

# The Practice of Human Rights

Tracking Law Between the Global and the Local

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## Introduction

### Locating Rights, Envisioning Law Between the Global and the Local

Mark Goodale

In January 2002 Fiji presented its first ever country report to the United Nations committee charged with monitoring compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). One of the most controversial sections of the report addressed the use of the practice of *bulubulu*, or village reconciliation, in cases of rape. During the public presentation of the report in New York City by Fiji's Assistant Minister for Women, the nuances of *bulubulu* as a sociolegal practice in postcolonial Fiji were obscured within what quickly became complicated layers of political miscommunication, the imperatives of a surging Fijian nationalism, and, as always, the politicization of culture. On the one hand, the CEDAW committee, though staffed by members from a range of different countries, was required by its UN mandate to fulfill a fairly simple task: to decide whether individual countries were taking the requirements of CEDAW seriously, as measured by national self-assessments of violence against women and official responses to this violence. But on the other hand, because CEDAW expresses both the conceptual and practical constraints of universal human rights discourse, the UN committee was prevented from considering the social contexts within which *bulubulu* functions in Fiji. To open up the possibility that CEDAW's requirements for defining, preventing, and redressing violence against women were contingent upon their correspondence with circumstance, tradition, or instrumental

efficacy would be to deracinate CEDAW, to destroy its potential as one key component in a still-emergent international human rights system. As Sally Engle Merry explains, in her multinational study of CEDAW practices, “it is of course impossible to understand the contextual functioning of a particular custom when a [CEDAW] committee is dealing with eight different countries in two weeks. One cannot expect committee members to spend a month reading the anthropological literature and two weeks interviewing Fijians in order to determine the meaning of a custom” (2005: PAGES).

Similarly, Maya Unnithan-Kumar (2003) has written about the ways in which national discourses of women’s health and development in India have been transformed over the last fifteen years by human rights activism, which has led to a shift in the way issues of fertility control and health planning are articulated and understood. After the 1994 United Nations International Conference on Population and Development, family planning programs in India, which had been directed toward reducing or controlling childbirths as part of earlier health and economic policies, were deemphasized in favor of a policy of contraceptive choice, which reflected the fact that “the enjoyment of sexuality” (2003: 187) had been singled out as a human right at the 1994 UN meeting in Cairo. Yet even though Indian feminists were successful in shifting the terms of the debate over reproductive health and sexuality from the “problem of childbirth” to reproductive choice as a human right, the Indian government was faced with the challenge of reconciling preexisting material, political, and cultural realities with the new discourse of “consumer choice,” as Unnithan-Kumar (2003: 188) revealingly describes the way human rights language reinscribed the question of women’s sexuality through the metaphor of the market.

And finally, since 1999 Bolivia has been shaken by a series of social movements that have toppled two elected presidents and have put the entire foundation of Bolivia's neoliberal restructuring in jeopardy. A key dimension to these waves of social upheavals has been the reframing of a set of very old social grievances by the nation's indigenous majority as rights claims within one of several human rights frameworks. The opposition political party with the most support by the loose coalition of indigenous groups has been the *Movimiento al Socialismo* (MAS) party, led by Evo Morales, the leading voice of Bolivia's coca growers. Although Morales is typically described as leftist or left-leaning by the international media, in fact his party employs a hybrid rhetoric that combines old-line Marxist (or neo-Marxist) categories and imagery with an entirely different—and much more recent—language of human rights in order to locate Bolivian struggles over natural resources, land, and political representation within broader regional and transnational indigenous rights movements (Goodale 2006c; N.d.). This normative hybridity creates awkward moments for MAS: the vision of a more equal and just Bolivia, in which indigenous people control—by force, if necessary—a greater share of the nation's wealth, coexists uneasily with a vision of Bolivia as a nation of human rights-bearing modern subjects, who demand legal and political institutions that will enforce the different international human rights provisions that have been adopted within national law.

What makes these three vignettes from the recent research on human rights practices so revealing is both what they tell us, and don't tell us. They demonstrate that the human rights regimes that have emerged over the last fifteen years increasingly coexist with alternative, and at times competing, normative frameworks that have also

been given new impetus since the end of the Cold War. Eleanor Roosevelt, the chair of the inaugural United Nations Commission on Human Rights, had hoped that a “curious grapevine” would eventually carry the idea of human rights into every corner of the world, so that the dizzying—and regressive—diversity of rule-systems would be replaced by the exalted normative framework expressed through the 1948 Universal Declaration of Human Rights. In fact, the curious grapevine of non-state and transnational actors did emerge in the way Roosevelt anticipated, but the resulting networks have been conduits for normativities in addition to human rights. Ideas, institutional practices, and policies justified through a range of distinct frameworks and assumptions—social justice, economic redistribution, human capabilities, citizen security, religious law, neo-laissez faire economics, and so on—come together at the same time within the transnational spaces through which the endemic social problems of our times are increasingly addressed. Yet even though the humanitarian goals of different international or transnational actors—the eradication of poverty, the elimination of discrimination against women, the protection of indigenous populations against exploitation by multinational corporations—might be fairly straightforward in principle, the emergence of different means through which these goals are met has created a transnational normative pluralism whose full effects and meanings are still unclear. Even so, there has been at least one effect that is clear: human rights have become decentered and their status remains as “unsettled” as ever, as Sarat and Kearns (2002) have rightly argued.

These excerpts from the recent study of human rights also show that the *practice* of human rights is more complicated than previously thought. This complexity is partly the result of the challenges associated with conducting empirical research on dynamic



and, at times, illusive transnational processes. But even more important, the study of human rights suggests that the “practice” that is being documented and analyzed has the potential to transform the framework through which the idea of human rights itself is understood. This is because the recent research on human rights, much of it carried out by anthropologists and others committed to the techniques of ethnography, suggests an alternative to the dominant modes of inquiry within which human rights has been conceptualized over the last fifty years. To study the practice of human rights is, in part, to make an argument for a different philosophy of human rights, what we can loosely describe as an *anthropological* philosophy of human rights.

And perhaps most consequentially, these three windows into contemporary human rights practices illustrate the poverty of theory through which transnational processes have been conceptualized, explained, and located in time and space. The emergence of contemporary human rights regimes over the last fifteen years quickly strained the capacity of existing social theoretical frameworks to explain different problems: how human rights relate to other transnational normativities; the relationship between the epistemology of human rights practices and the social ontologies in which they are necessarily embedded; the disjuncture between the universalism which anchors the idea of human rights conceptually, and the more modest scales in which social actors across the range envision human rights as part of preexisting legal and ethical configurations; the relationship between human rights regimes and other transnational assemblages that structure relations of—especially economic—production; the impact of human rights discourse on alignments of political, economic, and other forms of power, alignments which predated the rise of the international human rights system in 1948 and

which are motivated by an entirely different set of ideological and practical imperatives; and so on. The social theoretical literature that has emerged over the last fifteen years as a response to problems that are related to these has proven to be, while not exactly an orrery of errors (with apologies to E. P. Thompson), at the very least a problematic source of analytical guidance for those interested in making conceptual sense out of human rights practice and drawing out the broader implications for the study of transnational processes more generally. The mountain of writings that examines the nuances of “globalization,” the relationship between the global and the local, the emergence of new world orders or new sovereignties, the withering away of culture and the rise of global ethnoscaples, even the more promising move to envision transnational processes through network analysis, all fail, in one way or another, to capture the social and conceptual complexities documented by the recent study of human rights practices.

This volume represents a different response to this social and conceptual complexity. Through the eight chapters and four critical commentaries, the volume is intended to speak innovatively to key problems in both human rights studies and the broader study of transnational processes. Although each of the authors, in one form or another, draws from anthropological forms of knowledge in order to develop one or more of book’s main themes, the volume is not directed toward theoretical debates within any one academic discipline. The book is essentially interdisciplinary and expresses what I have described elsewhere (Goodale 2006a) as an ecumenical approach to the meanings and practices associated with human rights. Besides anthropology (Goldstein, Jackson, Merry, Nader, Speed, Wastell, Wilson), the authors come to the project from professional bases in conflict studies (Goodale), religious studies (Leve), sociology (Dale),

international studies (Warren), and international law (Rajagopal). This ecumenism is critical for the study and analysis of human rights, whose claims are projected across the broadest of analytical and phenomenological boundaries, but whose meanings are constituted most importantly by a range of social actors—cosmopolitan elites, government bureaucrats, peasant and other organic intellectuals, transnational NGOs and their national collaborators—within the disarticulated practices of everyday life.

