

# **The Polyvalence of Human Rights: Notes on the Treatment Action Campaign in the Struggle for Anti-Retroviral Drugs and State Politics in South Africa**

**Oliver Human**

With the settling of democracy in South Africa, and the implementation of a human rights based constitution, came a rising awareness on the HIV epidemic. In response to this epidemic, South Africa witnessed the rise of social movements such as the Treatment Action Campaign (TAC) demanding the government to effectively deal with the crisis through issuing anti-retroviral drugs (ARVs). The success of this activism was built on a human rights based approach, which challenged the 'denialist' government of Mbeki in the courts as well as on the streets, using tactics borrowed from the anti-apartheid struggle. However, despite the praise the TAC received for this activism, it was also critiqued by radical scholars for its adoption of a human rights based approach. These scholars argued that the use of legal human rights discourse depoliticised and technicised the struggle for ARVs in South Africa. In this light, critics saw any adoption of a legal rights framework as a concession to statist endeavours and therefore increasing the hegemonic hold of market based capitalism. Based on Foucault's philosophical and political discussions of human rights, I will give an overview of both sides to this debate by following Foucault. I will argue that human rights discourse can be seen as polyvalent and therefore both serves and challenges the interests of power. In doing this, I try to illustrate the complexity, which is faced by social movements, and their

supporters or critics, in their adoption of human rights discourse.

Human rights in South Africa bear an interesting history. A product largely of the post-Apartheid regime, a call to human rights was partly the new South African administration's means to legitimate its governance and asserts its power in a socially and politically unstable South Africa. The first expression of this re-legitimization came about in the form of the Truth and Reconciliation Commission (TRC) (see Ross 2003; Wilson 2001). This commission inquired into the human rights violations that occurred on both sides during the anti-Apartheid struggle (see Buur 2001). Alongside the TRC, the negotiated settlement between the repressive white regime of the National Party (NP) and the multiracial African National Congress (ANC) produced the new South African Constitution in which the rights of citizens were enshrined (Beinart 2001). This document, on which the legal infrastructure of South Africa was established, enshrined the rights of all South Africans to, amongst others things, the right to health care services, realised by free health care in state institutions (Heywood 2009: 15).

However, it seemed as if Apartheid would have a longer and more dangerous legacy than that which could have been dealt with in the TRC. The HIV epidemic, revealing its head in the late 1980's in South Africa, was all but neglected during the tenure of the first democratically elected president of South Africa (see Fassin 2008). The demands of guaranteeing a stable and relatively violence free transition seemed to take priority over the escalating epidemic brewing in both urban and rural South Africa. The second democratically elected president of South Africa was Oxford educated Thabo Mbeki, who rose to power amidst a fragmented and unorganized political opposition (Beinart 2001). Mbeki, building his presidency on the ideals of an inclusive "African Renaissance," was keen to witness the "rebirth" of Africa as a continent which had to overcome the oppression of colonialism, and saw South Africa as the country which could lead to the dawn of this new age for Africa (Fassin 2008; 2007). It was during this period of the rejection of Western colonial values as well as an initially uncoordinated and fragmented democratic opposition that the HIV epidemic came to the fore.

HIV sufferers were met with stigma, discrimination and eventual social isolation as the disease and its various connotations, from promiscuity to witchcraft, spread. Initially, the state's justification for not responding to the epidemic was simply a question of cost (see Schneider 2002: 148). The pharmaceutical companies who had developed anti-retroviral drugs were mainly concerned with selling these drugs to developed world clients and as such were not interested in marketing these drugs in developing nations<sup>30</sup>. In response to the government's inability or unwillingness to negotiate with drug companies as well as to challenge the high prices of these drugs, the Treatment Action Campaign (TAC) was formed. The TAC emerged after a protest march outside St Georges Cathedral in Cape Town in 1998. The small group of protesters collected signatures for a petition demanding the government to develop and implement a better plan to treat HIV in South Africa<sup>31</sup>. By the end of the day, the International Human Rights Day, they had collected a thousand signatures (Robins 2004). It was in this gap between an unwilling ruling party, having freshly overthrown their colonial oppression, and a fragmented political opposition to this party, that the TAC was given the space to make demands upon the state. At first, the aim of the campaign was to challenge the high cost of treatment. In this it initially sought to challenge the prices of drugs at which global pharmaceutical companies were selling them to impoverished, "under-developed" countries. It did this by supporting the South African government "in the litigation concerning the challenge to South Africa's Medicine's Act by international pharmaceutical companies" (Heywood 2009: 32). However, the TAC soon realised that the greater hurdle for issuing the drugs inside South Africa was President Thabo Mbeki's reluctance to believe the biomedical grounds on which the treatment was based.

