside, about the conditions and grounding of the internal legitimacy of a social and political structure rather than the perspective of an outsider who observes a political structure and asks whether there are grounds for intervention (as Beitz and Raz argue).

Finally, a negative reading of Forst's principle of justification as a veto right (as a right of resistance) captures the political and social meaning of human rights as standing against older and modern forms of oppression and social exclusion. Habermas's discourse principle is mainly a principle of consent; it emphasizes the consent of those affected to the norms and actions. Forst's principle of justification incorporates dissent, the right to justification accords to each moral person "a *veto right* against basic norms, arrangements, or structures that cannot be justified reciprocally and generally to him or her".[56] Grounding human rights on the right to justification incorporating this veto right (or a right to resistance) captures the political and social meaning of human rights as standing against older and modern forms of oppression and social exclusion. The moral point of human rights does not only lie in the protection of normative agency but also in expressing our normative agency and autonomy in a practical sense as *norm-givers*. The right to justification is a right to 'count' socially and politically, to be *authors* as well as *subjects* of rights.

A democratic conception of human right has these two building blocks: a conceptualization of the internal connection between human rights and popular sovereignty and the grounding of human rights on the principle of justification incorporating a right to resistance. Conceptualized as such, the democratic perspective is distinct from the naturalistic positions to the extent that it does not ground human rights on a substantive notion of the good such as Griffin's approach. The intersubjective procedure of justification of human rights similar to discourse theoretic approaches, incorporates a political principle – that human rights are a matter of collective will formation – into the normative core of the conception. As such, the democratic conception does not over-moralize or over-politicize human rights, emphasizing one aspect (moral or political) while neglecting the other.

According to the democratic conception, the moral and political aspects of human rights are not alternative conceptions but elements constituting *one* conception of human rights. In fact, Forst argues that with respect to human rights we should make a distinction between *moral constructivism* and *political constructivism*. The former refers to the level on which "a general conception of rights that no individual or state can legitimately withhold from others is justified".[57] Political constructivism refers to the justification and establishment of a just basic structure for a particular political community.[58] Both are forms of discursive constructivism which means that every content of human rights needs to be justified discursively in contrast to 'deriving' rights from the basic right to justification. Moreover, moral constructivism is a part of, rather than a theoretical alternative to, political constructivism. As Forst states:

> The main reason why moral constructivism must be accompanied by and integrated with political constructivism is that, since moral construction can only lead to a very general list of rights … these rights can only be concretely justified, interpreted, institutionalized, and realized in social contexts, that is to say, only within a legally constituted political order. The very rights that moral persons can claim and justify as moral rights they must also be able to claim and justify as citizens of a particular political community, which depends on their social goals. The demand for human rights arises in concrete social constellations, and it is here where that demand must primarily be heard and justified and where the rights must be granted and guaranteed as legally binding. The idea that there are

two separate procedures for construction is thus itself an abstraction*: moral justification is ¬in a normative-formal sense ¬the core of political justification.*[59]

In this sense, the democratic conception does not defend a 'pure' moral approach ignoring that the demand for human rights arises in concrete social constellations and in fact mainly as a negative claim in the sense of a condemnation of a social state of affairs as an instance of injustice and violation of rights. By perceiving human rights and democracy to be internally connected and grounded on the right to justification, the democratic conception accounts for the political efficacy of human rights as well as their moral authority.

V. Concluding remarks: human rights as struggle concepts

In order not to deprive ourselves of the means to understand the relation of the struggle for human rights to politics, we should not constrict their political role to setting standards for legitimate intervention in the realm of international relations. Neither should we tilt to the opposite pole and constrict human rights to the sole domain of morality by anchoring human rights in the moral importance attached to the human individual. Instead, we should develop the means of understanding their 'symbolic dimension', their being 'struggle concepts' articulating demands against extant relations of power and domination as well as demands whose aim is the inscription of new rights.