### I. The Different Meanings of Human Rights

Before moving on to describe the book's main themes in more detail, it is necessary to consider the question of what human rights are and to locate this volume in relation to the different approaches to this question, which entail, as will be seen, much more than semantic or academic distinctions.<sup>1</sup> These different orientations to the problem of human rights as a normative category can be usefully placed on a spectrum of degrees of expansiveness. At one end of the spectrum, the restricted one, are the different variations of the view that "human rights" refers to the body of international law that emerged in the wake of the 1948 Universal Declaration and follow-on instruments. These different variations all express a broadly *legal* understanding of human rights. Although the legal approach to human rights is itself fragmentary and internally diverse—for

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<sup>1</sup> It is actually quite surprising how rarely studies of human rights take the time to explain how, in fact, "human rights" is being used. Within the voluminous human rights literature it is much more common that the intended meaning of human rights is kept implicit, or allowed to emerge in context without formally addressing this issue analytically. While a contextual strategy has much to recommend it—in particular, it suggests that the answer to the question "what is human rights?" is itself contextual—it is also possible that in taking the meaning of human rights for granted, when it is in fact highly contested, a certain opacity has crept into the literature. Different analyses or arguments come to be marked by the disciplinary orientations from which they emerge, when what is desired is an approach to this most encompassing of topics that transcends (or unifies) the many different academic and political traditions.

example, some argue that human rights must be enforceable in order to be considered human rights, while others avoid the problem of enforceability—there are some important commonalities: the idea of human rights must be legislated, legally recognized, and codified before it can be taken seriously as part of the law of nations. The political scientist Alison Brysk, in the introduction to her edited volume *Globalization and Human Rights*, expresses the legal approach to human rights:

Human rights are a set of universal claims to safeguard human dignity from illegitimate coercion, typically enacted by state agents. These norms are codified in a widely endorsed set of international undertakings: the ‘International Bill of Human Rights’ (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Social and Economic Rights); phenomenon-specific treaties on war crimes (Geneva Conventions), genocide, and torture; and protections for vulnerable groups such as the UN Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women [*sic*] (2002: 3).<sup>2</sup>

A somewhat more expansive orientation to the problem of what human rights are moves away from international legal instruments and texts to consider the ways in which the *concept* of human rights—which is also expressed through instruments like the Universal Declaration, but not, on this view, circumscribed by them—is itself normative. This is very much an analytical normativity, one that describes the ways in which the

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<sup>2</sup> Both the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women, and the Committee on the Elimination of Discrimination Against Women, which is authorized in Article 17 of the Convention to monitor compliance by “States parties,” are at various times referred to with the acronym CEDAW, even though this usage was originally meant to refer to the Convention.

concept of human rights in itself establishes particular rules for behavior and prohibits others. Jack Donnelly, for example, who is a ubiquitous presence in human rights studies, occupies this middle location on the spectrum of degrees of expansiveness. As he explains (2003: 10), “[h]uman rights are, literally, the rights that one has simply because one is a human being” (i.e., completely apart from any recognition of these rights in positive international law). Having articulated the concept of human rights as clearly and axiomatically as possibly, Donnelly then goes on to deduce what are, in effect, logical corollaries to this first principle:

Human rights are *equal* rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all). They are also *inalienable* rights: one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated. And they are *universal* rights, in the sense that today we consider all members of the species *Homo sapiens* “human beings,” and thus holders of human rights (2003: 10; emphases in original).

This approach to the question of what human rights are, which, as Donnelly acknowledges, could be described as “conceptual, analytic, or formal” (2003: 16),<sup>3</sup> is also concerned with the ways in which the normativity of the human rights concept configures or shapes—again analytically, not empirically—the *concept* of the individual (not particular individuals in any one place or time). Through human rights, “individuals [are constituted] as a particular kind of political subject” (16). By making the constitution—even in the abstract—of the political (and legal) subject a basic part of the definition of

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<sup>3</sup> Elsewhere (2003: 17) Donnelly describes his approach to the question of human rights as “substantively thin” and argues that the “emptiness” of his conceptual orientation is “one of its greatest attractions.”

human rights, this midpoint approach moves well beyond the legal positivism of human rights instrumentalists and, at least theoretically, broadens the normative category “human rights” to include both the norms themselves and the subjects through which they are expressed.

At the other end of the spectrum, the question of what human rights are is answered by treating human rights as one among several consequential transnational discourses.<sup>4</sup> Upendra Baxi expresses this mode well when he begins his important and wide-ranging critique of human rights by describing the object of this study as those “protean forms of social action assembled, by convention, under a portal named ‘human rights.’” (2002: v). As can be imagined, the *discursive approach* to human rights is itself internally diverse. But despite this diversity, there are several features that mark this orientation as the most expansive framework within which “human rights” is conceptualized, studied, and understood. First, the discursive approach to human rights radically decenters international human rights law. Legal instruments like the Universal Declaration, or legal arenas like the International Criminal Court, are seen as simply different nodes within the power/knowledge nexus through which human rights emerges in social practice. Second, the discursive orientation makes human rights normativity itself a key category for analysis. This does not mean that human rights is simply studied or analyzed *as* norms; rather, normativity is understood as the means through which the idea of human rights becomes discursive, the process that renders human rights into

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<sup>4</sup> “Discourse” is employed at this end of the spectrum with vaguely poststructuralist resonances to refer to the institutional, historical, political, and social formations through which knowledge (and power) is constituted in practice. The many dimensions of language are of course key parts of human rights discourse, especially since the *word*—as embodied most clearly by the text of the Universal Declaration—plays an essential role in expressing the idea of human rights; but the notion of human rights discourse goes well beyond language to include the full range of social knowledge regimes through which human rights emerges in social practice.

social knowledge that shapes social action. Third, the study of human rights as discourse reveals the ways in which actors embrace the idea of human rights in part because of its visionary capacity, the way it expresses both the normative and the aspirational. Finally, to conceptualize human rights as one among several key transnational discourses is to elevate social practice as both an analytical and methodological category. Despite the nod that the several strands of social or critical theory make toward practice, praxis, or agency within their broader studies of discourse, in fact the actual consideration of social practices more likely than not remains prospective, or merely categorical. In contrast, discursive approaches to human rights assume that social practice is, in part, constitutive of the idea of human rights itself, rather than simply the testing ground on which the idea of universal human encounters actual ethical or legal systems. As we will see, this assumption has far-reaching implications for the way the practice of human rights is studied and conceptualized.

Although the chapters and critical commentaries here do not express a unified response to the question of what human rights are,<sup>5</sup> it is accurate enough to say that the volume would fit quite comfortably somewhere on the expansiveness spectrum between the conceptual approach of Donnelly and the broadly discursive orientation of Baxi. Even though many international lawyers and human rights activists—in particular—would

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<sup>5</sup> A perhaps minor point within human rights studies is the problem of whether one uses human rights in the singular or plural. The plural is much more common, at least for US-based writers and analysts, and for international agencies like the United Nations. This last is not surprising given the fact that the plural is most appropriate for those for whom “human rights” refers to the rights enumerated in international law (the legal approach), or those who argue that human rights are rights that all humans have simply by being human (the conceptual approach). But if by “human rights” one is referring to a consequential transnational *discourse*, then it is more grammatically correct to use the singular: “human rights is . . . .” Thus controlling for grammatically slippage or error, one signals one’s orientation to the question of what human rights are/is through the form of the verb “to be.” The matter—to give this point, as I have said, perhaps more importance than it deserves—becomes more complicated in English as between the American and British idioms, because British scholars adopt the singular form of “to be” much more frequently, so it is difficult to know (without context) whether a British writer on human rights is signaling allegiance to the discursive approach, or merely respecting British language usage, when she writes “human rights is . . . .”

consider the open and critical discursive approach to human rights either hopelessly vague, or ethically questionable (or both),<sup>6</sup> there is no doubt that scholars of human rights practices have demonstrated the usefulness in understanding “human rights” beyond the narrow confines of international law. As will be seen throughout the chapters, perhaps the most important consequence to reconceptualizing human rights as discourse is the fact that the *idea* of human rights is reinscribed back into all the many social practices in which it emerges. This inverts the dominant understanding, in which the idea of human rights refers to certain facts about human nature, and the normative implications of these facts, in a way that makes the practice of human rights of either secondary importance, or irrelevant. There are troubling implications to deriving the idea—or ideas—of human rights from human rights practice, including implications for the legitimacy of human rights, the epistemology through which they are known (and knowable), and their putative universality.<sup>7</sup> But despite these complications, it makes no sense to either

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<sup>6</sup> I was reminded recently just how unethical the discursive or critical approach to human rights is considered during a graduate seminar on “human rights in comparative perspective.” One graduate student—from a former Soviet bloc country—finally lost all patience with the ongoing discussion of problems within contemporary human rights. The student chastised me for subjecting any part of human rights to critical scrutiny and accused me of possibly weakening a normative framework that was clearly fragile to begin with. In the student’s quite emotional reaction, one detected a peculiar—if perfectly understandable—ethical syllogism at work. If the official ontology expressed through the Universal Declaration is accepted—and people do, in fact, *have* human rights in that way—then critical scrutiny that calls this ontology into question can only be a modern kind of scholasticism: the pursuit of abstract analysis for its own sake. But here’s the difference: to engage in intellectual casuistry in the area of human rights is to potentially damage or confuse the only transcendent moral fact—that we all have human rights by virtue of a common human nature or humanness—and thus to indirectly play a role in ongoing or future violations of these human rights. This is why many human rights activists—in particular—have reacted with more than simple incredulity at the emergence of a critical human rights literature over the last fifteen years, the same period that has provided an opening for greater human rights protection and enforcement.