Mbeki claimed that the root to HIV/AIDS sat in the poor living conditions which many in Africa faced. Mbeki saw in the demands for treatment neo-colonial and imperialist forces, which once again attempted to subjugate African populations to the yoke of science and debt (Fassin 2007; Robins

---

<sup>30</sup> The price of ARVs in 1996 was around 10 000-15 000 US Dollars per person per year (see <http://www.avert.org/generic.htm>). Currently, the cost of these drugs is 64 US Dollars per person per year.

<sup>31</sup> See Heywood (2009) for a short timeline of the history of the TAC. It must be noted that South Africa had various plans for dealing with HIV since the early 1990's (see Schneider 2002). However these plans were, up until President Mbeki was recalled from duty, poorly implemented.

2004). In order to challenge this "dissenting" or "denialist" position and the resulting inaction in treating HIV, despite existing government plans to deal with the epidemic, the TAC led public marches as well as civil disobedience campaigns (Friedman /Mottiar 2004; Robins 2004). It also filed legal papers against the government to demand the implementation of Prevention of Mother To Child Treatment (PMTCT) for unborn children (Heywood 2003). The TAC won this case for the roll out of PMTCT and the government appealed the court's decision, taking the case to the highest court in South Africa, the Constitutional Court. Once again, the courts ruled in favour of the TAC. Furthermore, the TAC challenged pharmaceutical campaigns in South Africa's competitions commission over the high prices of ARVs (a case which was settled out of court) and lead another civil disobedience campaign against the government for the roll out of ARVs to the general population. Finally, in May 2007 the South African government conceded to the demands of the TAC and began to develop a national plan for treating HIV (see Heywood 2009).

The strategy which the TAC adopted to challenge the government's reluctance as well as the pharmaceutical companies was made possible by the rhetoric of rights as they were enshrined in the new South African Constitution. This "rights talk" was also combined with a scientifically informed approach to the demand for ARVs where the TAC drew on biomedical orthodoxy to disprove the "denialist" diagnosis and to make the case of medical, rather than social or economic, treatment (Robins 2004, Schneider 2002). These "high level" forms of activism, the resort to science and the law, were supplemented with actions carried out in the form of civil disobedience campaigns and public protest marches populated by poor, largely urban African women as well as by disseminating information through treatment literacy campaigns. In short, the TAC drew on various modes and strategies for making its gains (Friedman/Mottiar 2005). It drew on the resources offered to it by the legal and scientific community along with mobilizing popular and mass support from the impoverished sufferers of HIV.

Due to the success of its campaigns, the TAC has been praised internationally for its activism and demand for human rights. The organisation was even nominated for a Nobel Peace prize in 2003 (Friedman/Mottiar 2005: 512). However, the TAC has received a mixed response from academics. Some academics saw in the TAC the creation of a

politicized civil society, essential to the functioning of democracy (Friedman/Mottiar 2005; Robins 2004, 2006). The TAC, in its style and modes of activism, as much as in its successes, promised a vital counter measure to the ruling elite in post-Apartheid South Africa. However, other academics saw in this movement's deployment of the law and bio-medicine the depoliticization of activism and the subsumption of radical politics drawn into the realm of state administration (Neocosmos 2006, 2009). This article aims to explore this debate between the different viewpoints of the TAC's adoption of a human rights rhetoric.

I begin this article with a discussion of Foucault's use of human rights discourse in both his public activism as well as in his philosophy. Foucault understood both the redemptive as well as restrictive possibilities which the deployment of rights discourse holds. I then proceed to discuss both the constraints of human rights discourse as well as its possibilities for holding the powerful to account. To this end, I will present two scholars who have taken up opposing positions on the TAC. First, I present the views of Steven Robins (2004, 2006). He argues that the TAC formed new modes of activism and subjectivity and thereby created a space for political action amongst people with AIDS (PWAs), which also allowed for new modes of sociality. Robins further suggests that the adoption of a scientific and rights based discourse can then be seen as a strategic move by the TAC in order to ensure the success of the movement. In contrast to this, I subsequently present the argument of Michael Neocosmos (2006, 2009), who critiques the TAC by arguing that the organization's dependence upon bio-medical and legal discourses depoliticises and technicizes the activism of PWAs. This is partly because of its tactics, using the leverage of state resources such as the legislature and the constitution, as well as because of the composition of its upper echelons, consisting largely of middle class members, and its dependence upon biomedicine. The adoption of human rights discourse by activist organizations such as the TAC confronts us with a double bind in that it can be seen to be both a tool to liberate people from sovereign power as well as a means to keep them under the yoke of state power. How then can we understand this double bind of human rights discourse? In what ways can we understand that human rights simultaneously enable and disable political action? It is this problem that I will address in this paper. I propose that Foucault offers us an understanding of rights which we can adopt here to grasp this double bind and to represent the merits of each side

of this debate. It will be noticed that I do not come to a set conclusion as to the worth of rights discourse, nor to the action of the TAC. Rather, the case of the TAC illustrates what Michel Foucault (1978) labelled the “tactical polyvalence of discourses” in that rights discourse can be used both to challenge and institute power relations. Read through the lens of Foucault, the case of the TAC spells out the importance of measuring the value of any discourse in terms of the contingency and circumstance of its deployment.

