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Translocal Dilemmas

Social Mobilization and Justice-Seeking beyond the Boundaries of Law

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5.1 Introduction

For those of us who came of age – intellectually, politically, ethically – from the late-1980s through the 1990s, the current conjuncture can appear bewildering and unmoored in very particular if no less destabilizing ways. Trained as a Marxist political scientist and budding "Sovietologist" – yes, that was actually a thing – I spent most of my undergraduate years absorbing in the deepest possible ways I could manage the ways and means of historical materialism, the enduring centrality of class conflict, and the patent injustice in the way surplus value became the corrupting means through which accumulated wealth and power were intertwined, hardwired into institutions of all kinds, and made the basis for multigenerational inequalities. Far from the analytical subtleties of today's intersectional theory, which rightly views social violence and marginalization as the subject- and context-specific result of microhistories of exclusion and categorical denial, the universalizing scope of Marxist political and social analysis was a blunt instrument. We were taught to sort factors from the outset into either the base (political economic variables) or superstructure (religion, ethnicity, nationality, race, etc.). Those factors assigned to the base deserved our greatest attention – either as scholars or activists – while those in the superstructure were treated as carefully forged ideological distractions meant to keep those who were actually allies in a common historical materialist struggle divided, at odds with each other, and forever alienated from what Marx had described as their/our true "species-being."

At the same time, if the Marxist diagnosis of the problem – and, in the end, there really was only *one* problem – was crystal clear in its

globalizing simplicity and self-imposed theoretical myopia (base, base, base, base), so too was its framework for action, its solution to the injustices of global capitalism. Although the dialectical rotation of history was inevitable – synthesis bifurcating into antagonistic conflict, only to be resolved through a new synthesis, itself to give way to a new antagonism, and so on – it was possible, with enough determination, willingness to sacrifice, and, of course, knowledge of political economy, to end class conflict and its manifold and devastating consequences. With a laser focus on the ever-unfolding tragedy of what Thomas Piketty (2014) would later reaffirm as the "central contradiction of capitalism," political action was supposed to be concentrated on overturning the thing itself. In this great task, intellectuals were given an important position as truth-tellers, as deniers of false consciousness, and as arbiters of which factors in the struggle merited our attention and which factors should be unmasked as false idols.

And yet, with the end of the cold war and the rapid collapse of global socialism, the power of Marxism as a social and political theory, a theory whose influence had been profound across a vast swath of academic, institutional, and associational life, likewise collapsed – albeit more gradually and with less intentionality. Geopolitically, despite the presence of isolated Marxist-Leninist states like North Korea or Cuba, the most important and consequential remainder – the People's Republic of China – was already well on the way to being restructured into the authoritarian capitalist juggernaut it would eventually become. In less than twenty-five years, as Evan Osnos (2014) has chronicled, China produced more capitalist wealth than was created globally during the entire period of the Industrial Revolution. And not surprisingly, during this same span of hyper-capitalist growth that is euphemistically described as "socialism with Chinese characteristics," economic and social inequality exploded in China, reaching levels of stratification that are equivalent to those of the "mature" capitalist economies like the United States.

But if Marxist politics largely disappeared even while the processes it claimed to uncover became dramatically and calamitously more inescapable in the coming years and decades, what, if anything, replaced it as a logic of mobilization for the suddenly bereft and rudderless political left? As is well known and rehearsed by now, the vacuum created by the implosion of socialism was quickly filled by a radically different framework for understanding and responding to injustice – a framework that was shaped, in one way or another, by human rights, which is to say,

shaped by a category of international and national law. Although some left-wing theorists-in-mourning like Nancy Fraser (1995) were soon worrying about the long-term consequences of a transformation in which the struggle for rights-based recognition became the new framework for "postsocialist" politics, these prescient voices were largely drowned out amidst the millenarian fervor associated with the "power of human rights" (Risse, Ropp & Sikkink 1999). Although this fervor found expression in landmark international gatherings like the 1993 Vienna Conference and the 1995 Fourth World Conference on Women (in which Hilary Rodham Clinton declared that "human rights are women's rights, and women's rights are human rights"), it was a sea-change shift that nevertheless seemed completely oblivious to the ways in which the new "moral grammar of social conflicts" (Honneth 1996) was actually incompatible with the political economic grammar of historical conflict that it supplanted.

What happened next in this condensed intellectual and political history is also becoming equally well rehearsed: The global human rights revolution would prove to be no match for either the deep-seated structures of global, regional, and national economic inequality that became increasingly naturalized during the "Age of Human Rights" (Annan 2000), or the vast spectrum of demands for justice, demands that were rooted in particular places, particular histories (not *History*), and particular legacies of social suffering. If Marxism was a blunt instrument that claimed universal validity for class conflict and the purifying necessity for anti-capitalist revolution, the rights-based struggle for recognition would prove to be equally and problematically blunt. Although the Preamble to the Universal Declaration of Human Rights projected a world in which legally recognized and protected inclusion in the fictive kinship category of "the human family" would form the foundation for "freedom, justice, and peace in the world," the multifarious realities of injustice would give the lie to the power of supposedly ontologically transversal moral values like "dignity" or "social progress." Despite the valiant efforts by scholars such as Sikkink (2017) and Howard-Hassmann (2018) to defend human rights notwithstanding the overwhelming incapacities of rights-based politics within the swirling "maelstroms" of an "unequal world" (Moyn 2018), in the end, the fusion of a more recent critique from the disenchanted postsocialist left (Hopgood 2013) with an older and more historically embedded postcolonial critique of human rights and international law (Mutua 2001; Anghie 2005; Clarke 2009) signaled the final unraveling of the juridified future imagined in Vienna and Beijing.