<sup>7</sup> I draw a distinction here between *universality* and *universalism*. The first refers to an assertion about—in this case—human rights ontology: that human rights are, in fact, universal, meaning coextensive with the fact of humanness itself. (Obviously universality in this sense does not only apply to human rights.) Universalism, however, is quite different. This *should be* used to refer to the range of social practices, legalities, political systems, etc., that emerge *in relation to* universality. Universalism can be understood, in part, as the ideology of universality. Thus, as I have argued recently in a collection of essays on the anthropology of human rights (Goodale 2006b, 2007), the study of human rights practices is, in part, the study of *universalism*.



conceptually divide the idea (or philosophy) of human rights from the practice of human rights (and then exclude the latter from the category “human rights”), or to argue that one should only be concerned with the expression of the idea of human rights through international law, especially since at present international human rights law plays such a demonstrably small part of the total normative universe within which human rights is expressed and encountered.<sup>8</sup>

## II. Human Rights Between the Global and the Local

The idea of human rights in its dominant register—the one expressed through instruments like the Universal Declaration—*assumes* the most global of facts: that all human beings are essentially the same, and that this essential sameness entails a set of rights, rights which might (or might not) be correctly enumerated in the main body of international human rights law. I underscore *assumes* because as a matter of philosophy—or perhaps logic—there is no question that to articulate the idea of human rights in this way is to assert a first principle, one which is formally unproven, and which is, most likely, unprovable, if by proof we insist on empirical evidence. What follows from this first principle is the list of human rights themselves, which are also not discovered or justified inductively, but are rather “proven” through a process that is in large part deductive.

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<sup>8</sup> To describe international human rights law in this way is to evaluate what can be said empirically: that human rights exerts a normative influence, provokes shifts in identity and consciousness, operates instrumentally by altering political configurations or calculations, etc., apart from any connection to actual legal codes or instruments. Nevertheless, when present, human rights expressed through, or as, law assumes a different—and more specific—kind of influence (or power, see my chapter this volume) that can be as consequential as it is (so far) uncommon.

In other words, I am arguing here that the contemporary idea of human rights was—and continues to be—articulated through a form of reasoning that is both rational and essentially deductive: part Descartes and part Thomas Aquinas. Social scientists with empiricists like Francis Bacon or Jeremy Bentham for intellectual ancestors would not recognize the form of proof that justifies human rights. Bentham rejected the possibility of natural law (and, *a fortiori*, natural rights) for precisely this reason. Nevertheless, it is important to note that deductive proof was for centuries—and continues to be, by mathematicians, theologians, and others—considered the best kind of proof for something, if it was available. The trick for deductivists, in human rights philosophy as elsewhere, is in finding a basis of legitimacy for the first unproven principle, the linchpin upon which every other part of the system is based. In human rights there are several unproven first principles actually: common humanness as a moral quality (rather than simply a biological fact); the assertion that this essential humanness entails a particular normative framework; and that this normative framework is expressed through rights.

But to say that the idea of human rights is global from a conceptual or philosophical perspective is to both state the obvious and make a point that is of only marginal importance for anthropologists and others who study human rights as a key contemporary transnational discourse. And, even more, the fact that the idea of human rights is global in the abstract has misled some into assuming that human rights practices do—or should—unfold at a much broader scale than they in fact do. In other words, there is a significant difference in this case between the conceptual scale within which the idea of human rights in its major form must be understood—the global, or universal, these are essentially the same for our purposes—and the scale within which human rights is

encountered in practice. This difference has made it a difficult theoretical task, among other things, to account for the different dimensions of contemporary human rights discourse in a way that does not spiral into the regress of particularism that often characterizes accounts of human rights practice. Moreover, to speak of scale is to adopt a spatial metaphor in order to locate human rights discourse as a set of complicated social and ethical knowledge practices that appear in discrete places at discrete time with enough autonomy that they can be isolated analytically and studied in what is often described as their “local context.”

Yet it is not at all clear, as the chapters in this volume show, that spatial metaphors are the best ordering principles for these analytical tasks. Some, like Annelise Riles (2000, 2004), have suggested that the virtuality and disembodiedness of human rights networks mean that the pursuit of human rights ontologies is futile; rather, the networks themselves are no more—but no less—than the sum total of all the legal and technocratic knowledge practices that constitute them. Others, especially those who adopt a non-discursive or legal approach to human rights (e.g., Alston, ed. 2000; Alston, ed. 2006; Likosky 2005; Provost 2005), pursue what could be understood as a hyper-spatial framework: certain key locations and artifacts take on added significance as the places where human rights are expressed, all of which, added together, constitute the human rights system. Meetings of human rights activists, international legal forums, headquarters of transnational human rights NGOs, are all semi-sacred places where human rights norms are generated; but this hyper-spatiality is also reflected in the way major human rights documents are understood. The four corners of a foundational text like the Universal Declaration circumscribe an actual normative space, where the

particular words used, the internal statutory architecture, and the language the document is written in are reified and invested with a kind of norm-generating autonomy.

The approach to the problem of how and where to locate contemporary human rights discourse that we develop in this volume attempts to strike something of a balance between the non-spatial (i.e., epistemological) and hyper-spatial extremes. Given the fact that human rights discourse has become increasingly transnational over the last fifteen years through the efforts of a range of actors whose work interconnects horizontally beyond the territorial boundaries of nation-states, there is no question that to reify these interconnections through spatial models is to impose an analytical structure that cannot account for the actual dynamism and temporality of human rights practice. Yet the notion of scale, as several chapters here show, is embedded in the idea of human rights itself (universality) and a feature of human rights that serves as an ordering principle in practice (universalism). Conversely, the virtuality, temporality, and transnationalism of human rights discourse suggest that the technocratic, legal, and other forms of knowledge through which the idea of human rights is translated or vernacularized, as Sally Engle Merry has recently shown (Merry 2005),<sup>9</sup> are constitutive, yet constitutive not of a discrete system or permanent network, but only the continually emergent collection of knowledge practices themselves. But to treat the study of human rights practices as merely a problem of comparative epistemology, as an example of competing knowledge

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<sup>9</sup> In both her recent work and in an article that is part of a collection of essays on different problems in the anthropology of human rights (Merry 2006), Merry offers what is perhaps the most nuanced theoretical framework for understanding what actually happens when the idea (or ideas) of human rights is translated into the terms through which the idea becomes meaningful in different cultural, political, and legal contexts. It was not enough, as Merry soon discovered, to describe these processes through one or two different distinctions (vernacularization, appropriation, etc.). Instead, she found that her ethnographic data suggested a number of different categories of social practice and that these categories could explain the range of *possible* encounters with transnational human rights discourse, which means that she has developed a theory of human rights practice that is, to a certain extent, predictive.

practices that come together within complicated “global assemblages” (Ong and Collier 2005) of power, culture, and politics, is to ignore a key fact about human rights discourse: that the sites where human rights unfold in practice do matter, and these sites are not simply nodes in a virtual network, but actual *places* in social space, places which can become law-like and coercive. How to characterize these sites, and where these places are in social space, are questions which this volume, in part, seeks to answer. But for now it is enough to recognize that the study and understanding of human rights require a reconceptualization of *both* the role of knowledge practices and the related problems of scale and location.