### **Foucauldian Rights**

As Paul Patton (2005) points out, one would assume from Foucault’s archaeological and genealogical methods that he would deny any possibility of appealing to universal human rights. From this perspective, it would appear, human rights would only be the product of particular discourses and histories of power and as such only serve the interests of sovereign power. Yet, Foucault himself appealed to rights in his own political action. In his various political actions, Foucault called for the development of a relational right for same sex couples, for the right to a means to health and suicide and for the rights of individuals to intervene in matters of international policy (Patton 2005: 269-270). Therefore, “on the one hand, Foucault is often quite critical of a discourse of rights that appears to be bound to a sovereign concept of politics, thereby concealing the technologies and rationalities of government. On the other hand, Foucault often stressed the importance of rights” (Lemke 2011: 33). Is there then a paradox in Foucault’s work and in his public activism for the rights of different groups?

According to Patton (2005: 273), Foucault’s appeal to rights derives from “what Foucault calls the rule of the tactical polyvalence of discourses.” The ‘tactical polyvalence of discourses’ is a term Foucault develops in “The History of sexuality” (1978). In this he argues that we must not think of discourses as competing between a dominant discourse and a dominated one, but rather “as a multiplicity of discursive elements that can come into play in various strategies” (Foucault cited in Platter 1995: 214). This implies that any discourse can be both an instrument and a stumbling block to power (Foucault 1978). Discourses then, such as rights, are available for strategic use by parties either instituting or resisting power. In this regard,

Foucault is not simply calling for the assertion of “historically available discourses of rights” (Patton 2005: 279); his interest was in the creation of new rights, or better, new forms of rights. In doing this, Foucault pointed to two conditions which arose in recent history for the possibility of these forms of rights to be developed (Patton 2005: 279). Firstly, this new form of right, in order to be developed free from the constraints of government, was made possible by the founding of NGOs such as Amnesty International, Terre des Hommes, and Medecins du Monde (Foucault 1994: 474; Patton 2005: 279). These organisations, Foucault (1994: 475) argues, show us that the “will of individuals must make a place for itself in a reality of which governments have attempted to reserve a monopoly for themselves, that monopoly which we need to wrest from them little by little and day by day.”

However, the second condition which Foucault points to is the moral leverage provided by governments (Patton 2005: 279). This is because “governments of all persuasions believe and would have others believe that they are concerned for the welfare of their citizens... to the extent that governments rely on this shared belief to justify their actions, they thereby make themselves accountable for their action or inaction. This mutually accepted relationship between governors and governed is one of the conditions that enables governments to be held responsible for the suffering of citizens and allows for the emergence of a duty on the part of the international citizenry to speak out against abuses or derelictions of power” (279-280). Governments then, in efforts to morally legitimize their own actions, create the moral or normative grounds for citizenry to be able to make demands upon (or even against) them. It is the complex interplay between the normative grounds made possible by governments, through their instrumentalisation of rights to justify their own actions, and the citizenry or non-governmental organisations, which draw upon these moral discourses in which the possibility for new forms of rights exists.

Patton argues that Foucault’s resort to rights should always be understood in a historical and locally situated sense. Foucault’s method and philosophy does not allow for an appeal to some form of universal, and therefore any appeal to rights will have to be made from within the tradition and context in which the activist is acting. In the case of South Africa, and its recent history, any appeal to rights will always be an appeal to the post-Apartheid government, which is seen as the guarantor of human rights in South Africa

today. However, this “does not imply a global endorsement of neo-liberal governmentality, nor does it rule out the possibility that this particular form of governmental reason might undergo transformation or that new forms of right might emerge. However, it does imply that appeals to new rights or new forms of right will always rely upon concepts that may be found within or derived from existing discourses of moral or political right” (Patton 2005: 284). However, whether this appeal to the discourse of power indeed moves us beyond the constraints of power is an empirical question which I will discuss below.

We should not regard the new rights which Foucault appealed to as unknown rights, which simply need to be added to the existing legal catalogue (Lemke 2011: 33-34). Foucault’s political action was not to expand the currently existing judicial framework. It was aimed at transforming the relations between the powerful and the subjects of power. To illustrate this, Thomas Lemke (2011: 34) sketched out some of the possible features of the type of right imagined by Foucault. I will only mention those that interest us here. Firstly, this form of right is built on difference rather than identity. “It is not based on a solid idea of (human) nature or on more or less fixed concepts of normality. Rather, it is intended to give rise to deviations, to dissent and diversity.” Secondly, this form of right is interested in promoting reciprocity and exchange rather than defending privacy. Finally,

...this new form of right does not focus primarily on the state to specify the limits of state interventions, nor is it restricted to an atomistic conception of individual rights. To describe this new relational right, Foucault refers to common experiences and attacks individualist and privatist concepts of right ... Foucault, following Nietzsche, does not treat rights as inherent properties of individuals which then set limits to other individual or collective bodies; rather, he regards rights as a matter of relations between those agents. The new relational right is not defined in terms of legal or formal rights, but rather as effective right in the sense that it only exists when it is recognized and guaranteed by power relations (Lemke 2011: 34).

