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## HOW DO HUMAN RIGHTS MATTER?

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This volume asks why human rights still matter in contemporary world affairs. My answer will be that human rights matter insofar as they provide tools for transformative and emancipatory politics. Before outlining and defending that answer, let me say briefly what I won't argue here, as a way of introducing the approach I want to take. I won't endeavor to show that human rights have made the world a better place—an argument that is sometimes presented in terms of their *effectiveness* (in the abstract). We know only the world that has been shaped by human rights and by the larger configurations of rule in which they have been embedded historically.

To argue that human rights have made the world better or have been “effective” would require that the analyst specify what a counter-factual world without human rights would look like. Any such specification would inevitably be question-begging—or at least, highly tendentious. That's not to say we can't study the *effects* of human rights, as many scholars have done in rigorous and illuminating ways. We can understand how human rights shape states' behavior, how they influence international politics and domestic policy, how human rights norms diffuse, how activists use those norms to leverage social change, and much else. But none of that can tell us if the world is better than it would have been without human rights. Precisely because they are so pervasive, their effects so widespread, we can't know if human rights have made the world safer, more equal, more peaceful, more conducive to human dignity, less poor, less violent, or otherwise better or less awful than it might have been. There's no meaningful basis for comparison.

My point here is not to express pessimism about human rights but rather to acknowledge epistemological constraints that limit our ability to say certain things about them.<sup>1</sup> Often, when scholars or other commentators reflect on whether human rights still matter, they begin from the assumption that human rights did, once and for a while at least, make the world a better place, that they were effective

in creating a world more or less whatever the commentator thinks it should or shouldn't be. The problem with this way of framing the question—apart from the fact that we just can't know—is that it turns the question of how human rights matter into a kind of normative question about whether we (whoever *we* are) still want the kind of world that human rights make (better), or whether we prefer some other (worse) world in which they no longer matter. The question is, obviously, loaded; it's also, as I shall argue below, profoundly conservative—that is, biased toward the *status quo* in a way that makes it harder to understand, empirically, the actual politics of human rights.

If we want to know how human rights matter, the proof is in the pudding: they matter because and in the ways that they are taken up by political actors and used in the world—and not in any other ways. In saying this, I'm signalling my position with respect to some big ontological debates that I'll otherwise mostly ignore in this essay: I conceive of human rights as social constructs, not moral or philosophical truths. They reflect and embody a set of political values and commitments and provide a vocabulary for radical democratic politics.<sup>2</sup> Hence my answer to the question of how they matter: as tools for emancipatory social critique and political transformation.

The chapter begins by describing what I call the “Regime conception” of human rights, an understanding of human rights and human rights politics that informs much of the scholarship on the subject in law and political science. On the Regime conception, it's hard to show that human rights matter—at least, in the ways that that conception itself indicates that they should. Research in this paradigm does, however, disclose the important role of social movements in making human rights effective. In the second section of the essay, I contrast the Regime conception with what I call the grassroots conception of human rights, arguing that the grassroots conception better captures what we know about how human rights work and encompasses a much richer and more diverse set of practices than the Regime conception, deepening our understanding of human rights. The third section concludes with reflections on how human rights matter informed by the foregoing analysis.

## The “regime conception” of human rights

The disciplines of law and political science have traditionally dominated the study of human rights.<sup>3</sup> Scholars in these fields have put tremendous emphasis on the international legal regime of human rights (hereafter, the Regime), including the extensive United Nations (UN) human rights apparatus of conventions, councils, courts, tribunals, and related regional institutions. These scholars also emphasize the role of international human rights activists, the often-professionalized advocates who staff prominent international non-governmental organizations (NGOs) like Amnesty International and Human

Rights Watch, as well as smaller national and local rights outfits, in promoting human rights and demanding government compliance.