### *Global/local and other binaries*

To recognize that the study of contemporary human rights practice requires a reframing of these ontological and epistemological problems through empirical research is to bring us only so far.<sup>10</sup> This is because there are no obvious sources of theoretical guidance which can respond to the need to reframe these problems that are not problematic in yet different, and, in some cases, much more serious ways. The most

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<sup>10</sup> Indeed, this recognition is far from academic, although scholars do play an important role in pursuing new orientations to all of the different problems in contemporary human rights theory and practice. Recently, for example, the chief prosecutor of the International Criminal Court has enlisted the assistance of academics in developing the conceptual framework within which the ICC can carry out its responsibilities under a very general legal mandate. At a recent workshop at George Mason University’s Institute for Conflict Analysis and Resolution, Chief Prosecutor Luis Moreno-Ocampo asked a diverse group of faculty and students to consider the relationship between human rights and the Court’s mandate to undertake prosecutions in the interests of justice, the relationship between peace, justice, and human rights, and the problems of culture and traditional justice and their impact on international legal proceedings, among other issues that required critical and practical attention. Moreover, I recently attended a series of international conferences in Germany (October 2005, April 2006) entitled “reframing human rights,” which brought together human rights activists from around the world with mostly European and American academics. The activists were, by and large, even more insistent than the academics that human rights—understood broadly—were ripe for conceptual reframing.

obvious difficulties are created when we consider the usefulness of the broad and interdisciplinary body of social theory that frames problems of space and social knowledge as more specific instances of the general problem of the relation between the global and its antithesis, the local. It is perhaps impossible to say when the global/local dichotomy emerged as the most common theoretical framing device for describing social processes that span multiple boundaries, but it is likely that this model emerged over the last fifteen years as a way of conceptualizing processes that were first included within the category “globalization.” The global/local social theoretical literature is indeed voluminous, with endless debates revolving around different arguments for how these two levels relate to each other in terms of power, economic importance, ontological priority, and so on. But regardless of the approach, the global/local model for understanding widespread social processes has certain features in common.

First, and most obviously, it assumes that there are only two levels at which these social processes emerge or unfold, despite the many different arguments—which can be either empirical or normative—about how these levels relate to each other. Second, the global/local model is based on an entirely vertical spatial metaphor, with the local level at the bottom and the global at the top. This verticality is present in every analysis that describes particular processes “from below” or “from above.” An exception to this scalar verticality is when the invocation of “below” or “above” is clearly not meant to be a spatial metaphor, but represents a critique of existing political or legal paradigms. A good example of this usage is Balakrishnan Rajagopal’s *International Law from Below*, in which his use of “below” alludes to excluded and marginalized voices within dominant international law frameworks. And there is also a methodological argument in

Rajagopal's re-reading of international law from below: because the structure of dominant international law discourses—like human rights—masks certain forms of what he calls “economic violence” (2003: 231), it is necessary to expose this violence by studying actual social practices through ethnographic and other form of close engagement.

Third, the global/local framework is dialectical in the most formal of senses. Regardless of how a particular analysis describes the relation between the global and local levels, it is always locked in a Hegelian embrace in which the global and the local interact conceptually through the dynamic movement of people, cultural trends, economic goods and services, and so on, all tending toward some “new world order” (Slaughter 2004) or period of “global/local times” (Wilson and Dissanayake 1996). In other words, the global/local model is—perhaps unintentionally in many cases—teleological (and perhaps utopian). Moreover, the dialecticism of the global/local model is actually considered one of its chief advantages by scholars who employ it, in that it serves to clear up confusion and provide a window into deeper social forces. As Cvetkovich and Keller explain:

[d]ichotomies, such as those between the global and the local, express contradictions and tensions between crucial constitutive forces of the present moment; consequently, it is a mistake to overlook focus [*sic*] on one side in favor of exclusive concern with the other (rejecting the local and particularity, for instance, in favor of exclusive concern with the global, or rejecting the global and all macrostructures for exclusive concern with the local). Our challenge is to think through the relationship between the global and the local by observing how

global forces influence and even structure even more local situations and even more strikingly (1997: 1-2).

Fourth, to explain trans-boundary social processes like human rights discourse in part by “articulating the global and the local” (Cvetkovich and Kellner 1997) is to both reify and then anthropomorphize what are at best social-theoretical categories of questionable utility. The mountain of literature within the global/local cottage industry—irrespective of perspective or points of emphasis—treats these levels (1) as if they had an independent empirical existence apart from their invocation by scholars and others, and (2) describes them in a such a way that they appear almost as social actors in their own right, moving through real political and social time and space.

And finally (this is not an exhaustive list), most studies that adopt the global/local framework are internally contradictory or, at best, analytically confusing. This confusion is particularly acute for social scientists and others whose analyses are based on—or at least associated with—actual social processes that unfold across different boundaries but which cannot be easily fitted into one of the two sides in the global/local binary. The contradictoriness of this approach is perhaps most marked in the cultural studies literature, so that authors like Wilson and Dissanayake (1996: 6) can rail against the “‘binary machine’ logic sustaining the dominant discourses of social science or political economy” and the “by-now-tired modernist binary of the universal (global) subsuming the particular (local),” while at the same time not only adopting the global/local binary themselves, but, even more, giving it a kind of theoretical normativity indicated by the Foucauldian forward slash. This widely cited work on the relationship between the global and the local is also analytically disoriented in the way it reinscribes transnationalism—



which *is* a useful ordering principle—as just another “spatial dialectic.” And confusion is further produced by a prevailing and theoretically precious cultural studies idiom, when what is needed (at least by social scientists) is social analysis that adheres to some semblance of analytical rigor and which is embedded in actual research data on social practice.<sup>11</sup>

All of this—and more—means that most of the theorizing within the global/local framework is simply irrelevant for helping us understand the spatial and epistemological dimensions of transnational human rights practices. This is also true of much of the equally voluminous globalization literature, which suffers from many of the same problems, but which adds to them by over-privileging the “global” as a sociopolitical frame reference at the expense of the “local,” which, no matter how misleadingly conceived within global/local studies, at least has the advantage of gesturing toward sites of social practice whenever it is invoked. But as a recent study of the “globalization of human rights” (Coicaud, Doyle, and Gardner 2003), shows, there is an unfortunate tendency for analyses of *conceptually* global categories like human rights to devolve into an analytical globalism, in which “global justice,” “global institutions,” “global accountability,” and so on, are treated as if they were empirical descriptions rather than political goals, or moral ideals of particular institutions or individuals, or categorical or theoretical possibilities. And actual human rights practices, which, as the chapters in this book demonstrate, unfold transnationally through concrete encounters in particular places

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<sup>11</sup> A typical example of this preciousness: “[w]hat we would variously track as the ‘transnational imaginary’ comprises the *as-yet-unfigured* horizon of contemporary cultural production by which national spaces/identities of political allegiance and economic regulation are being undone and imagined communities of modernity are being reshaped at the macropolitical (global) and micropolitical (cultural) levels of everyday existence” (1996: 6; emphasis in original).

and times, are elided as what is described as the “local” in global/local studies is replaced by the “construction of human rights at the domestic level” (Coicaud et al. 2003: 22).<sup>12</sup>

A variation on the globalization approach to what are complicated transnational social processes can be seen in studies of human rights that reframe the global/local dichotomy in terms of relations between the international and domestic (or national) levels of norms and political action. This is a common framework for international lawyers and political scientists, for whom the relationship between states within the Westphalian system (international), and the relationships within states (domestic or national), more or less structure the way questions can be asked and answered. The relationships within and between these two levels—the international and domestic—are most often analyzed in terms of different and shifting power dynamics, which leads to studies of human rights that simply refract the binary approach through a realist prism. The results are useful in their own terms and represent a certain advance, if one is interested in what is actually a quite limited corner of the total universe of human rights discourse—i.e., the relationship between “international human rights norms and domestic change” (Risse, Ropp, and Sikkink 1999)—, but studies of the “socialization of international human rights norms into domestic practices” (Risse and Sikkink 1999) (again, where “domestic” means “national”) cannot begin to shed light on the full range of human rights practices, nor help us understand exactly where and why human rights practices emerge in the ways they do.<sup>13</sup>

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<sup>12</sup> “Domestic” is taken to mean here the national level, not the individual domestic unit, or home, which would actually come closer spatially to the places where transnational human rights discourse takes root and is in part constituted.

<sup>13</sup> Even if we grant the realist approach to human rights some legitimacy, it is clear that human rights discourse is most often effective—or at least instrumental—in social spaces that are neither international nor national, which is a fact that partly explains why adopting the transnational as an ordering principle opens up so many fruitful lines for research and analysis.