This chapter gives me the opportunity to expand on a series of recent interventions about the consequences of this unraveling – for critical scholarship (both disciplinary and interdisciplinary), for the state of (mostly Euro-American) progressive politics, and for the urgent need to develop alternative approaches through which the most pressing and intractable problems might be confronted. In the next section, I pick up the intellectual historical narrative by examining what has happened in the wake of the "endtimes" (Hopgood 2013) of human rights and other categories of law that were invested with the weight of social, political, and, to a lesser extent, economic transformation. Although, as the Introduction to this volume explains, the use of juristocracy to describe the elevation of law during certain historical moments is meant to be transhistorical, my own contribution focuses on one of these extended moments, one that transcends specific national or regional case studies. After tracing the trajectory of this historically significant moment of juristocracy up to the present, I then introduce my own proposition for what might be thought of as the "futurelives" of human rights, one that recognizes the force of the recent critical fusion described above, but which is not, in the end, circumscribed by it.

Although my argument for "reinventing human rights" (Goodale 2022) was meant to examine fairly comprehensively the ways in which a radically reformulated account of human rights was still possible, an account, moreover, that might yet prove capable of galvanizing new and more sustainable forms of translocal social and political action, this intervention nevertheless left certain key concepts rather underdeveloped. In both this and the following section, the chapter returns to these key concepts in order to thicken the argument for a reinvented human rights as a framework for multiscalar social mobilization and justice-seeking. Yet as will be seen, this framework does not return "human rights" to its grounding in law – national, regional, or international. As I argue, the case for detaching human rights – conceptually and institutionally – from law seems to me as compelling as ever, perhaps even more so in light of the violent impotence of the international system writ large in the face of crises such as the global COVID-19 pandemic and Russia's invasion of Ukraine.

The chapter ends by reflecting more generally on the dilemmas and potential limitations of reimagining progressive politics beyond the rule of law. With a number of historical and contemporary examples of both ideological and political overreach in view, I argue that a reinvented human rights – or any other alternative proposal – must grapple with

the imperatives of pluralism and the need to temper the fiery struggle for change of whatever kind with the cooling values of tolerance and solidarity, even if this means letting go of the chimera of revolution once and for all.

5.2 The Rise and Fall of Post-Cold War Juristocracy and Its Consequences

In 2004, the political theorist Ran Hirschl published an influential study of the ways in which specific forms of law had become increasingly more important, even hegemonic, over the first decade of the post-cold war. In particular, he focuses on what he describes as "constitutionalization and the judicialization of mega-politics," that is, the absorption by the mechanisms of constitution-making and national legal reform of long-standing political, social, and economic demands, including demands for different forms of justice during times of transition. For example, he invokes as a sort of paradigmatic case of the "judicialization of mega-politics" the "widely celebrated South African constitutional revolution," in which the ubiquitous and deeply-rooted consequences of the "notorious apartheid regime" were supposedly rectified through post-apartheid South Africa's rights-based process of reconciliation and political change (see Zenker's chapter in this volume; see also Zenker, Walker & Boggenpoel 2024).[1]

Yet as others observed both during this same period, and after, the hegemonization of particular categories of law went well beyond consti tutionalization (Couso, Huneeus & Sieder 2010; Kirsch 2012; Ramstedt 2012). In fact, what Hirschl describes as post-cold war juristocracy came to characterize a much wider range of processes, from the transformation of international development into a mode of human rights activism (Goodale 2008) to the juridification of post-conflict ideology and practice through the formation of a global "transitional justice" regime (Hinton 2018; Clarke 2019). Regardless of the differences and gaps in the ways in which this particular instantiation of juristocracy came to shape the post-

[1] Again, this section must be read in relation to the Introduction to the volume, which develops in much more detail a theoretical argument about juristocracy and the dialectics of reckoning with law in excess that is meant to be transhistorical. For purposes of my own chapter, I focus on a particular moment of juristocracy, one that has itself become a key marker of what the Introduction describes as "iconic indexicality." In other words, notable instances of iconically indexical juristocracy can be associated with global, rather than national or regional, histories.

cold war world, it is important to acknowledge the extent to which the apotheosis of a number of consequential categories of law was viewed as a major advance, as a way of giving new institutional and normative form to a wide range of longstanding social, political, and economic claims.

But it is also important to be quite clear about the ways in which a post-cold war and globalizing juristocracy related to both "the law" more generally and the rule of law as a logic of social ordering and institutional justification. Clarity about the contours of post-cold war juristocracy also helps to sharpen the historical and theoretical understanding of its emergence and, even more, to guide a consideration of the eventual fall of post-cold war juristocracy, which was a form of reckoning that follows inevitably whenever the law has been elevated beyond its intrinsic capacities. First, to return to my condensed intellectual history above, the rise of post-cold war juristocracy and the collapse of socialism were closely connected. In other words, the juridification of social and political life in different parts of the world was an effect of the fall from global legitimacy of a long tradition of revolutionary leftist politics and ideology, which had obviously taken a wide range of forms over the preceding decades, but which shared to greater or lesser degrees a commitment to a Marxist analysis of conflict, capitalism, "accumulation by dispossession" (Harvey 2003), and the drivers of historical change. In the absence of either the Marxist historical vision or its blueprint (however modified) for revolution, something else was needed.