What I call *the Regime conception of human rights* is the understanding of human rights that reflects this traditional focus on the UN human rights regime itself. As this is a very familiar way of understanding human rights, I won't spend much time elaborating on it. I do, however, want to highlight four key features of this conception of human rights. First, the key *actors* in this conception of rights are *states*. The Regime is a creation and a creature of states, an outgrowth of their cooperation through treaties, conventions, inter-governmental forums, international law and diplomacy, and so on. States and the relations among states are central to human rights politics; put differently, human rights are an *international* phenomenon. A second feature of the Regime conception of human rights, one closely related to the first, is that the primary *mechanism* for the realization of human rights is *enforcement*. Monitoring, regulation, adjudication, and punishment become the obvious channels of rights protection and promotion when states are the authors and implementers of human rights law. States either take direct responsibility for human rights compliance and enforcement or create entities—courts, tribunals, commissions—to do so as their agents.

Third, on the Regime conception, the *political character* of human rights is *neutral* or *impartial*; they are universal norms that apply to everyone and, as such, are (or should be) above or outside of politics. On this view, rights place limits on politics—specifically, limits on the behavior of states and some other non-state actors. States, individually and collectively through the United Nations and international law, police these limits. Finally, the *legitimacy* of human rights flows from and reflects a *legal/normative consensus* among states (or, what is a version of the same thing, reflects their status as principles of customary international law). What makes rights right is states' agreement about them, so that the Regime itself is central to the legitimacy of human rights.

Making these elements of the Regime conception of human rights explicit clarifies how human rights are supposed to matter on the traditionalist view: as enforceable legal principles that impartially bind states, both constraining and enjoining certain behavior required for their respect, protection, and fulfillment. On this view, rights will “matter more” as conventions proliferate, enforcement mechanisms grow stronger, and impunity and selective application diminish through strong state intervention and/or transnational justice mechanisms. Activism contributes to these developments by providing crucial support for the Regime and pressuring states to comply.

Skeptical readers might worry that I have overstated the case with respect to the Regime conception and traditional approaches to human rights. After all, the spiral model, perhaps the most prominent and successful model of human rights change in the social sciences, was developed by political scientists in the late 1990s and places significantly more emphasis on the role of activists and social movements than my characterization of the Regime conception would appear to accommodate.

Briefly, the spiral model highlights how domestic actors enduring oppression can appeal to sympathetic external actors like liberal states and international human rights organizations to put pressure on their governments. Such external pressure is often met initially with denials, recalcitrance, and increased repression, the result of which can sometimes be to quash domestic agitation. Sometimes, however, domestic activists use evidence of this renewed or increased repression to amplify their appeals, leveraging greater international pressure on their governments to relent and reform. As that pressure mounts, governments can be forced to make tactical concessions and ultimately to commit to human rights and undertake a process of genuine reform.<sup>4</sup>

This model has held up relatively well over time, though it was perhaps too optimistic about states' progression from the commitment to the compliance phase of the spiral.<sup>5</sup> In any case, my point is not to evaluate this model but rather to emphasize its consistency with what I am calling the Regime conception of human rights. The legitimacy of human rights is taken for granted in this model, emanating from their status in conventions and in customary law. Rights are conceived as neutral and impartial standards to which all governments can and should be held accountable—hence the appeal to international actors, who need to be informed but not persuaded about the human rights situation in the target state. The ultimate aim is to secure the state's compliance with international human rights law and ensure its proper enforcement of that law domestically (commitment). While the spiral model emphasizes the role played by non-state actors in bringing about change, it remains a story about states' behavior, and states—both the target and the liberal states that apply pressure on it—figure centrally. Let me be clear that, in pointing out its consistency with the Regime conception, in no way do I intend to criticize the spiral model; rather, my point here is to demonstrate that the case this model makes for how human rights matter in global politics fits comfortably within the Regime conception. (I'll return to the spiral model again below.)

Given the widespread acceptance of this conception of human rights, it is easy to see why many observers find reasons for pessimism in the multiplying examples of states' diminishing support for human rights at home and abroad—whether in the rise of “illiberal democracies” in Brazil, Poland, Turkey, Hungary, Italy, India, Israel, the Philippines, the United States, and elsewhere, in states' criticism of and withdrawal from institutions like the International Criminal Court (ICC),<sup>6</sup> in their episodic and seemingly strategically self-interested intervention in humanitarian crises,<sup>7</sup> in their accelerating crackdown on human rights activists, journalists, and dissidents,<sup>8</sup> and in the increasing assertiveness of states like China, Russia, Iran, and Saudi Arabia, whose commitment to the liberal order is suspect or non-existent.<sup>9</sup>

As the inter-state consensus on human rights unravels, the enforcement capacity of the Regime, always contingent on the cooperation of states, atrophies; naming and shaming also become less effective strategies in such an environment, crippling NGOs.<sup>10</sup> As ethno-nationalist discourses challenge the hegemony of human rights

and critics lament their seeming inability to address skyrocketing inequality,<sup>11</sup> rights' very legitimacy comes into question.