*From structures of power to utopia—the emergence of human rights networks*

Much more promising for our purposes are studies of trans-boundary social processes that drop the global/local : international/national dichotomy in favor of some version of network analysis. Network analyses emerged in large part to describe the changes in information technology and communications over the last fifteen years, the same period when transnational human rights discourses have become more prevalent and consequential. Networks describe the spaces that provide the “material organization of time-sharing social practices” (Castells 2000: 442), practices which are determined by the imperative “not just to communicate, but also to gain position, to outcommunicate” (2000: 71; quoting from Mulgan 1991: 21). Within network analysis space is emptied of its usual ontological significance and given what is at best a supporting function: what is described as the “local” within global/local studies becomes in network analysis a node of articulation, a “location of strategically important functions that build a series of locality-based activities and organizations around a key function in the network,” to again draw from Castells’s important study of the contemporary network society (443).

The usefulness of network analysis, which overcomes many of the problems produced through the “binary machine logic” that dominates much social theory, has been noticed by human rights scholars, particularly those who study the groups of transnational activists and others whose activities form the “key functions” in what Keck and Sikkink (1998) describe as “transnational activist networks.” The particular nodes of articulation within transnational activist networks are not described in the first instance *as*

social movements, political institutions, international agencies, and so on, but rather through the different assemblages of epistemic communities which share certain characteristics: “the centrality of values or principled ideas, the belief that individuals can make a difference, the creative use of information, and the employment of nongovernmental actors of sophisticated political strategies” in furthering the cause of human rights transnationally (Keck and Sikkink 1998: 1-2). Keck and Sikkink also offer what they understand to be a solution to the problem of the relation between space and knowledge practices within transnational human rights networks, in that the networks are both structured and structuring—adapting Anthony Giddens’s theory of structuration—and seem to “embody elements of agent and structure simultaneously”(5).

In other words, the spaces of transnational human rights discourse and the social practices of human rights are mutually constitutive.<sup>14</sup> Moreover, Keck and Sikkink’s application of network analysis to transnational human rights advocacy is not merely—or entirely—an analytical move, one calculated to avoid the fallacies of the global/local binary: particularly in regions like Latin America, the “network” has become a ubiquitous social, political, and legal category within which ordinary social actors pursue human rights, public health, economic development, and other strategies. As they say, “over the last two decades, individuals and organizations have consciously formed and named transnational networks, developed and shared networking strategies and techniques, and assessed the advantages and limits of this kind of activity. Scholars have come late to the party” (4).

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<sup>14</sup> As Castells explains on this same point, “the space of [transnational] flows is constituted by its nodes and hubs. The space of [transnational] flows is not placeless, although its structural logic is” (2000: 443).

This is an important point and one that will find echoes in our discussion of the role of practice in helping to shape the meanings and possibilities of human rights discourse. In Bolivia, for example, the *red*, or network, is really the only organizational model within which initiatives focused on human rights, economic reform, maternal health, greater political participation, and so on, are organized. But despite what Keck and Sikkink say, the development of network models by human rights activists—in Bolivia and elsewhere (see Merry 2005, Riles 2000, Speed 2006)—has not been an isolated, country by country process, in which “a thousand flowers bloom, a hundred schools of [network advocacy] contend.” Indeed, in light of what Keck and Sikkink describe about the rise of transnational advocacy networks, it would be surprising if the emergence of *justifications* for the network as the preferred advocacy model did not go hand in hand with the rise of the (networked) epistemic communities themselves. Moreover, it is also not possible to say that particular “actors” developed networks—and the accompanying networkism—before the participation or awareness of “scholars.” Not only are scholars important social actors whose writing and presence shape transnational human rights advocacy, but, even more specifically, in many countries like Bolivia prominent human rights advocates are themselves full-time teachers or academics.

But even though network analysis does provide some suggestive possibilities for conceptualizing the study of human rights practices, problems remain. It is somewhat ironic, given the way critical political scientists like Keck and Sikkink have rushed to apply the insights of network analysis to transnational human rights, that the consideration of power as a variable shaping the transnationalization of human rights discourse becomes obscured by what appears as an ideological faith in the democratizing

possibilities of networks, including human rights networks. Despite recognizing that “many third world activists . . . [argue that] the focus on ‘rights talk’ . . . begs the question of structural inequality” (215), they nevertheless go on to assert categorically that “networks are voluntary and horizontal, [and] actors participate in them to the degree that they anticipate mutual learning, respect, and benefits” (214). As several of the chapters in this volume demonstrate, it is, in fact, a continually open question—to be answered through the close ethnographic engagement with particular human rights practices—whether or not human rights networks should be characterized as “vehicles for communicative and political exchange, with the potential for mutual transformation of participants” (Keck and Sikkink 1998: 214), or whether the emphasis should not be placed on structural or other types of systemic constraints, all of which limit the emancipatory potential of human rights discourse.

There is also a problem with using a network model in order to describe the spaces of transnational human rights practice in that the horizontality that does seem to characterize connections between different network nodes cannot account for the ways in which social actors often experience human rights “vertically,” meaning as part of hierarchical social, political, and legal alignments of interests. In other words, in developing an analytical framework that will allow us to locate the practice of human rights in time and place, we must be careful to give equal weight to what the social theorist’s eye sees *and* what participants in human rights networks themselves tell us about the meanings and experiences of human rights as it relates to other forms of social practice. This means that from the perspective of the analytical observer, it might be quite clear that the webs of relations that form human rights networks span multiple boundaries

without any obvious levels or formal hierarchy; indeed, even the idea of human rights implies a kind of ethical flatness, something that is built into the Universal Declaration itself in that its different articles are co-equal and thus normatively undifferentiated. But since human rights discourse always emerges—as the chapters here show—as part of broader social structures through which meanings are constituted, the multiple experiences of human rights can be actually quite constrained or locked within what Ulf Hannerz has described as the “unfree flows” of meaning that remain despite the breakdown of cultural boundaries and the corresponding increase in cultural complexity over the last fifteen years (Hannerz 1992: 100). This problem with the social and political depthlessness implied by network analysis is one that also characterizes much of the related globalization literature, which likewise assumes the breakdown of traditional vertical relationships and the emergence of a kind of inherently emancipatory set of global relations of communication and production which resist the concentration or exercise of power.

A good example of this is the most recent book by the globalization guru Thomas Friedman (2005), which argues that the world is becoming increasingly flat and that this flatness—the result of the breakdown of established hierarchies—is the key geopolitical force behind the empowerment of workers and industries outside the traditional centers of global economic power. In his critique of Friedman’s book—mischievously entitled “The World is Round” (*New York Review of Books*, August 11, 2005)—the British political theorist John Gray effectively flattens Friedman’s flatness hypothesis, not only showing that its horizontality is more ideological than empirical, but that it is actually a kind of neo-Marxism! Nevertheless, as with Friedman’s other globalization books, the

utopianism of his perspectives on contemporary economic and political relations remains extremely popular, even soothing, to the vast swaths of the Euro-American bourgeoisie that have rushed to jump on the globalization bandwagon.<sup>15</sup>

And finally, in moving away from the global/local dichotomy in order to conceptualize the relationship between structure and agency within transnational human rights discourse through network analysis, we must be cautious not to overprivilege the role of cosmopolitan elites, those “activists without borders” whose very movements across both cultural and territorial boundaries seem to symbolize the normative transnationalism they advocate. The ethnographic study of human rights practice over the last fifteen years has shown that “transnationalism” has different meanings and should not be simply understood as a more accurate or revealing “ontological choice” (Orenstein and Schmitz 2005: 24). In other words, transnationalism should not *only* be taken literally to refer to networks that open up—physically or discursively—beyond the boundaries of nation-states, as important as this meaning of transnationalism is for—among other things—moving the focus of attention away from both the state and international institutions. To take transnationalism too literally is naturally to concentrate on the range of social actors whose activities are most symbolic of the trans-boundary and horizontal interconnections that define (for example) contemporary human rights networks. But many of the most important actors whose encounters with human rights discourse contribute to its transnationalism never physically leave their villages, or towns, or countries. Instead, in order to encounter or appropriate the idea of human rights many social actors must *envision* the legal and ethical frameworks that it implies, which

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<sup>15</sup> As of April 2006, *The World is Flat* remained in the top five on the *New York Times* nonfiction bestseller list and number two among all books at Amazon.com—right after *The Da Vinci Code*.



requires the projection of the moral imagination in ways that not only contribute to how we can (and should) understand the meaning of human rights, but also, at a more basic level, suggest that the emergence of transnational networks takes places “in our minds, as much as in our actions,” a fact that Boaventura de Sousa Santos describes—in another, but related, context—as “interlegality” (1995: 473).