As I will note in the conclusion to this article, these features of Foucault’s conception of rights are important for understanding the articulation of rights based activism in South Africa. Before advancing with the discussion



of Foucault's position on rights in relation to the debate surrounding the demand for ARVs by the TAC in South Africa, it is necessary to note that the texts of both Robins and Neocosmos have different conceptions of the political, both of which to a certain extent agree with the position developed by Foucault. For Robins, the possibility of political action exists within the current framework. Rather than reducing this position to a conservative one, we can see that it takes seriously, as Foucault argued, the polyvalence of discourse. That is, human rights discourse can be strategically adopted to make gains which may not necessarily agree with the demands of the state. For Neocosmos (2009: 280), the political is that which is radically outside the current state, it is that which is "not about achieving state power but about transforming power, it is arguably about democratising power, not about replacing some politicians by others." In this, it would appear that Neocosmos agrees with part of Foucault's definition of politics as that which occurs outside of or challenges the terrain of the state. The TAC is not a political organisation in this definition, it is simply an organisation seeking healthcare for its population. But we can also see that the TAC, and its appeal to rights, did create the possibility for activating large parts of the population. There is then a certain politics to this activism which I will discuss below in relation to the respective positions adopted by Robins and Neocosmos.

### **The Right to Treatment**

Steven Robins (2009: 639) argues that scholars of humanitarianism have critiqued humanitarian interventions on the premise that these interventions reduce the victims of violence and oppression to 'bare life.' These critiques of humanitarianism borrow from the work of Giorgio Agamben's (1998) rereading of Michel Foucault's (2010) notion of biopolitics. Although agreeing that in certain cases this analysis of humanitarian intervention holds true, Robins argues that the case of the TAC presents us with a different understanding of humanitarian and human rights interventions. In the case of the TAC's recent intervention into the rights of refugees during the xenophobic uprisings of May 2008, Robins (2009: 639-640) argues:

The TAC case also questions the sweeping claims that the global “humanitarian apparatus” constitutes a seamless, coherent, and all-encompassing conduit for individualizing and depoliticizing neoliberal discourses and biopolitical technologies... In contrast to these accounts of humanitarianism as an “antipolitics,”... by strategically deploying both human rights rhetorics and conventional humanitarian technologies, TAC activists were able to create the conditions for the emergence of new forms of political agency and subjectivity.

The creation of these new forms of subjectivity is best articulated in the case of the TAC and the dramatic rebirth of activists from “near death to new life.” (Robins 2006) In this, Robins has argued that HIV positive sufferers, having been previously excluded from society by both the stigma of HIV as well as the physical inability caused by the extremes of the illness, are reborn into society as activists through their participation in the TAC and their access to treatment made available by MSF or eventually the South African government. The TAC in this regard provides PWAs with a new moral politics, made possible through “the deployment of religious, communal, biomedical, and social activist discursive framings. PWAs often draw on these framings to make sense of their illness and social suffering” (Robins 2006: 313). In doing this, and through their different engagements with the ruling party (the ANC) as well as South Africa’s largest trade union (COSATU), the TAC managed to “introduce new concepts of health citizenship that have raised questions about the nature of democracy in South Africa.” (Robins 2004: 666)

The concept of therapeutic (Nguyen 2005) or health citizenship, Robins (2006) argues, can be seen in the creation of an “activist subjectivity,” whereby the healing power and language of science and rights fuse in the creation of new forms and modes of being. As one activist states, “I was very sick but then I found TAC and MSF [Médecins sans frontières] and my life changed....TAC is my mother, MSF is my father” (as quoted by Robins 2006: 316). Another TAC member stated, “Thanks to TAC and MSF I’m flying, I’ve got wings to fly.” (quoted in Robins 2006: 316) Or, in order to express the dramatic effects which ARVs had on improving the health of PWAs, one TAC member stated, “I am like a born again. ARVs, that’s where my commitment comes from. It’s like committing yourself to life because

the drugs are a life time thing. ARVs are now my life.” (317) According to Robins, these testimonies reveal that the subjectivity created by activism inside the TAC, drawing on science and law, does not produce the individualizing or atomizing subjects of neo-liberalism. Rather, through the discourse of science, the dependence upon testimonies which revolved around viral loads and CD4 counts<sup>32</sup>, this organisation inculcated a new form of subjectivity and sociality which allowed for PWAs to again function within society. It was also the development of this sociality which the TAC depended upon to give it mass appeal rather than being seen as an “elite” or “white” organisation. Therefore, although the TAC fought and won most of its battles in the courts, a means usually associated with neo-liberalism, where individuals put their case before the state, the organisation gained legitimacy by means of positioning itself as speaking for the masses through its deployment of mass protest and civil disobedience campaigns. In this sense, according to Robins (2004: 667), “although the TAC can be described as a rights-based social movement that uses the courts and constitutional rights to health care, it is also a grassroots social movement that goes beyond liberal individualism and ‘rights talk’.”