As I mentioned at the beginning, many contemporary social movements attest to the political efficacy of human rights. One specific example is the residents of slum houses in Dikmen Valley in Ankara (Turkey) who have been resisting the demolition of their houses following an urban transformation project. They make a clear rights claim by calling their struggle 'a housing rights struggle'[60] and despite the heavy-handed intervention by the authorities, they have been resisting their eviction from their neighborhood for more than seven years now. In my conversations with some participants in these struggles, they told me, in response to my question whether there were any limitations to the rights framework (legalistic, individualist, etc.), that they perceive law as one leg of their struggle, the other being the public sphere. They claimed that law is in the making of continuous contestation and struggle, so they cannot afford refraining from attesting the political significance of rights.[61] Moreover, their justification for their demand ("we just want that our right to housing is recognized and that our right to a house in order to have a human life is respected"[62]) attests a *moral* demand of recognition of their dignity. As Forst argues, participants in struggles for rights "may have no abstract or philosophical idea of what it means to be a "human being," but in protesting they believe that there is at least *one* fundamental moral demand that no culture or society may reject: the unconditional claim to be respected as someone who deserves to be given justifying reasons for the actions, rules, or structures to which he or she is subject".[63] Hence, there is a "deep normative grammar" of social protests and struggles in which concrete demands for justification are associated with the language of rights.

In order to understand the significance of rights in contemporary politics we need to take a democratic turn that embraces the social and political point of human rights as struggle concepts. This point is ignored by the naturalistic and political views of human rights. Human rights are not simply means to achieve or enjoy certain goods. Nor are they primarily means to evaluate social structures in the international arena from the outside. Rather it "provides a language that can be spoken in many languages, but it is the language of emancipation. When we think about human rights, the proper perspective is the one in tune with that of the participants in social struggles".[64] Such a perspective we should take in thinking

about human rights.

Endnotes

[1] Kenneth Baynes, "Rights as Critique and the Critique of Rights: Karl Marx, Wendy Brown, and the Social Function of Rights," *Political Theory* 28, no. 4 (2000): 451.

[2] The phrase 'existence condition' is used by Sumner in his analysis of the moral foundation of rights, L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Oxford University Press, 1987) and later applied by James Griffin to the idea of human rights. James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 38. 'Existence conditions' can be reasonably used interchangeably with the term 'grounds' which is frequently used in the literature on the foundations of human rights.

[3] The idea of human rights has inspired and mobilized many collective energies in the contemporary political arena. Minorities or particular sections of societies frequently raise rights claims: indigenous peoples demand rights concerned with the preservation of their land, religion and language, women's rights activists struggle for rights around women's sexual and reproductive autonomy, LGBT rights activists struggle against discrimination based on sexual orientation. At the other end of the spectrum of the rights struggles, we see people who are deprived of their means of subsistence demanding their rights for an adequate standard of living including rights to work, adequate housing, education, health care and clean water among others. Despite the heterogeneity of these various demands with their different motives and formations, they are similar in their attesting to what Claude Lefort calls the "symbolic efficacy of the notion of rights'', Claude Lefort, "Politics and Human Rights," in *The Political Forms of Modern Society* (Cambridge, MA: MIT press, 1986), 264. Hence, I call them all real-life rights struggles.

[4] Some writers who classify conceptions of human rights into these two broad perspectives (albeit sometimes using different labels) are Jean L. Cohen, "Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization," *Political Theory* 36, no. 4 (May 2008): 578–606; Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); Joseph Raz, "Human Rights Without Foundations," in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 321–337; Pablo Gilabert, "Humanist and Political Perspectives on Human Rights," *Political Theory* 39, no. 4 (May 2011): 439–467. Cohen differentiates between "traditional" and "political" conceptions of human rights. Beitz differentiates between "naturalistic" and "practical" views of human rights. What is called the naturalistic account is also called the "traditional" (e.g. Raz, Cohen, op.cit.) or "orthodox" view (e.g. Charles R. Beitz, "Human Rights and The Law of Peoples," in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen Chatterje (Cambridge: Cambridge University Press, 2004), 193–216 or "humanist" perspective (Gilabert, op.cit.). This essay, like S. Matthew Liao & Adam Etinson and Pablo Gilabert, starts from the view that two opposing conceptions (political versus naturalistic) dominate the contemporary philosophical literature, S. Matthew Liao and Adam Etinson, "Political and Naturalistic Conceptions of Human Rights: A False Polemic?," *Journal of Moral Philosophy* 9, no. 3 (2012): 327–352. What are called political/institutional/practical approaches and naturalistic/humanist/orthodox/traditional approaches in the literature will be referred to by the terms 'political approach' and 'naturalistic approach' respectively.