*Betweenness and the human rights imaginary*

The chapters in this volume suggest yet a different framework for locating the practice of human rights. By describing the locations in which human rights discourse emerges in practice as “between” the global and the local, we do not intend to replace one spatial metaphor with another. Indeed, it is partly our argument here that “ontological [or epistemological] choices” have the effect of severely limiting the ability of researchers to capture both the patterns across transnational human rights practice, and the ways in which such practices are non-generalizable and contingent upon the entire range of legal, political, and social variables that shape them. Instead, betweenness is meant to express the ways in which human rights discourse unfolds ambiguously, without a clear spatial referent, in part through transnational networks, but also, equally important, through the projection of the moral and legal imagination by social actors whose precise locations—*pace* Keck and Sikkink—within these networks are (for them) practically irrelevant. So although Eleanor Roosevelt, the chair of the commission that was responsible for drafting what became the Universal Declaration of Human Rights (1948), hoped that a “curious grapevine” would carry the idea of human rights across state boundaries (she didn’t

describe this grapevine as a “network,” but that is close to what she meant), the recent study of human rights practice has shown that actors (including academics) contribute to this grapevine in ways that are more complicated than simple network analysis assumes.

Yet even though betweenness is employed here as an analytical device meant to both emphasize the non-universality of human rights practice, and create an intentionally open conceptual space which can account for the way actors encounter the idea of human rights through the projection of the legal and moral imagination, we nevertheless retain “global” and “local” as referents. There are three reasons for this. First, despite the fact that global and local are highly problematic ways of framing the ontology of transnational human rights discourse, the binary global/local remains an important part of human rights discourse itself. Human rights activists talk in terms of global movements and the globalization of human rights; international institutions denounce the resistance of local institutions or cultures to the realization of a global human rights culture; the use of metaphors of the ultra-local—such as *grassroots*, which implies a kind of localism that actually burrows into the earth itself—takes on political meaning for human rights organizations; and, as I have already argued above, “the global” continues to be used teleologically, as a gesture toward the goal of transnational human rights discourse, the creation of a global moral community.<sup>16</sup>

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<sup>16</sup> This emphasis on the global is reinforced by the academic human rights studies literature, which analyzes the global dimensions of human rights from every possible angle: the way human rights are an essential feature of globalization (Coicaud et al., eds. 2003); the fact that neoliberal globalization is incompatible with the protection of human rights (George 2003); the ways in which human rights form the foundation of an emerging global order based on new forms of sovereignty (Mills 1998); the relationship between human rights and an “ethic of global responsibility” (Midgley 1999); the ways in which human rights give voice to the oppressed within an emerging “global society” (Shaw 1999); the fact that the ethnographic study of human rights should be undertaken from a global perspective and framed in relation to the emergence of other global discourses, such as “global justice (Wilson and Mitchell, eds. 2003); the role that human rights has played in creating a “global village” of rights-bearing citizens (Brysk 2000); and so on.

Second, while we reject the reification of the global and local as points in an imaginary discursive hierarchy, we nevertheless believe that maintaining them in a different form allows us to emphasize the power asymmetries that have framed the transnationalization of human rights discourse over the last fifteen years. In other words, describing the practice of human rights *between* the “global” and the “local” evokes a self-consciously artificial verticality which serves a specific analytical purpose, one that should not be taken to imply an actual “top down” (or “bottom up”) relationship between the different nodes within transnational human rights networks. Finally, if retaining the global and local within our study of human rights practices provides a way of illustrating the empirical dimensions of power within transnational human rights networks, it also recognizes an equally important side to the way power is mobilized through human rights discourse: the fact that human rights actors often experience human rights discourse *betwixt and between*, as a kind of legal or ethical liminality that can both empower the relatively powerless and place them at a greater risk of further violence at the same time. As activist-scholars like Shannon Speed have recently shown (2006), the use of human rights discourse within ongoing political and social movements has the effect of radically shifting the framework within which apparently “local” struggles are waged. But at the same time, the liminality that is created by the introduction of human rights discourse exposes actors to greater scrutiny by dramatically expanding what might be in fact quite modest claims. The social and political implications of human rights *between* the global and the local are unpredictable.

### III. The Practice of Human Rights

The chapters in this volume suggest the diversity and ambiguity among the multiple meanings of human rights; they also point to a different way of conceptualizing the discursive spaces in which transnational human rights networks are constituted. Both of these contributions—among others—are based on the close and critical engagement with the practice of human rights in different regional and cultural contexts. But what exactly do we mean by the practice of human rights? At a basic level, the practice of human rights describes all of the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, etc., the idea of human rights in its different forms. By social actors we mean all of the different individuals, institutions, states, international agencies, and so on, who practice human rights within any number of different social contexts, without privileging any one type of human rights actor: the peasant intellectual in Bolivia who agitates on behalf of *derechos humanos* is analytically equal to the executive director of Human Rights Watch. In defining the practice of human rights in this way we draw attention to both the diversity of ways and places in which the idea of human rights—again, in its legal, conceptual, and discursive forms—emerges in practice, and the fact that the practice of human rights is always embedded in preexisting relations of meaning and production. The practice of human rights, defined in this way, is obviously a major part of transnational human rights discourse. Nevertheless, the idea of human rights discourse implies a set of structural relationships that mediate the practice of human rights, so that one cannot simply treat

human rights practice and human rights discourse as different descriptions of the same thing; in other words, human rights discourse is the more encompassing category.

There are several important implications to the way we define the practice of human rights. First, to adopt such a broad definition of human rights practice is necessarily to reject all of the traditional analytical divisions that have been used to artificially parse the different types of engagement with human rights: between the philosophy of human rights and human rights practice; between human rights law and the politics of human rights; between the abstract idea of human rights and its messy and contradictory emergence within situated normativities; between universal human rights and the culturally-specific legal or ethical forms in which they are expressed; and so on.<sup>17</sup> This has been one of the most important contributions of the ethnographic study of human rights over the last ten years. This research, which has been documented in a series of edited volumes (Borneman, ed., 2004; Wilson, ed., 1997; Cowan, Dembour, and Wilson, eds., 2001; Wilson and Mitchell, eds., 2003), and in more traditional monographs (Malkki 1995; Merry 2005; Povinelli 2002; Riles 2000; Slyomovics 2005), has demonstrated the following (among other things): that the idea of human rights is developed further, or transformed, or culturally translated, for political, economic, and other formally non-philosophical reasons; that the notion of trans-cultural universal human rights is itself a product of particular histories and cultural imperatives, so that it is simply not possible to consider the idea of human rights “in the abstract”; that the different ways of *describing* the expression of human rights—in law, in politics, within

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<sup>17</sup> It is not surprising that the traditional analytical divisions in the human rights literature are framed as dichotomies given the prevalence of related binaries that I describe in Part II. One detects, in the orthodox study of human rights, specific expressions of all the typical oppositions: theory and practice; structure and agency; pure and practical reason; tradition and modernity; communicative and subject-centered rationality; and so on.

economic relations—are at best temporary analytical expedients, whereas these in fact refer to fundamentally interconnected processes; and, perhaps most importantly, that non-elites—peasant intellectuals, villages activists, government workers, rural politicians, neighborhood council members—are very often important human rights theorists, so that the idea of human rights is perhaps most consequentially shaped and conceptualized outside the centers of elite discourse, even if what can be understood as the organic philosophy of human rights is often mistakenly described as “practice” (i.e., in false opposition to “theory”).

And if the way we define the practice of human rights here is, in part, an argument for a different approach to human rights theory, then we must recognize that there are consequences to acknowledging that the idea of human rights is subject to—or the product of—open source theorizing: the meanings of human rights will remain contextual and relative (what I describe above as “universalism”); all truth claims on behalf of a particular approach to the idea of human rights are reinscribed within the particular intellectual and political histories that produced them; and because the idea of human rights is essentially contingent and dynamic, its future is far from assured. If the idea of human rights is constituted through all the different forms of practice that anthropologists and others have so richly documented, then there is no reason why circumstances in certain places and times (or, indeed, more broadly) might not cause the practice of human rights—and thus the idea—to end, at least in its current transnational forms.

Finally, there are political or institutional implications to conceptualizing the practice of human rights in the way we do in this volume. If the ethnographic study of

human rights has shown that the practice of human rights is characterized by contradictions, uncertainties, and a kind of normative incompleteness, these should not be taken to represent a failure of universal human rights as a coherent legal or ethical framework, or, on a more practical level, a failure by different institutions to properly translate the idea of human rights in context. Rather, the openness and incompleteness within the practice of human rights are essential to the development of what are different—but living and organic—*ideas* of human rights, which can be expressed politically and institutionally precisely *because* their legitimacy does not depend on assumptions or aspirations of universality.<sup>18</sup> The argument here follows from my earlier discussion of universalism, which I described as social and legal practices that emerge *in relation to* the putative universality of human rights. Even if discourses of universalism obviously gesture toward the supposed universality of human rights, in practice this connection is often weakened because the ontological framework expressed through human rights must be reconstituted in terms that resonate culturally and politically. And to reconstitute the idea of universal human rights is, in part, to find grounds on which a formally trans-cultural ethical and legal framework can be *made* legitimate. This means that legitimacy—which is a key problem for human rights activists and lawyers in particular—is also anchored in social practice. This is a problem—to be sure—from a certain legal and philosophical perspective, but it seems unavoidable and is yet another important implication of the study of human rights practices.