The litigation against the state led by the TAC depended upon the constitutional right to health and the extension of this right to anti-retroviral treatment. Yet, the use of the law and science by the TAC was a strategy the TAC deployed elsewhere. In their reaction to the xenophobic uprisings of May 2008<sup>33</sup>, Robins (2009: 644) argues the TAC did not resort to what Peter Redfield (2005) describes as “biopolitical minimalism”. Redfield (2005) argues that in states of emergency or in humanitarian interventions, the necessity of survival implies that the ends of intervention result in sheer survival; the biopolitics of humanitarian interventions are then a minimalist biopolitics because their interest in the state of emergency are simply technical and bureaucratic rather than political. Instead, Robins (2009: 644) notes, “the TAC transformed human rights talk and humanitarian action into claims of ‘moral truth’ in pursuit of political values and ethical ends.

---

<sup>32</sup> A CD4 count is a measure of the immune system which, in relation to the viral load of the blood, provides a determination of the relative health of the PWA.

<sup>33</sup> In May 2008, South Africa witnessed massive displacement of people as xenophobic violence in the form of mob violence swept through the poor areas of South Africa. Due to the delayed government response the TAC responded initially in providing vital services and later in the form of threatened litigation to ensure internationally agreed upon sets of norms and standards were met to alleviate the suffering of the displaced.

Although the TAC drew on medical expertise, epidemiological methods, and techniques of data gathering to provide scientific evidence of the failure of the government and UNHCR to adequately address refugee needs, this effort constituted what Redfield refers to as the production of 'motivated truth' ... These motivated truths contributed toward the production of highly contested sites of political activism and rights claiming."

In short, Robins argues that the TAC's deployment of legal, human rights and scientific discourse in their various campaigns, as well as their composition of various social classes, and their strategic relationships with various political parties does not imply that their work depoliticizes and technicizes the issues to which they respond. Instead, Robins (2006: 320) argues that:

"To reduce TAC and MSF to a rights-based movement solely concerned with access to health resources underestimates the movement's work at the level of the body, subjectivity, and identity. Neither can mainstream social movement theory account for the powerful ways in which activists with HIV/AIDS make meaning of their terrifying and traumatizing journeys from the shadows of death to 'new life'."

In this regard, "politicizing health care has empowered citizens" (Robins 2004: 669), in that it has strategically deployed the language of the state in order to make gains for those who are excluded from its benefits. Yet, the success of this organisation, and the "politics of citizenship" it has made possible, has "remained tethered to a liberal model of subject and social contract, and while movements like the Treatment Action Campaign have been able to use it to win significant collective rights, their victories have not been unequivocal. The Treatment Action Campaign, for one, has been accused...of individualizing AIDS, hence of failing to deal adequately with its 'socio-politico-economic' roots and implications." (Comaroff 2007: 212) It is to this critique of the TAC that I will now turn.

## The Depoliticisation of Activism

Michael Neocosmos (2006: 115) has argued that the modern African state has wholeheartedly adopted liberal discourse, to the extent that the state has become the “sole legitimate domain of politics.” In this regard, any oppositional politics is reduced to capturing the state and its apparatuses. This fetishism of the state in South Africa results in the belief that the state should be able to, and will, meet all of the needs of South African society. Politics is then reduced to assessing policy or the ability of the state to manage its affairs. As Neocosmos argues, “for liberalism therefore, politics becomes largely reduced to managerialism and thus loses its specificity so that it cannot be thought as a distinct practice” (Neocosmos 2006: 115).

For Neocosmos, ‘civil society’ and the state only exist in a mutual recognition which necessarily excludes other possibilities for political action (Neocosmos 2006: 115). Other forms of politics, which are not recognised by this mutual recognition, are excluded by the consensus established. It is then only the modes of politics “legitimized” by the state which are recognized as actors in the political field. Those which do not abide by the procedures and norms, in other words, those which do not recognize the legitimacy of the state, are labelled as criminal or disruptive and their modes of politics are suppressed by the police. This

...mutual recognition [by state and civil society] is given substance by ‘human rights’...These rights, even though fought for and achieved through popular struggles throughout society, are supposed to be ‘delivered’ and ‘guaranteed’ by the state. They are taken out of popular control and placed in a juridical realm, where their fundamentally political character is removed from sight so that they become the subject of technical resolution by the judicial system...[Human rights] also represent the depoliticisation and technicisation of popular victories under the control of the state... the politics of human rights is, at best, a state-focused politics and is predominantly reduced to a technicised politics, which is limited to a demand for inclusion into an existing state domain (Neocosmos 2006: 116).