[5] Cohen, "Rethinking Human Rights," 581.

[6] Beitz, *The Idea of Human Rights*, pp. 49–50.

[7] James Griffin, *On Human Rights* (Oxford University Press, USA, 2008); Herbert L. A. Hart, "Are There Natural Rights?," *Philosophical Review* 64, no. 2 (1955): 175–91 and Finnis, *Natural Law and Natural Rights*.

For another account of agency as a basis of human rights see Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1982).

[8] Beitz, *The Idea of Human Rights*, p. 51.

[9] Griffin, *On Human Rights*, p. 33.

[10] Ibid., 36, 124.

[11] See Beitz, *The Idea of Human Right,* p. 7*, p. 53; Raz, "Human Rights Without Foundations," 323.

[12] Gilabert, "Humanist and Political Perspectives on Human Rights," 440.

[13] John Rawls, *The Law of Peoples: With "The Idea of Public Reason Revisited"* (Harvard: Harvard University Press, 1999), 81.

[14] Rawls uses the term "decent" to describe "nonliberal societies whose basic institutions meet certain specified conditions of political right and justice (including the right of citizens to play a substantial role, say through associations and groups, in making political decisions) and lead their citizens to honor a reasonably just law for the Society of People", Ibid.,3, note 2.

[15] In Rawls's words: "A basic feature of liberal democracy is the fact of reasonable pluralism — the fact that a plurality of conflicting reasonable comprehensive doctrines, both religious and nonreligious (or secular), is the normal result of the culture of its free institutions", Ibid., 124.

To make human rights based on any particular comprehensive or religious doctrine of human nature, Rawls argues, would involve religious or philosophical doctrines that "many decent hierarchical peoples might reject as liberal or democratic, or as in some way distinctive of Western political tradition and prejudicial to other cultures". Ibid., 68. To avoid the accusation of being ethnocentric in this sense, Rawls suggests that liberal and decent peoples agree not on the *grounds* but on the *role* of human rights in the Law of Peoples. See also Rainer Forst, "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach," *Ethics* 120, no. 4 (2010): 714.

[16] Rawls, *The Law of Peoples*, 65.

[17] Beitz, *The Idea of Human Rights*, 103.

[18] Ibid., 65, 83-84.

[19] Raz, "Human Rights Without Foundations," 328.

[20] Pluralist accounts of human rights such as John Tasioulas's invoke a wider range of interests, rather than only one, in grounding human rights. See, for example, John Tasioulas, "Taking Rights out of Human Rights," *Ethics* 120, no. 4 (2010): 647–678.

[21] Griffin, *On Human Rights*, 149–187.

[22] In order to give some specific examples, Griffin argues that there is not a human right to work (Article 23.1 of Universal Declaration of Human Rights), and not a human right to 'the highest attainable standard of physical and mental health' (Article 12.1 of The International Covenant on Economic, Social and Cultural Rights) on his account. Griffin, *On Human Rights*, 206–208.

[23] According to Geuss the slogan "politics is applied ethics'' is popular among political philosophers and there can be at least two interpretations of this slogan; an "anodyne reading" and an "ethics-first reading". The anodyne readings asserts that politics ("meaning both forms of political action and ways of studying both forms of political action'') is not and cannot be a value-free enterprise and so is an ethical activity in a general sense. Geuss accepts the anodyne reading but he objects to the ethics-first reading of the slogan. Raymond Geuss, *Philosophy and Real Politics:* (Princeton: Princeton University Press, 2008), 1.