It was in this context, as we have also seen above, that institutions, activists, and intellectuals alike turned to particular forms of law, most of them based in one form or another around rights, that is, entitlements that are derived from ontological inclusion in any number of interrelated – but not always perfectly consistent – categories of identity: human, women, children, cultural minority, Indigenous, and so on. The underlying logic of the post-cold war juridification of politics through rights went something like the following: The enduring inequalities and claims that had been the basis for Marxist/socialist revolutionary mobilization throughout most of the twentieth century would now be addressed through the legal recognition of social value and belonging.

Beyond the centrality of rights, however, post-cold war juristocracy was also expressed in another important domain – that of "transitional justice." Yet here too juridification is linked to the widespread collapse of Marxist revolutionary models and state projects. Instead of the use, for example, of the infamous "dictatorship of the proletariat" (Lenin 1975

[1919]), "post-conflict" (not post-*revolutionary*)[2] processes were dominated by the imposition – usually by international institutions – of different legal or quasi-legal mechanisms through which the post-conflict order was defined and set in motion. As with human rights, here too law was meant to take the place of nonlegal forms of social and political change, not a few of which had been associated with some of the preceding century's worst mass atrocities.

So this is the first part of the clarification around post-cold war juristocracy: it was a historically bounded yet globalizing instance of a wider transhistorical phenomenon that involved the rise of particular categories of law. These categories of law were intended to stand in for earlier frameworks that offered vastly different solutions for the same set of social, political, and economic problems, solutions that had (fairly suddenly) become illegitimate. And, to refer to the theoretical arguments made in the volume's Introduction, the post-cold war rise of law can be taken as a first stage in a longer process of dialectical reckoning, in this case with the failure of Marxist and socialist politics to usher in the anticipated global overthrow of capitalism.

The second part of the clarification follows from the first: If post-cold war juristocracy, the apotheosis of rights and narrowly framed regimes of justice-seeking, took place in terms of a limited number of categories of law, this means, importantly, that much – perhaps most – of law regardless of scale or region was excluded from this highly consequential process of globalizing – *not* global – dialectical reckoning. In other words, the "judicialization" or "juridification" of politics had nothing to do with the immense spectrum of laws and legal processes that regulate everything from criminal procedures to intellectual property. This is not to say, of course, that "the law" remained static in different places and times while rights-based forms were amplified in importance and scope during these same years, a spectrum of diversity that is demonstrated across the different chapters in this volume.

But the difference is that unlike the legal categories at the center of a globalizing post-cold war juristocracy, the many other categories of law –

[2] Given that the current volume features a chapter by Arzoo Osanloo, one of the leading scholars of justice processes and culture in Iran (see, e.g., Osanloo 2009, 2020), it is important to note that by "revolution" I am referring to Marxist or socialist revolution and its variants. This doesn't take account of other forms of revolution, for example, the Iranian Islamic revolution of 1979, or, of course, the late-eighteenth-century "rights of man" revolutions of France or the US.

again, national, regional, international – evolved, were reformed, or remained in the grip of the "dead hand," based on factors that had nothing to do with the ways in which the "politics of recognition" came to replace the "politics of redistribution," to return to Nancy Fraser's argument.

And if this two-part clarification helps us understand the rise of post-cold war juristocracy as a critical reckoning with the failures of revolutionary politics during a particular historical moment, it also allows us to better understand the shape and implications of what followed, that is, what happened when these categories of law themselves failed to serve their transformative purposes. Again, to speak of the fall of post-cold war juristocracy is not to make a claim about the global waning of law *as such*. If the expansion of certain categories law during the early post-cold war was the result of variations on the juridification of politics, as we have seen, the corresponding reckoning with the failures of juridification gave way to something like the "dejuridification" of politics, that is, the increasing marginalization of human rights norms and legal institutions as privileged instruments for social and political change.

However, from around 2008 onward something else took place: this multifaceted and diverse process of "dejuridification" overlapped with a more widespread and diffuse sidelining of the rule of law itself – both internationally and nationally. If post-cold war juristocracy was a globalizing instance of a wider phenomenon, so too has been the corresponding backlash-as-reckoning and its expression in various forms of anti-legal populism.

As I have argued (Goodale 2022), I put significant stock in the implications of the response by the leading global economic powers – the G20 – to the upheavals of the financial crisis of 2007–8, in which the contradictions of global capitalism yet again created system instability. The shock to the global capitalist system opened a trapdoor on regional and national markets and led to the loss of at least $2 trillion from the global economy. Beginning in November 2008, the G20 began meeting at least once every year in order to ensure that international collaboration around global capitalist markets would become the overriding logic of international relations and global governance.

Despite the widely diverse range of political, ideological, regional, historical, and cultural differences among the elite body of G20 states (which even includes at least one nominally Marxist-Leninist state – China), the goal was to reaffirm allegiance, despite these vast differences, to the monopoly of capitalism as the world's only legitimate political

economy. Even in the face of any number of high-profile confrontations over the intervening years, most notably a series of cold war-like stand-offs between the US and China (whose combined nominal GDPs are more than 50 percent of global GDP itself),[3] the inevitability and centrality of global capitalism were never in dispute.