Neocosmos (2006; 2009) argues that the TAC, rather than increasing possibilities for political action, has instead minimized them. He explains that neo-liberal states ensure their hegemonic rule less through the operation of parties but rather by “institutionalising the operation of civil society organisations, in particular NGOs.” (Neocosmos 2009: 315) In an era of growing apathy towards political parties by populations, the dominance of the state is ensured by drawing popular politics and frustrations into civil-society organizations, which work to maintain the conditions under which they have the recognition of the state (Neocosmos 2009: 316). In this regard, NGOs operate strictly within the neo-liberal framework of human rights and civil society and thereby do not represent a real challenge to the hegemony of the state. The success of such organisations is measured by their ability to lobby or influence government whilst not challenging its hegemony. Therefore, the success of NGOs is always at the cost of maintaining a disempowering economic context supported by the rule of governments and their protection of “free” markets (Neocosmos 2009: 317). According to Neocosmos (2009: 317), the approval given to the TAC by scholars such as Steven Robins “reduces politics to ‘strategy and tactics’.” For Neocosmos, there are several reasons why the TAC has disabled politics. Firstly, he cites the hierarchical nature of this organization. As the structure of the TAC is similar to the one of a trade union (see Friedman/Mottiar 2005), the organization makes decisions centrally, which reduces the ability of its grassroots members to have a say in the decisions of the organization. “This branch structure has also lead to observable contradictions between leaders and membership given that the former is overwhelmingly White and educated while the latter is Black and poor.” (Neocosmos 2009: 319) Secondly, Neocosmos critiques TAC’s reliance on medical science, especially in its dealings with the courts but also manifested in the individual subjectivities of its members. According to him, this depoliticises the action of the TAC in that it is congruous “with the international bio-medical power system and the fact that it re-enforces the ideology of the bio-medical paradigm for which people are seen as ‘patients’, passive recipients of medical and state *delivery*, rather than as active agents” (Neocosmos 2009: 317, emphasis in original). In this regard, the TAC has made the gains towards treatment of HIV at the cost of creating political passivity (Neocosmos 2009: 319). Demanding that the state delivers drugs means that the TAC was calling for the expansion of the

state, for incorporating individuals into its orbit. In this regard, Neocosmos argues that the success of the TAC largely rested on the fact that it did not challenge elite interests or understandings of politics nor did it challenge the logic of the world medical establishment “but rather relied on, and thus reinforced, the established positions and power of the bio-medical scientific model” (Neocosmos 2009: 320).

Neocosmos, like other critics of liberalism and human rights (e.g. Englund 2006), sees this discourse as an essentially conservative force, which reduces politics simply to the management of populations. Human rights for these authors are both the moral justification as well as legal draw card to pull any challenges to the state into its orbit and playing field. In this regard, by calling on human rights as the driving force for political action, activists are in effect falling into the trap of the state by ensuring that any actions which may challenge power can only be done so on a playing field which power itself has defined.

## **Conclusion**

It is possible to read the rights imagined by Foucault in the same terms as the type of rights which the TAC is struggling for. As Robins (2006) points out, the activism of the TAC produces sociality. Members of the TAC, previously marginalised and excluded from social life, are brought into a mode of social being built around being HIV-positive. This modality of being produces a type of social person open to the public, the previously privatising stigma of HIV now turned into a currency for well-being and sociality. The activism of the TAC, whilst drawing on the resources of the moral order made possible by legal and constitutional frameworks, depends greatly upon its grassroots mobilization and treatment literacy in order to be effective as an agent of change (Heywood 2009). This movement then, whilst garnering most of its fame through its legal actions, and the actions of its leadership, relies on the production of a particular type of relationship between its members. These relationships, and the mass mobilization they imply, are necessary to gain recognition and guarantee from the South African state. This sociality and mass mobilization is vital to the success of any campaign in South Africa which seeks to change the policies of a reluctant government. This is partly due to the fact that the ANC

government of South Africa sees itself as representing the interests of the people. In this regard, the adoption of a human rights based activism to gain resources for the poor was successful. The adoption of this rhetoric did mobilize masses of people and gain vital lifesaving medications for those who would otherwise have been denied them. As Mark Heywood (2009: 28) argues:

...it is also important to appreciate that the spread of democracy, and the pretence of democratic governance, has created a legal space for the human rights movement. Yes, the promotion of individual 'liberty' may be a catch phrase associated with neo-liberal attacks on welfare states but, in my view, the question ought to be asked, particularly by the poor, is 'liberty from what?' If the liberty people seek most desperately is from poverty and inequality, and if this is central to their ability to lead their lives with dignity and autonomy, then the role of the state – and its ability to respect, protect, promote and fulfil human rights – comes very much to the fore.