[24] Ibid., 6–9.

[25] Joseph Raz, "Human Rights in the Emerging World Order," *Transnational Legal Theory* 1 (November 14, 2010): 40; Beitz, *The Idea of Human Rights*, 57.

[26] Raz, "Human Rights Without Foundations," 328, emphases added. Raz considers Alan Gewirth's theory of human rights together with Griffin's as exemplary works of what he calls 'traditionalist' accounts of

human rights. I will not discuss Gewirth's account in detail in this article, as there is no significant difference between his account and Griffin's in their treatment of specific rights claims that is relevant to the arguments of this paper.

[27] A similar critique of political conception is forcefully raised by Forst, "The Justification of Human Rights," 726.

[28] See, for instance, Rawls, *The Law of Peoples: With "The Idea of Public Reason Revisited"*; Joshua Cohen, "Is There a Human Right to Democracy?," in *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, ed. Christine Sypnowich (Oxford: Oxford University Press, 2006), 226–249.

[29] "Political in the wrong way" is a phrase coined by Rawls in a different context, John Rawls, "The Domain of the Political and Overlapping Consensus," in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 491.

[30] Gilabert, "Humanist and Political Perspectives on Human Rights," 446.

[31] Raz, "Human Rights Without Foundations," 336.

[32] By democratic rights I mean both rights of political participation such as the right to vote and to be elected, the right to take part in the conduct of public affairs and a number of other rights which are thought to be essential for democracy such as the right to freedom of opinion and expression (article 19 of the Universal Declaration); and the right to freedom of peaceful assembly and association (article 20 of the Universal Declaration).

[33] Joshua Cohen, "Is There a Human Right to Democracy?," in *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, ed. Christine Sypnowich (Oxford: Oxford University Press, 2006), 226–249.

[34] In fact, Griffin's question is not whether democracy is a human right, rather "Do human rights require democracy?" And his answers is "Yes and No, depending upon circumstances." James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), sec. 14.4.

[35] This does not necessarily preclude the possibility that one can derive the conclusions such as that there is a human right to democracy and human rights need democracy to be realized from an analysis of this conceptual link.

[36] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: The MIT Press, 1996), 267–74, 298–304. The link between popular sovereignty and the legitimacy of law and justification of human rights has also been noted by contemporary republican approaches such as those of Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008); Phillip Pettit, *Republicanism: A Theory of Freedom and Government*, Clarendon (Oxford: Oxford University Press, 1997). I cannot go into details of these positions as it is beyond the scope of this paper. For an analysis of the republican accounts of human rights see, Duncan Ivison, "Republican Human Rights?," *European Journal of Political Theory* 9, no. 1 (2010): 31–47; Simon Hope, "Republicanism: A Theory of Freedom and Government," *Cambridge Review of International Affairs* 21, no. 3 (2008): 367–382. However, it is important to note that the democratic conception I am arguing for is different from contemporary civic republican positions which ground human rights on civic virtues such as Stuart White's account which grounds human rights on the civic virtue of patriotism, Stuart White, "Republicanism, Patriotism, and Global Justice," in *Forms of Justice*, ed. Daniel Bell and Avner De-Shalit (London: Rowman and Littlefield, 2002), 251–268. This is because, as I will discuss below, the democratic conception does not ground human rights on virtues or common values. Moreover, considering Forst's distinction between constitutional Kantianism and republican Kantianism, the democratic approach is closer to republican Kantianism. Constitutional Kantianism sets out basic moral principles of justice that represent the substantive basis for any legitimate constitution and legislation. Republican Kantianism, on the other hand, seeks to transform the moral level of justification into procedures of political self-legislation and attaches justice more to the democratic legitimation of norms and laws rather than to general principles.

Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, 101. The democratic conception remains closer to republican Kantianism than to constitutional Kantianism to the degree that human rights norms are justified democratically by intersubjective procedures of general and reciprocal justification instead of being derived from general moral principles. Nevertheless, it differs from the Habermasian type of republican Kantianism to the degree that it accounts for the moral content of human rights by grounding it on the right to justification. As such, it offers an alternative combination of moral and political constructivism.