Despite the fact that the postwar international system – itself a repackaging of a much older Westphalian international order of formally autonomous nation-states organized around the principle of sovereignty – had remained relatively powerless across more than six decades of decolonization, neocolonial wars, insurgency, repression, resource crisis, and genocide, from the killing fields of Cambodia to ethnic cleansing in the former Yugoslavia, the UN and its various bodies had managed to maintain at least a semblance of significance, at least a symbolic presence as the institutional embodiment of postwar internationalism and an icon for the Kantian fantasy of "perpetual peace." But even though it was – perhaps intentionally – unremarked upon at the time, I would date the G20's dramatic declaration of global capitalist solidarity as the moment when the rule of law-based international system, with its august tribunals and cadres of "post-conflict justice junkies" (Baylis 2008), a system that had been on life support for decades, was definitively replaced as both the ideological and practical locus of global power.[4]

Beyond the institutions and aspirations of international law, the fall of post-cold war juristocracy also coincided with the marginalization of the rule of law at more national and local levels during this same post-2008 period. This second development has usually been associated with the

[3] A comparison of the enormous differences *among* the members of the G20 is also illustrative. For example, the size of the Chinese economy is much closer to that of the US than it is to the third largest economy by nominal GDP (Japan). If the US economy is $5 trillion larger than China's, China's is $*15 trillion* larger than Japan's. Even more stunning, the Chinese economy is larger than the *combined* economies of the next six largest (Japan, Germany, India, UK, France, Canada). Leaving aside China, the US economy is larger by nominal GDP than the next nine countries combined (Japan, Germany, India, UK, France, Canada, Italy, Brazil, and Russia).

[4] In reference to the ongoing (as of May 2024) Russian invasion of Ukraine, an act of military aggression that can be understood in part as a move by Russia to expand control over economic resources and improve its supply routes, it is telling that other members of the G20 club moved first to harness the power of the market to punish Russia for its transgression, rather than mobilize the international legal system. Despite the sound and fury around, for example, the fact that Russia was eventually removed from the UN Human Rights Council, this was entirely symbolic, a form of internationalist nostalgia, which ultimately signified nothing.

amorphous (re-)emergence of populism as a loose description for resistance to elite control of political parties, economic wealth, and social capital. However, at the national level, the impact of populism on the rule of law has been ambiguous. If the two terms of Donald Trump in the US were examples of a right-wing populist head of state seeking to undermine the rule of law from *within* the corridors of political power, the cases of ideologically similar leaders like Viktor Orbán of Hungry, or the Tory leadership that oversaw the UK's populist withdrawal from the European Union, are less clear cut. Has Orbán sought to undermine the rule of law in Hungary or, instead, to harness the rule of law as one among several instruments of populist power? Did the 2016 vote and follow-on parliamentary processes through which a succession of populist Tory governments oversaw Brexit undermine the rule of law, or, as in Hungary, demonstrate that state-populism and the rule of law are perfectly compatible under the right (or wrong . . .) conditions?

Yet it is at the level of social and political movements – the level that concerns me most directly in this chapter and elsewhere – where the overlap between the fall of post-cold war juristocracy and the broader marginalization of the rule of law itself is most striking. On the one hand, contemporary right-wing (broadly conceived) movements organized around ethno-nationalism, racial (white, or otherwise) supremacy, religious nationalism (as in Modi's India), neofascism, and so on, are largely contemptuous of the rule of law, especially when such movements see state institutions as allies of the cultural, ethnic, or religious forces that right-wing movements seek to destroy. In particular, the logic and methods of right-wing mobilization emphasize the purifying necessity for violence and the importance of sacrificial performance, both of which take place outside of, and often against, state institutions, including legal institutions.[5] But on the other hand, because right wing social and political movements *rarely* turned toward human rights or other categories of law during the post-cold war period in the first place, their contempt for the rule of law during the current period of reckoning with the failures of law is of little interest.

With contemporary left-wing social and political movements (again, broadly conceived), however, the situation is quite different. Here, the

[5] Although not a central theme of my research, I had the occasion to track these dynamics ethnographically in the course of an extended study of the "cultural and democratic" revolution in Bolivia (see Goodale 2019, 2020).

trajectory is more complicated, beginning with the fact that many left-wing movements played a central role in the shift to human rights and other law-based forms of activism during the first decade or so of the post-cold war. As we have seen, this was also the period in which human rights activism led to the push for new treaties, new tribunals, and the judicialization of political demands in the form of human rights prosecutions and rights-based claims-making. In other words, during the rise of post-cold war juristocracy, the remnants of the former traditional revolutionary left found themselves tightly bound to the rule of law and its institutional mechanisms.

But the eventual reckoning with the failures of post-cold war juristocracy by the erstwhile left led to a corresponding reckoning with the commitment by what would later be described as "progressive" movements to the law as an instrument of social and political change. In fact, the turn away from human rights activism as a privileged mode of mobilization by a range of generally left-wing movements was a key factor in precipitating the "endtimes" of human rights and other juridified expressions of the politics of recognition. Yet these politics not only remained, even as they were "dejuridified"; they deepened and became more urgent. The difference, which continues to have major implications for the potential for lasting transformative change and the possibilities for social and political mobilization at larger scales, is that the turn away from human rights has coincided with – or, perhaps, has led to – a turn away from the rule of law as a boundary-setting social value. And in this – that is, in methodology, if not in ideology – much contemporary progressive politics resembles the traditional revolutionary left it ultimately replaced.