However, the question of whether the deployment of human rights discourse by the TAC in its activism constitutes a mode of politics or not is a complicated one. As Marxist theory has long argued, the state may only serve the interests of the ruling class (Badiou 2007: 106). In this regard, depending upon the state to fulfil the needs of the poor may be a means to placate the poor, a means to create a pool of labour available for exploitation (Wacquant 2001). The question Heywood asks above, liberty from what, can be answered in terms which demand liberty from a state that supports business interests instead of the aim to alleviate poverty. The deployment of human rights rhetoric did draw the TAC into a close relationship with the state. With the recall of Thabo Mbeki came the willingness of the South African state to concede to the demand to issue ARVs in public hospitals. The role of the TAC then shifted from being an activist organisation to becoming a watchdog of the state, some of its members even taking up positions in the government as advisers to the Department of Health.

The adoption of human rights discourse can then be read to depoliticise activism in that it forces organisations to speak the language of the state and act on the terrain of the state, to the extent that the members of these organisations become available to the state as expertise. The style of



activism adopted by the TAC, its deployment of human rights rhetoric, can then be seen to only go that far in terms of emancipatory politics. Once the organization's demands are met, the political actions of its mass membership are absorbed into managing the affairs of state. The political then is quite narrowly defined by human rights activists. If one were to adopt a definition of politics in the style of Neocosmos, the action of the TAC can be read as depoliticising. The means of activism of the TAC does depend upon a state and thereby any attempt by other movements to move beyond this narrow definition of politics is curtailed by the necessity to always behave in a manner which is appropriate to the state. In this regard, the activism of the TAC, whilst producing sociality and reciprocity amongst its members, did not call for new forms of rights in the style that Foucault imagined. Their demand was simply that existing rights be instituted. In this regard, the TAC did not seek a new right, emancipated from sovereignty. Rather, it demanded the sovereign keep the promise of governance and the moral order it made possible in post-Apartheid South Africa.

Yet the position developed by Neocosmos depends upon defining politics as something that occurs outside the terrain of the state. In this, Neocosmos seems to believe that a "pure" politics, played out on a terrain undefined by power relations, is possible. This position denies the constitution of the activists through power relations. It should be acknowledged that rather than existing organically, a class is produced by activism within a set of relations, some of those relations being the state and science. Foucault, it seems, was of this opinion, as Platter (1995: 214) explains, "since the tactics of 'liberation' demand a dialectical movement of revolt against an oppressor, they do not occupy a place outside power relations but are in fact an integral part of them. Even when successful, they erase the power they oppose only to reinscribe it under new conditions. It does not disappear." We cannot, under the Foucauldian model, escape power relations, we are inevitably caught inside the webs which power weaves.

In order to develop the radical conception of politics that Neocosmos suggests, one has to assume the existence of a set of relationships which occur outside of power. This is often done by romanticising "the poor" or resorting to metaphysical terms, such as "truth," which occur outside the realm of the state. The reduction of political action to some imagined or metaphysical outside produces the same depoliticization as is critiqued.

This comes about because the objects of admiration, the masses or the people, are seen as the rightful arbitrators of matters political, rather than as political entities themselves. Thus, it is replacing one idealized model, the state and its limits, with another, the people. If we are to offer critique of civil society's adoption of human rights rhetoric and its modes of activism and its role in depoliticising the state, we should do so from a perspective, which takes the complexities and paradoxes of activism into consideration, whatever the consequences of that may be. This may be the advantage of the model Robins provides, whether it is valid or not, at least it points to the complexities of local activism in a way that moves us beyond the simple dichotomy between politics and anti-politics. The political in this sense is more than simply the replacement of a "false" state with the "true" desires of the popular. The political is precisely that which constitutes the true and the false. The danger of romanticizing radical politics is to overlook the power they inevitably deploy and depend upon.

The debate on the use of human rights as a means for gaining resources for the poor is a complicated one. Perhaps, the final arbitrator for the politics of this discourse will be time. Yet, what my comments on Neocosmos and Robins shows is the difficult situation currently faced by emancipatory politics. The use of rights does force activists to act on the terrain and within the bounds of the state. The TAC then, to be effective and to gain lifesaving medication for PWAs, was forced to act in this manner. The desperation of those dying without ARVs and the necessity for the TAC to act as swiftly and efficiently as possible to get these issued meant resorting to whatever means necessary, as at one point, 600 South Africans were dying from AIDS related illnesses each day.

In its actions, the TAC did not effectively deal with the socio-economic roots of HIV, as Neocosmos rightly points out. The TAC did not demand new forms of rights, campaigning only for existing rights to be fully implemented. Yet, as Foucault points out, this may be the only means we have for overcoming the current state we find ourselves in. For Neocosmos, politics is always outside or challenges the domain of the state. It is that which challenges the limits of the state. Indeed, by definition, radical possibilities could only exist at this limit. In a time of the rapidly expanding hegemonic grip of neo-liberal capital, such a definition of politics, as always pointing towards a beyond of the current predicament, is becoming increasingly important. To conclude then, perhaps the

appropriate thing to do at this point, is to allow for both models of politics and the experimentation they make possible. Probably, experimentation and the patience it implies is the greatest resource emancipatory politics can draw on today.