[37] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: The MIT Press, 1996), chap. 3.

[38] Ibid, 88.

[39] Ibid, 122–123.

[40] Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 107.

[41] David Ingram, *Habermas: Introduction and Analysis*, (Yale University Press, 2010), 168

[42] Ivison, "Republican Human Rights?," 41.

[43] Lefort, "Politics and Human Rights," 252.

[44] Claude Lefort, "Politics and Human Rights," in *The Political Forms of Modern Society* (Cambridge, MA: MIT press, 1986), 260.

[45] Claude Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism* (Cambridge: MIT press, 1986), 258.

[46] See, for example, Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004); Forst, "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach"; Eva Erman, *Human Rights And Democracy: Discourse Theory And Global Rights Institutions* (Aldershot: Ashgate Publishing, 2005).

[47] Forst, *The Right to Justification*, 6,21.

[48] Hence, there is an agonistic element in the envisaged conception of democracy, yet due to space limitations I cannot discuss that element here. At the same time, it is important to note that it is not the case that all rights claims including sexist or, fascist claims, etc. count as human rights. This is because the right to justification together with the criteria of generality and reciprocity serve as a filter for claims and reasons that can 'be reasonably rejected'.

[49] Rainer Forst, "The Basic Right to Justification: Towards a Constructivist Conception of Human Rights," *Constellations* 6, no. 1 (March 1999): 35–60; Forst, "The Justification of Human Rights ."

[50] By "reflexive" Forst means here "the very idea of justification itself is reconstructed with respect to its normative and practical implications" (Forst, "The Justification of Human Rights", 719). This idea is similar to what he elsewhere calls a recursive analysis, Forst, *The Right to Justification*, see esp. Ch.1 and p.271, n. 29.

[51] Forst, "The Justification of Human Rights", 719.

[52] This does not mean other rights are directly "derived" from the right to justification but rather that the right to justification serves as the internal (moral) core of every concrete justification. Forst, "The Basic Right to Justification," 56.

[53] Ibid., 724 , n. 43.

[54] Ibid., 722.

[55] Ibid., 727.

[56] Forst, *The Right to Justification*, 6, 21.

[57] Ibid., 213.

[58] Ibid., 219.

[59] Ibid., 218, emphasis original.

[60] As it is documented in the United Nations Human Settlements Programme (UN-Habitat) Report (2011), forced evictions and housing rights violations increased globally. "Evictions and the rights-based approach to urban development", UN-Habitat Publications September 2011. Avalibale at http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3359 (visited on October 13, 2012). Although there is no information and data about the exact time span and rate of increase in the instances of forced evictions in this document, the Executive Summary Report of the UN-Habitat Advisory Group on Forced Evictions (AGFE) of April 2007 makes the estimation that at the current pace, between 38 and 70 million people will have been evicted between 2000 and 2020". Available at http://www.hic-net.org/articles.php?pid=2145 (visited on January 27, 2014). There are many residents who have been facing forced evictions in various cities such as Buenos Aires (Argentina), Porto Alegre (Brazil), Durban (South Africa), Hangzhou (China), Istanbul (Turkey), Karachi (Pakistan) and Santo Domingo (Dominican Republic). Some of these groups and others are organized for the recognition of housing and city rights in the network of International Alliance of Inhabitants.

[61] This anecdote relies on two interviews made with two residents of the valley and one lawyer of the residents' law-suits on 21/07/2012 and 24/07/2012 respectively.

[62] These are the last lines of the online news and petition (dated November 14, 2011) signed by the organizations and people who declare solidarity with the residents of Dikmen Valley in their resistance to the demolition. The translation from Turkish to English is done by the author. Online available at http://www.sendika.org/yazi.php?yazi_no=40911 (visited on October 12, 2012).

[63] Forst, *The Right to Justification*, 209, emphasis original.

[64] Forst, "The Justification of Human Rights", 729.