But instead of accumulation by dispossession or the "central contradiction of capitalism," the struggle continues to be waged – as it was during the period of post-cold war juristocracy – over questions of recognition, of collective identity, and other "moral grammars" of social conflict. So now we can begin to narrow the problematic, the likely consequences of reckoning with law in excess by and through contemporary progressive politics. In relation to social and political movements that constitute much of the afterlives – through a series of historical twists and turns – of the traditional Marxist and socialist left, we must consider the fact that nonjuridified and revolutionary approaches are being put to use at the service of a maturing politics of recognition. What kinds of new possibilities are suggested by this synthesis? And, perhaps even more important, what kinds of limitations?

5.3 Reinventing Human Rights: An Autocritique

It was in part as a way of responding to these and similar questions that I framed a recent intervention (Goodale 2022). The extended argument for "reinventing human rights" is also a multidimensional critique of the structural, historical, and conceptual failures of the existing international human rights system, a critique that helps explain *why* progressive movements have turned away from the promises of post-cold war juristocracy. Nevertheless, this is not to say that what I propose as an alternative to existing human rights is always congruent with the shape and vision of many highly visible contemporary social and political movements. Indeed, in the chapter's Conclusion, I return to the broader problem of how progressive movements might or might not express the values of a reinvented human rights.

However, what I want to do at this point is to engage in a reflexive exercise in autocritique, that is, to restate the main argument of the intervention and then acknowledge those dimensions of the argument that remained admittedly underdeveloped. In the next section, I then respond to these ambiguities by thickening the presentation of the argument and then pushing several of its main concepts further. This will allow me to both provide a point of contrast with emerging features of various contemporary social and political movements and to recognize the dilemmas that remain – despite this thickening – with the proposal itself.

The proposal begins with a reexamination of different approaches to the ontological status of human rights, from the naturalist (Howard-Hassmann 2018) to the political (Goodhart 2013) to the historical (Hunt 2007). In the end, I find Hunt's orientation the most fruitful: that existing human rights, those codified in the major international documents and prevailing discourse, were "invented" over the course of centuries, with certain turning points proving foundational: the French Revolution and the promulgation of the "Declaration of the Rights of Man and of the Citizen"; the ultimately failed attempt to make human rights a part of the response to the catastrophe of World War I through the League and Nations and the so-called Minority Treaties; and, of course, the ratification of the Universal Declaration of Human Rights (UDHR) in 1948.

There are two aspects of Hunt's approach that influence my own: First, the clear recognition that existing human rights should not be understood, as the naturalist tradition has it, as "universal," that is, as moral-ontological entitlements that somehow have inhered in all human beings

for all time just waiting to be revealed for the first time in the late eighteenth century in France and Britain's North American colonies; and second, and relatedly, that this particular normative heritage, which would eventually come to have much wider scope and influence, was, on the contrary, the result of a long, contested, and dynamic process of social construction. Although the prospect – or, rather, the specter – of social constructivism has loomed over the history of existing human rights since the beginning, as an idea that – if accepted – threatens to render human rights into a framework that is subject to social and political manipulation and thereby denude human rights of their apparent existential power, my argument is that we have no choice but to embrace the reality of social constructivism and learn to harness its transformative potential.

Thus, the argument continues, if existing human rights were invented, they can be reinvented. I then take up the next question: In light of everything we know about the history and practice of existing human rights, and in the face of a daunting range of the world's most pressing problems, *should* human rights be reinvented, even if what emerges is radically different than what exists today? My response to this question is *yes*. But given the way in which I attempt to outline what a such a reinvention might look like, why describe such an alternative vision as "human rights"? This is the first ambiguity, to which I will return in the chapter's next section.

Having taken the position that only a profoundly reformulated approach to human rights can serve as a viable replacement framework for the existing system of laws and political institutions, I then go on to examine critically the different key dimensions of the international human rights system, including its relationship with global capitalism, the centrality of the nation-state, the relationship between human rights and national and international law, and the historical and cultural problems with human rights universalism, among others. This wide-ranging reconsideration leads me to argue that a reinvented human rights must be conceived not only beyond the control of state institutions and even the principle of sovereignty itself, but also beyond the boundaries of law. Regarding the latter, I take something that was implicit in Samuel Moyn's (2018) dismantling of existing human rights – in which he frequently alludes to the sad spectacle of celebrating isolated human rights prosecutions while the world burns – to its logical conclusion: that in order to reimagine human rights in ways that might prove truly efficacious and transformative, they must be detached from their juridical roots.

Yet this is not, by extension, an argument against law or legal systems or against the rule of law itself, despite the fact that the rule of law as a political ideology and logic of governance has been linked at times with various forms of "plunder" (Mattei & Nader 2008). Rather, it was intended to clear the way for a completely different grounding for a reinvented human rights, a grounding that also recovers and retains a number of valuable aspects of the existing model. But if a reinvented human rights is neither a system of international/national law, nor a set of norms under the control of nation-states, then what is it? This is a second ambiguity with the proposition, also to be addressed with more clarity below.