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<sup>18</sup> One of the best examples of the way universalism transforms universal human rights claims into legitimate categories of legal, political, and social action, is Richard Wilson's study of the debates over human rights and justice in post-apartheid South Africa (Wilson 2001).

#### IV. Four Themes in the Practice of Human Rights

Although we intend this volume to contribute to new ways of conceptualizing the practice of human rights as a key transnational discourse, we are also aware that it represents only the beginning of what we hope will be an interdisciplinary dialogue on the meanings and possibilities of human rights within the orientations we develop here. As should be abundantly clear from the way I have described the volume's major claims, the volume itself is thematic rather than disciplinary. There is a certain risk in reframing human rights studies in this way, not the least of which is the fact that particular disciplinary perspectives have had a larger stake than others in defining both the terms of analysis, and the ways in which ideas about human rights have been translated into political and social action. But in drawing out themes in the practice of human rights we hope to create a space for collaborative dialogue and critique that is not dependent on the range of entrenched theoretical or institutional paradigms. To do this we have brought together scholars whose contributions coalesce around four openings or themes in the practice of human rights: violence, power, vulnerability, and ambivalence. In making the argument that these four themes reveal, among other things, the potential and limitations of universal legal or ethical frameworks, certain insights into how transnational discourses are to be understood and where they are to be located, and the persistence of structural inequalities and forms of pressure within human rights networks, we recognize that there might be other points of entry into the practice of human rights, other ways of organizing a thematic approach to human rights problems. In other words, although these four themes emerge from the study of human rights practice itself, as the chapters here



demonstrate, we expect that other windows into the practice of human rights will emerge as more scholars and activists recognize its implications.

### *States of violence*

The problems of violence have become epistemic within the practice of human rights. These include the relationship between violence as a complicated and historically specific social process and universal human rights, and the ways in which “violence” itself becomes problematized in certain ways—which exclude others—within transnational rights discourse (Rajagopal 2003). There is also a phenomenological dimension to violence within the practice of human rights: social actors experience violations and abuses at different levels of directness and remove, from the literal acts of physical and psychological trauma, to the vicarious forms of experience that lead to what Richard Rorty has described as “sentimental education” (Rorty 1993). The study of these different experiences of violence within the practice of human rights by anthropologists and others has shown that the effects and implications of violence are both empirically and ethically ambiguous.

Daniel Goldstein’s chapter explores the way the problem of violence in Bolivia is understood in different ways depending on which transnational discourse is mobilized to address it. During the rise of neoliberalism in Bolivia, human rights discourses were deployed by political and social movements as part of various national campaigns against poverty, domestic abuse, the neglect of children, and so on. But in certain parts of Bolivia, like the peri-urban *barrios* of Cochabamba, the most serious problems from the

perspective of particular communities—property theft, financial fraud, corruption among public officials, and (more recently) the sexual abuse of children—could not be managed through legal frameworks provided by the Bolivian state, which were increasingly linked to human rights. So an alternative discourse was developed by residents, one which wrapped the dominant concern with “citizen security” within the language of human rights to create what Goldstein describes as a “right to security.” This is a complicated “human right” indeed, one which embeds a demand for a more robust and even vengeful police presence within the social ontology of rights. And if the police are not able—or willing—to enforce this right to security, community vigilantes take over this role. Goldstein’s chapter demonstrates that certain human rights practices that might appear contradictory from the perspective of the international human rights community can be shown to express a set of logics from the perspective of the social actors for whom “human rights” becomes just one, unstable, part of a larger discursive approach to endemic social and economic problems.

Lauren Leve’s chapter reveals violence to be an important theme in the practice of human rights in yet a different way. She describes the way a liberal human rights rhetoric emerged in Nepal as part of ongoing struggles against the violence and capriciousness of the Nepali state. Yet for Nepali Buddhists, this use of human rights discourse constituted a kind of categorical violence, since human rights assumes a form of identity—possessive individualist—that is at odds with basic Buddhist philosophy and theology. In other words, in order to use human rights discourse to support claims for Buddhist autonomy and religious freedom, Buddhists were forced to advance claims that undermined Buddhism itself. Leve describes this kind of violence as a “double-bind.” As

she puts it, these are the “double-binds Nepali Buddhists confront when they call on normative values associated with liberal democratic citizenship to protect a form of religious selfhood that denies the very logic of identity that human rights implies.”

### *Registers of power*

Despite the fact that human rights activists and scholars have persistently argued that transnational networks are inherently empowering and counterhegemonic frameworks for organizing the expansion of human rights discourse in its different forms, the close ethnographic engagement with the practice of human rights over the last fifteen years has revealed a more complicated picture. The ways in which power is expressed through—and within—human rights networks demonstrate that generalizations are problematic: for example, economic and other related pressures are clearly behind debates over human rights compliance within the EU’s so-called eastern enlargement, which has unleashed a kind of “moral imperialism” (Hernández-Truyol, ed. 2002) directed toward countries like Romania (see Goodale 2005);<sup>19</sup> but at the same time, a wide range of studies has shown that transnational human rights discourse *does* provide at times a radically transformative framework within which the different expressions of power can be resisted, from rights-based sex worker organizations in the Dominican Republic (Cabezas 2002), to the use of arguments for religious rights to resist the Chinese state in Tibet (Mills 2003), to the many examples of collectivities of different types (indigenous peoples, linguistic minorities, etc.) harnessing the power of human rights

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<sup>19</sup> On this point, see also Laura Nader’s analysis of power within human rights networks (Nader 1999), in which she critiques the way international institutions and dominant nation-states address human rights issues based on self-interest and other ethically unsustainable grounds.

discourse as part of wider political and legal struggles (Cowan 2001; Jackson this volume).<sup>20</sup>

The two chapters here that focus on power as a theme within the practice of human rights likewise demonstrate the complicated meanings and implications of human rights discourse for actors engaged in movements for social change. My own chapter examines distinct but related processes in contemporary Bolivia. The first is the emergence of transnational configurations I call “empires of law,” and Bolivia’s location within these empires. Since the end of the Cold War, human rights discourse has increasingly acted as a conduit for specific—and much older—forms of transnational legal, economic, and political power. But social actors in Bolivia have picked apart and appropriated only some aspects of human rights discourse, a process that Sally Merry has described as “vernacularization” (2005, 2006), in order to construct discursive frameworks for contesting the same neoliberal policies through which human rights emerged in Bolivia. I call this the Pandora’s box of neoliberalism: when the power of one part of neoliberalism (human rights discourse) is used to resist other parts (privatization of utility concerns, the rationalization of land tenure, democratization, the capitalization of property, etc.).

Shannon Speed’s chapter explores the relationship between human rights, social movements, and power in another part of Latin America. Her study of the Zapatista *Juntas de Buen Gobierno*, or Good Governance Councils, in Mexico’s Chiapas region, captures another way in which human rights discourse at times generates a set of unpredictable logics—of rule, of the market, of law. In the case of the Zapatista *Juntas de*

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<sup>20</sup> Although it should be pointed out that in Cowan’s study of the use of human rights discourse by the Macedonian minority in Greece, the relationship between human rights language and claims and political emancipation is far from unambiguous.

*Buen Gobierno*, the very idea of human rights itself has been reconfigured through the practice of the dominant version of human rights recognized by both the neoliberal Mexican state, and the transnational actors who intervened on behalf on Mexico's indigenous peoples. As Speed explains, Zapatista leaders have developed an alternative human rights ontology in which rights "exist" only in their exercise. This is an organic theory of human rights, one in which Zapatista human rights practice is invested with both cultural and politico-legal legitimacy by the Zapatistas themselves.