## References:

- Agamben, Giorgio. 1998. *Homo sacer: sovereign power and bare life*. Stanford: Stanford University press.
- Badiou, Alain. 2007. *Being and Event*. London: Continuum.
- Beinart, William. 2001. *Twentieth Century South Africa*. Oxford: Oxford University Press.
- Buur, Lars. 2001. The South African truth and reconciliation Commission. In: Blom Hansen, Thomas/ Stepputat, Finn (eds.). *States of Imagination: Ethnographic Explorations of Postcolonial State*. Durham: Duke University press, pp. 149-181.
- Comaroff, Jean. 2007. Beyond bare life: AIDS, (bio)politics, and the neoliberal order. *Public Culture* 19(1):197-219.
- Englund, Harri. 2006. *Prisoners of freedom: human rights and the African poor*. Berkley: University of California Press.
- Fassin, Didier. 2007. *When bodies remember: experiences and Politics of AIDS in South Africa*. Berkeley: University of California Press.
- Fassin, Didier. 2008. The Embodied past: From paranoid style to politics of memory in South Africa. *Social Anthropology*, 16(3):312-328.
- Foucault, Michel. 1978. *The history of sexuality. Volume 1: An introduction*. New York: Random House.
- Foucault, Michel. 1994. *Confronting Governments: Human rights*. In: Faubion, James (ed.). *Power: essential works of Michel Foucault volume 3*. England: Allen Lane, pp. 474-476.
- Foucault, Michel. 2010. *The birth of biopolitics: Lectures at the college de France 1978-1979*. Edited by Michel Senellart . New York: Palgrave MacMillan.
- Friedman, Steven /Mottiar, Shauna. 2004. *A moral tale to the tale: The treatment action campaign and the politics of HIV/AIDS. A case study for the UKZN project entitled: Globalisation, Marginalisation and New Social Movements in post-Apartheid South Africa*. Available at:  
<http://ccs.ukzn.ac.za/files/Friedman%20Mottier%20TAC%20Research%20Report%20Short.pdf> [Accessed 27 July 2012]

- Friedman, Steven/ Mottiar, Shauna. 2005. A rewarding engagement? The Treatment Action campaign and the politics of HIV/AIDS. *Politics and Society* 33(4): 511-565.
- Heywood, Mark 2003. Preventing mother-to-child HIV transmission in South Africa: Background, strategies and outcomes of the Treatment Action Campaign case against the Minister of Health. *South African Journal on Human Rights* 19: 278-315.
- Heywood, Mark. 2009. South Africa's Treatment Action campaign: Combining law and social mobilization to realize the right to health. *Journal of Human Rights Practice* 1(1):14-36.
- Lemke, Thomas. 2011. Critique and Experience in Foucault. *Theory, Culture and Society* 28(4):26-48.
- Neocosmos, Michael. 2006. From 'foreign natives' to 'native foreigners': explaining xenophobia in post-Apartheid South Africa. CODESRIA Monograph series. Dakar: Council for the development of social science research.
- Neocosmos, Michael. 2009. Civil society, citizenship and the politics of the (im)possible: rethinking militancy in Africa today. *Interface* 1(2):263-334.
- Nguyen, Vihn- Kim. 2005. Antiretrovirals, Globalism, Biopolitics and Therapeutic Citizenship. In: Ong, Aihwa/ Colliers, Stephen (eds.). *Global assemblages: technology, politics and ethics as anthropological problems*. London: Blackwell, pp. 124-144.
- Patton, Paul. 2005. Foucault, critique and rights. *Critical Horizons* 6(1):267-287.
- Platter, Charles. 1995. *Officium in Catullus and Propertius: A Foucauldian reading*. *Classical Philology* 90(3): 211-224.
- Redfield, Peter. 2005. Doctors, borders, and life in crisis. *Cultural Anthropology* 20(3): 328-361.
- Robins, Steven. 2004. 'Long live Zackie, Long live': AIDS activism, science and citizenship after apartheid. *Journal of Southern African Studies*, 30(3): 651-672.
- Robins, Steven. 2006. From 'rights' to 'ritual': AIDS activism in South Africa. *American Anthropologist* 108(2): 312-323.
- Robins, Steven. 2009. Humanitarian aid beyond 'bare survival': Social movement responses to xenophobic violence in South Africa. *American Ethnologist* 36(4): 637-650.
- Ross, Fiona. 2003. *Bearing witness: women and the Truth and Reconciliation Commission in South Africa*. London: Pluto Press.
- Schneider, Helen. 2002. On the fault-line: the politics of AIDS policy in contemporary South Africa. *African Studies* 61(1): 145-167.
- Wacquant, Loic. 2001. *Deadly Symbiosis: when ghetto and prison meet and mesh*. *Punishment and Society* 3(1):95-133.
- Wilson, Richard. 2001. *The politics of truth and reconciliation in South Africa: legitimizing the post-apartheid state*. Cambridge: Cambridge University Press.