The abandonment of the "universal" in universal human rights has a number of important implications for the proposition. On the one hand, the rejection of the natural rights underpinning of existing international human rights opens the door for what turns out to be a striking alternative: instead of human rights universalism, the argument is that a reinvented human rights should be built around *pluralism*. But rather than a limitless and ungrounded approach to diversity that resembles extreme forms of relativism, I adopt instead an account shaped by the late writings of Isaiah Berlin, who used the concept "human values" to describe a still somewhat vague but nevertheless finite range of values and practices – and, we can add, "rights" – that would pass muster under the following test: that they are values and practices, however disparate, that are, even with much effort and education, mutually recognizable, and thus might at least *potentially* form the basis for collaboration across the many boundaries that divide us. Yet, as I acknowledge, the actual shape and content of such an approach to human rights based on pluralism would seem to raise as many questions as it purports to resolve.

And on the other hand, the abandonment of human rights universalism in favor of human rights pluralism points to the need to clarify the bases for collective mobilization. Universal human rights was/is predicated on the assumption that our supposed common humanity, which is meant to take priority over, and serve as a check on, all the existing categories that otherwise reflect our vast diversity, would ultimately animate social and political action on all levels. If we would just recognize that we were all, in fact, members of the same "human family," we would treat each other as we are supposed to treat members of our real families – with respect, support, and a willingness to work together to solve family problems. But human rights pluralism gives up this fraught kinship metaphor; we are not, and nor should we think about ourselves, as

members of a single "human family," even in the face of global problems that affect people and communities at a global scale.

Yet if human rights pluralism centers the value of diversity, of difference of opinion and history, even of conflict over visions for the future, what is its basis for social and political mobilization? In other words, when a "spirit of brotherhood," as the Preamble to the UDHR puts it, is rejected as the basis for social and political action, what new "spirit" might take its place? My response is to propose an alternative logic of mobilization, a logic that I describe as "translocality." By translocality I mean an ongoing imperative for people to form alliances across the sharp boundaries of our plural lives; that alliance-building, in this sense, is the necessary precondition for being able to confront the most serious crises; and that the imperative to form wider alliances directed toward meaningful social, political, and economic change should be given priority over other approaches to change or justice – no matter how necessary or valuable in their own terms – that do not equally privilege translocal solidarity, tolerance, and the capacity to forge collective "life projects" (Blaser 2004) amidst social, ideological, and ethical multiplicity.

But – and here I come to the final ambiguity to be taken up below – beyond the seemingly obvious fact that translocality has a certain utilitarian value, that is, assuming that the broader goal of ameliorating global problems is sufficiently convincing *across* place, time, and belief, what are its more specific parameters? If translocality suggests a going beyond the local, what, in this sense, does the local mean, especially given the problematic place of "the local" as an ordering device within everything from international development to human rights treaty monitoring? And from the other side, what kinds of alliances can and should be the outcome of translocality? Is every diverse social and political movement, one that is directed toward transformative change, an expression of translocality as I understand it – in other words, an expression of a "reinvented human rights"?

5.4 Thickening the Argument, Pushing Outward

In light of the preceding summary of the main arguments behind the proposal to reinvent human rights, and the recognition of several ambiguities and dilemmas around these arguments, let me now attempt to clarify several problems by way of leading into the more reflective discussion in the chapter's final section. First, if the framework is deeply anti-institutionalist, if it requires human rights to be detached from its

existing anchorages in both legal and political systems (at different levels), if it instead reimagines human rights as an ongoing imperative to form – and act upon – new social and political movements, then why describe this vision as "human rights" at all, especially given the fact that both "human" (as a constructed category of belonging) and "rights" (as an imagined set of immanent entitlements) are meant to be left behind in the process of reformulation?

The response to this question is both pragmatic (or, neopragmatic) and conceptual. For the first, what I mean is that even this radically different vision for the future of human rights recovers from the past, and preserves from the present, as much as it "reinvents." In particular, the existing human rights system – despite its manifold flaws and structural weaknesses – was viewed by many as a framework for action that became instrumental through what the neopragmatist philosopher Richard Rorty – implicitly gesturing toward Flaubert? – described as "sentimental education" (Rorty 1993). As he explained, the world would be a better, more peaceful, more egalitarian place if more people learned about the suffering of others and came to see such suffering as the urgent concern of the whole.

To the extent to which enough people around the world – whether post-1948 or post-cold war – actually came to embrace what Rorty calls a "human rights culture" of mutual empathy, I would want to hold on to this advance, something the feminist moral philosopher Annette Baier (1991) would have described as a "progress of sentiments." The category "human rights," in this sense, functions as a signifier of everything of enduring value in that which was "invented," including the "ability to see the similarities between ourselves and people very unlike us as outweighing the differences" (Rorty 1993: 129).

The conceptual response to the question "Why human rights?" is also related to a key dimension of the existing system. Much more than a signifier, the proposition retains – or, even more, depends upon – what might be thought of as the "cosmopolitan imperative," that is, the obligation to construct and live categories of identity *maximally* rather than minimally. Although the orthodox cosmopolitanism of existing human rights – one in which the "global community" was the privileged outermost ring in a set of nested concentric circles, from which we were expected to "draw the circles somehow toward the center" (Nussbaum 1996: 9) – turned out to be a completely "misbegotten" (Goodale 2020) ideal toward which the postwar human rights system was supposedly directed, the demand to conceive of collective belonging as both *emergent*

and *projective* seems to me to be absolutely necessary. To the extent to which this approach to identity forms a bridge between that which was invented and that which remains to be reinvented, it is yet another reason to retain the use of "human rights."