### *Conditions of vulnerability*

Vulnerability is another opening into the practice of human rights, another key theme that emerges from the ethnographic and critical engagement with human rights discourse in its different expressions. The international human rights system, though founded on statements of largely individual rights, was nevertheless created in order to protect vulnerable populations against the kind of large-scale outrages that had plagued Europe—and, to a lesser extent, other parts of the world, such as east Asia—for much of the first half of the twentieth century.<sup>21</sup> It is therefore axiomatic that the international human rights system is mobilized to protect populations in jeopardy, and, indeed, states of vulnerability have come to form the rationale for a permanent set of international (and transnational) interventions in the form of the International Criminal Court, postconflict truth and reconciliation commissions, International Labor Organization activism on behalf of indigenous and "tribal" peoples, and so on.

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<sup>21</sup> As the intellectual historian Isaiah Berlin once said, "I have lived through most of the twentieth century without, I must add, suffering personal hardship. I remember it only as the most terrible century in Western history."

But the problem of vulnerability as a distinct category of meaning within human rights regimes has not been adequately examined. How, for example, does the employment of human rights as a normative framework actually affect the ongoing set of causes of vulnerability, regardless of how this is defined? If the opposite of vulnerability (stability)—if, in fact, we agree that stability *is* the opposite of vulnerability—is the real goal toward which interventions are directed, then is human rights discourse the best, or even most appropriate, framework for such interventions? Finally, what can the practice of human rights tell us about the usefulness of describing vulnerability in this way, as a trans-cultural ordering principle which justifies the range of international and transnational interventions?

Jean Jackson's chapter on the complicated intersections of human rights, law, and indigenusness in Colombia reveals the ways in which vulnerability takes on different meanings for different social actors within wider political and legal struggles. As she has done in her earlier work on the political and conceptual elasticity of "culture," here Jackson examines a series of legal cases in Colombia in order to show that vulnerability has been largely misconceived within conventional transnational human rights discourse. This is, in part, due to the fact that the rise of human rights in Colombia must be seen against a backdrop of ongoing violence, which shapes the way human rights are used in particular political and legal contexts. As she explains, "Vulnerable indigenous populations in rural Colombia, in their effort to find and maintain stability in a situation of tremendous violence and government neglect, enlist particular traditions and authorize particular actors to carry out actions that without doubt challenge the trans-cultural scaffolding of the human rights regime."

In her critical analysis of the 2000 UN anti-trafficking protocol, Kay Warren examines the problem of vulnerability within human rights from yet another perspective. The study of the way human rights documents are produced is a well-established means through which the contradictions and contingencies of human rights practice are revealed, since human rights are so clearly shaped by the technocratic knowledge regimes that underpin the contemporary international legal human rights system. In exploring the way the problem of human trafficking is both understood and constructed within the international human rights community, Warren shows how vulnerability acts as a mediating framework that establishes discursive (and, in this case, legal) boundaries around what is in fact a complicated set of political, legal, sexual, and moral processes. As she found, the machinery of intentional human rights law was mobilized in an “attempt to tame this heterogeneous reality so it could be comprehended as an entity appropriate for a certain set of interventions.” The discourse of vulnerability, in other words, works to both simplify different slices of “heterogeneous reality” and reinterpret them in ways that bring them within the ambit of (new) categories of international human rights law.

### *Encountering ambivalence*

Finally, the study of the practice of human rights is also necessarily the study of the donors and institutions whose support—financial, political, ethical—is a key variable that shapes the impact and meanings of human rights in context. The role of transnational human rights institutions is marked by several forms of profound ambivalence. For

example, transnational donors are often caught between the demands of their own articles of incorporation or policy objectives—which typically define the institutional mission in terms of some normative good, like fostering a respect for human rights—and the demands of *realpolitik*, which force transnational actors to make choices, compromise, and redirect finite resources, for reasons that have nothing to do with fostering or protecting human rights. And if human rights has become a key transnational normativity over the last fifteen years, it is not the only one. It is not uncommon for transnational donors to work under a mandate that prescribes what are actually—at least conceptually—competing normative agendas, or at least agendas that coexist uneasily, so that an institution might work for human rights, social justice, environmental protection, and economic development (or justice), at the same time.<sup>22</sup> In practice this transnational normative pluralism can create confusion—and, at times, cynicism—for both transnational actors and their intended beneficiaries. Confusion (or cynicism) can lead to ambivalence about the efficacy or value of any one of these competing agendas, but what has become—in light of the amounts of money involved—a marketplace of transnational normativity can also create openings for social action by providing a kind of menu of options for individuals or groups enmeshed in ongoing struggles of different kinds.

John Dale explores the problem of ambivalence through an analysis of the use of the Alien Tort Claims Act (ATCA) by activists involved in the transnational Free Burma movement. Dale shows how the threat of a novel legal strategy against a transnational

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<sup>22</sup> Many examples of this could be given. Catholic Relief Services undertakes projects around the world to promote the capacity for economic development, food security, gender equality, social justice, and human rights ([www.catholicrelief.org/](http://www.catholicrelief.org/)). The Aga Khan Development Network advances the causes of “health, education, culture, rural development, institution-building and the promotion of economic development” (<http://www.akdn.org/about.html>). World Vision International is concerned with child labor, debt relief, the use of child soldiers in armed conflicts, the advancement of human rights, and the “hope of renewal, restoration, and reconciliation” that is offered by “God, in the person of Jesus Christ” ([www.wvi.org](http://www.wvi.org)).



corporation by victims of human rights abuses in Burma altered the transnational legal landscape in subtle ways. Yet as Dale's description of the different legal proceedings, negotiation, and aftermath makes clear, much of this alternation was unintended. In other words, the case against Unocal might, or might not, serve as a precedent for future claimants seeking to find legal arenas for human rights claims. Dale's chapter, which begins as a story of optimism by transnational human rights activists, ends on a note of multifaceted ambivalence: on the part of "foreign policy conservatives who have appropriated the language of international human rights for their own purposes"; on the part of transnational corporations who must look to the Unocal case as either a cautionary tale, or an example of how human rights claims become just another cost of doing business; and, finally, on the part of victims of human rights abuses, who desperately want—and need—ways to put teeth into international human rights, but who end up suffering anew when their efforts fizzle out in the Dickensian world of legal procedure and institutional compromise.

The theme of ambivalence within the practice of human rights is approached quite differently by Sari Wastell, in her analysis of the political, legal, and cultural processes surrounding the struggles over a new constitution for the African kingdom of Swaziland. Here transnational legal experts were surprised to find the narrative of constitutionalism in Swaziland unfolding in completely unpredictable and ambiguous ways. Although some Swazi subjects had pressed for multi-party democracy and human rights in Swaziland for at least a decade, other large swaths of Swazi society resisted the constitutional process. As Wastell explains, "[a]nticipating that the very constituencies who had long pressed for multi-party democracy, the observance of the rule of law and

the recognition of human rights in the country would welcome the constitution's passage into law, many were surprised by the vehemence with which the document was roundly rejected." This ambivalence was the result of different and cross-cutting political and cultural factors, but the most important was the fact that human rights discourse, as understood by ordinary Swazis, seemed to express a value system that was opposed to Swazi custom. As Wastell shows, Swazi custom emphasizes responsibilities to community, responsibilities which are centered on Swazi family and social relations more generally. It is through custom that one *becomes* Swazi. Human rights, however, place the highest value on one's humanness, which is invested with normative significance. So for many Swazis, the adoption of human rights within the new constitution would have meant the adoption of a legal framework that rejected the structure of Swaziness, and thus the essence of the Swazi nation itself.

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The volume is brought to a close with a concluding chapter by Richard Wilson. Wilson has played an important role in making the ethnography of human rights a robust area for debate and scholarship within anthropology over the last ten years. Through a series of edited volumes (1997, 2001, 2003) and his study of the politics of truth and reconciliation in South Africa (2001), among other works, Wilson has helped to make the practice of human rights a legitimate and compelling object for empirical research. More recently, he has broadened his range of interests as the director of an interdisciplinary human rights institute. This position has given him the chance to reflect on both the

radical potential, and limitations, of anthropological approaches to human rights theory and practice.

He titles his contribution “Tyrannosaurus Lex” as a way to signal a note of pragmatic caution for scholars and others who might lose sight of the fact that the international human rights system is, at least formally, a *legal* system. And over the last fifteen years, human rights have emerged within what can be understood as a transnational legal regime, comprised of human rights activists, international institutions acting across the boundaries of nation-states, and human rights victims themselves, who increasingly look for ways to press claims outside the boundaries of *both* national and international legal frameworks (see Dale this volume). Although the nature and scope of this transnational human rights law could not have been entirely anticipated, some scholars—like Merry (1992), who Wilson aptly quotes at some length in his chapter—had a sense relatively early on that human rights practice would emerge as an important transnational legal space, and that anthropologists would have a key role to play in tracking this emergence. This volume represents the maturing fruits of these efforts.

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