The second ambiguity to be clarified is how to understand a reinvented human rights that has been "dejuridified," that is, detached from its close association with legal instruments, tribunals, and monitoring mechanisms. Here the clarification also underscores an unresolved dilemma in the proposition. If "human rights" is to be reconceived as a means through which new movements might coalesce beyond the boundaries of law, a means, moreover, that puts great weight on the transformative potential of translocal alliance-building and social praxis, something important is necessarily sacrificed: the regulating effects of the rule of law itself.

Although I still believe that the "logics of law . . . are particularly ill-suited to the broader tasks of economic and social transformation toward which a reinvented human rights must be directed" (Goodale 2022: 78), "dejuridification" is a move that is nevertheless made with much trepidation, especially given that the violence of "arbitrary extra-legal power" (Thompson 1977: 265) has been associated historically with *both* right-wing and left-wing (now "progressive") politics. Although I will return to the problem of "arbitrary extra-legal power" in the Conclusion, it is enough to acknowledge here that power, in this sense, can and does take many forms, including new forms of digital erasure and bullying, which coexist with other online activist movements that mobilize in ways that otherwise capture much of the spirit of a reinvented human rights (see Niezen 2020).

Attempting to clarify the final ambiguity also allows me to affix a more prescriptive scaffolding onto the proposal. As I have argued, translocality is the logic of mobilization at the center of a reinvented human rights, a logic that demands the formation of alliances *across* the many categories of difference that continue to divide us. But in order to have any meaning in practice, translocality must also function as a limiting device, that is, as a way of sorting the entire universe of social and political movements into those that express the values and objectives of a reinvented human rights from those that do not. The first limitation relates to an important distinction between *inclusionary* and *exclusionary* categories of difference. In order for a particular movement to express the values of translocal alliance-building within the meaning of a reinvented human rights, both the problem toward which the mobilization is directed, and the basis on which the new alliance is justified, must be inclusionary.

Although perspectives will differ regarding which kinds of problems meet this criterion – economic and social inequality, climate change, resource conflicts, ethno-nationalism, for example – the problem (or problems) must be viewed from within the translocal alliance itself as one of inclusionary scope and importance. At the same time, translocality must lead to alliances that involve the mobilization of people from different identity categories; put otherwise, mobilizations based around essentialized categories of identity that tend to exclude, deny, or demand various kinds of erasure, would not express the values of a reinvented human rights.

Nevertheless, translocality *would be* consistent with much of the contemporary politics of recognition/identity, *but only* to the extent to which recognition was understood to be a means unto an end – for example, the creation of more just economic and social systems – rather than an end itself. In other words, from the perspective of a reinvented human rights, a mutual appreciation for cultural, historical, religious, and other categories of difference is valuable, but only as a basis for deepening solidarity as a transversal moral value, or "sentiment" (Baier 1991). Otherwise, difference in the absence of solidarity, empathy, and tolerance, remains much too volatile, a value that is all too easily weaponized in the service of ideologies and movements that run directly counter to the vision of a reinvented human rights.

5.5 Conclusion: Tolerance and Multiplicity at the Limits of Post-ideological Change

> However, . . . tolerance cannot be indiscriminate and equal with respect to the contents of expression, neither in word nor in deed; it cannot protect false words and wrong deeds which demonstrate that they contradict and counteract the possibilities of liberation. Such indiscriminate tolerance is justified in harmless debates, in conversation, in academic discussion; it is indispensable in the scientific enterprise, in private religion. But society cannot be indiscriminate where the pacification of existence, where freedom and happiness themselves are at stake: here, certain things cannot be said, certain ideas cannot be expressed, certain policies cannot be proposed, certain behavior cannot be permitted without making tolerance an instrument for the continuation of servitude.
>
> Herbert Marcuse, "Repressive Tolerance."

In late 2010, Rhoda Howard-Hassmann, a distinguished Canadian scholar, responded to a request to write an essay that explicitly took up

what she considered the most critical dilemmas confronting the maturing post-cold war human rights project. Howard-Hassmann, like others who wrote essays as part of a volume (Howard-Hassmann 2013), was encouraged to examine these dilemmas freely, without overly due regard to broader disciplinary or other sensibilities. The point was to give key thinkers the chance to express themselves in ways that they might have otherwise resisted – because of institutional pressure, or lingering personal doubts, or worry about the uncertain implications of their analyses.

The main thrust of Howard-Hassmann's (2013) essay was to reject the various critiques of universal human rights, which she associated with the ideological and intellectual abuses of postmodern social theory and its dependence on what Benedict Anderson described as "homogeneous empty time" (Anderson 1991: 24). According to Howard-Hassmann, this prevailing postmodern temporality tends to simplify, essentialize, or elide the complex lessons of history. But leaving aside her rejection of postmodern and postcolonial critiques of human rights, what struck me then (as now) is an anecdote she relates by way of explaining her own trajectory as a human rights scholar and activist.

Howard-Hassmann, whose father immigrated to Canada as a refugee from Nazi Germany, was a student at McGill University in Montreal from the mid-1960s to the mid-1970s. During this time, the university was a hotbed of student activism against the war in Vietnam, colonialism, and racial injustice, among other forms of structural and historical violence. Yet what affected Howard-Hassmann at the time was not the righteousness of the struggles being waged by her fellow student-activists, but the chilling extremism of their methods and visions for change.

As she explains, in a passage that will always shape my own thinking, "many of my acquaintances worried about being too 'bourgeois': I remember debates about whether we would be willing to kill our own parents in the name of the Revolution" (Howard-Hassmann 2013: 174). In other words, the radical politics of the era were such that a young student like Howard-Hassmann actually seriously considered the question of whether she would be willing to kill her own father, a Jewish refugee from Nazi Germany, if the cause of justice demanded it of her.

In May 2022, I found myself engaged in a lively debate of my own with a colleague from the US, an anthropologist whose critical perspectives on a range of questions over the years have always resonated with me. Given that I had left the US in 2014 to take up a chair at the University of Lausanne, my institutional and political experiences during the intervening years had been quite different than hers. She explained the ways in

which university life had profoundly changed for both students and faculty alike; among other things, she worried about the cleavages that had opened up between students and professors. Yet she hastened to add that she – like many of her colleagues, within anthropology and beyond – wanted (or, perhaps, *needed*) to be seen as allies of students, many of whom were vigorously engaged in different political and social movements for justice.

But then she added something that I found as chilling, in its own way, as Howard-Hassmann's anecdote. When I asked her how she navigated this cleavage, one in which an increasingly revolutionary progressive politics was transforming the landscape of American academia, she replied that she and her colleagues had no choice but to engage with the prevailing ethos, which she described as "absolutist." This was offered both as an empirical description and justification for the fact that what Herbert Marcuse had called (in 1965) "repressive tolerance" had returned with a vengeance. The struggle for justice – within and beyond academia – had come to mean yet again that "certain things cannot be said, certain ideas cannot be expressed, certain policies cannot be proposed, certain behavior cannot be permitted."

I begin this concluding section in this way in order to make sure that the wider stakes are crystal clear and to leave no doubt about the fact that the consequences of social mobilization and justice-seeking beyond the boundaries of law also entail costs. It is also a way to draw a distinction between a number of models: the Marxist revolutionary politics of Howard-Hassmann's youth; the revolutionary – but "postsocialist" – progressive politics of our time; and the vision for a reinvented human rights that I have described above and elsewhere, which shares elements in common with the first two in certain respects, but diverges sharply in others. A relatively straightforward application of the prescriptive criteria from the preceding section would explain much of this divergence, but not all.

If a reinvented human rights imagines new forms of social and political mobilization that depend upon translocal alliances and the value of pluralism, it will always be in tension with other approaches to justice and change that depend upon ideological or other forms of "absolutism," whether these approaches demand the reeducation or "smashing" (Hinton 2016: 59) of counter-revolutionaries or the no-platforming of people who cannot be allowed to speak, the banning of ideas that cannot be expressed, and the interdiction of policies that cannot be proposed. It could be, given the way in which Marcuse's manifesto captures the

zeitgeist almost perfectly for both the late 1960s and today, that is, across vastly different political landscapes, that the real problem is the methodology of revolution itself, which necessarily relies on ideological and other dichotomies to which a reinvented human rights must remain opposed.

To abandon, once and for all, revolutionary change as the vague endpoint toward which all our labors and sacrifices should be directed is to let go of the idea that once *the* truth is known, even to only an enlightened few, its realization justifies any means. As Marcuse (1965: 90) put it, the "telos of [repressive] tolerance is truth." But I disagree. If we reject, as we should, the grotesque contradiction of tolerance as a form of righteous *intolerance*, and return it to its place as a marker of acceptance, forbearance, and freedom from bigotry, then the end goal of tolerance is not truth, but solidarity. And if solidarity, in this sense, is the underlying value that animates the proposition for a reinvented human rights, it is a value that contains within itself a recognition of its own limits, limits that cannot be overcome.

Even in the face of the great crises, which seem to cry out for revolutionary upheaval, the replacement of "absolutism" with the kinds of inclusionary praxis that must be at the heart of a reinvented human rights will necessarily create barriers to at least the promise of rapid social, political, and economic transformation. In other words, to return to Isaiah Berlin's final essay, written in the last year of his long life, the problem is that most revolutionaries – of whatever stripe – believe that "in order to create the ideal world eggs must be broken, otherwise one cannot obtain an omelette" (Berlin 2000: 14). Yet history reveals a long record of broken eggs and very few, if any, omelettes. Indeed, most revolutionary/progressive movements, according to Berlin, become vast exercises in egg-breaking as an end unto itself, in which violent strategies of dehumanization come to doom the politics of the left as much as they more obviously do the politics of the right.

It is in light of these dilemmas and limitations that the proposition to reinvent human rights must, in the end, be understood. Pluralism, tolerance, solidarity, humility, irresolution – these are not the values that align with either the dominant model for revolutionary change of the decades before the rise of certain categories of law during the period of post-cold war juristocracy, or with the "absolutist" politics of recognition that came to replace this model during the current period of reckoning with the failures of law in excess. They are, instead, the values of a global politics that might very well remain, despite it all, too radical (in its

alterity, not methods), too late, and thus forever "otherwise-than-actual" (Bryant & Knight 2019).

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