It is no wonder that proponents of human rights should, at such a historical juncture, feel compelled to seek "Evidence for Hope" or to show why "Human Rights Still Matter" in our world. They have their work cut out for them. It is hard to show that ratifying human rights treaties positively effects outcomes,<sup>12</sup> that humanitarian intervention amounts to much more than *realpolitik*,<sup>13</sup> that prohibitions on genocide or the prosecution of war crimes and crimes against humanity have diminished their frequency or severity,<sup>14</sup> or that the Regime has had any other positive, measurable effect on rights realization.<sup>15</sup> Prosecutions for rights violations have increased, and seem to contribute to democracy, stability, and the rule of law, but to the extent that rights outcomes have improved, it is mainly as a result of development and democratization.<sup>16</sup> (Even here, democratic backsliding is undermining confidence about the extent to which previous improvements have been effectively consolidated.) In short, it's hard to show that human rights matter in the way that the founders of the Regime or the scholars who adopt the Regime conception of human rights imagine that they would or should.

That's not to say that human rights don't matter. Again, my position is that they matter, but only because and in the ways that they are taken up by political actors and used in the world. While treaty ratification alone has little impact on rights outcomes, when domestic actors mobilize around treaties or their moments of ratification, they can be very effective.<sup>17</sup> Likewise, while international enforcement and political pressure alone have limited impact, domestic social movements struggling for social justice can draw on them to amplify and support their work.<sup>18</sup> In these cases, it's not the treaties or even their enforcement that matters; it's the human rights politics made by social movements.

Often their struggles involve local issues like opposition to the construction of a dam<sup>19</sup> or resistance to water privatization<sup>20</sup> or better wages for tomato-pickers<sup>21</sup> that don't seem directly relevant to international politics or show up in rights databases (though social movement actors are often enmeshed in transnational networks and their work frequently provokes abuse and harassment that violate human rights law).<sup>22</sup> Moreover, some of the most significant effects of human rights politics have little to do with measurable rights outcomes or indicators; rather, groups and individuals constitute themselves as citizens and political agents and (re)define their aims and identities through practices of rights-claiming.<sup>23</sup>

All of this is to say that, if we want to understand how human rights matter, we should pay more attention to the ways that social movements use human rights as tools for social critique and political transformation.

## Toward a "grassroots conception" of human rights

Of course, lots of scholars *have* paid attention to social movements—particularly those who study transnational social movement networks and their effects.<sup>24</sup>

Despite the best evidence, which consistently indicates that human rights are meaningful and effective *through* the efforts of social movements, and despite the difficulty of showing that the Regime matters significantly except insofar as it supports and enables the work of those movements and networks of movements, no alternative conception of human rights has emerged.

No doubt this is partly because the methods scholars use to study human rights politics tend to reinforce the Regime conception. Statistical analyses of the kind that pervade political science require huge datasets that contain numerous observations over significant intervals of time to make meaningful guesses about how the world works. Treaty ratification is easy to observe; large, cross-national measures rely on legal data and political reporting, which emphasize the enforcement or violation of legally recognized rights. Legal studies emphasize statutes, enforcement mechanisms, and compliance rates. It's hard to incorporate the role of political mobilization into these measures,<sup>25</sup> and harder still to produce the sort of evidence about the expressive or constitutive aspects of human rights politics that contemporary political scientists would regard as persuasive.<sup>26</sup>

Compounding the problem, the Regime conception assumes a history of human rights that further obscures the centrality of social movements to human rights politics. Given its subject matter, that history formally begins in 1948 with the promulgation of the Universal Declaration of Human Rights (UDHR) and follows the development of the UN human rights framework. While it is certainly—tautologically—true that the history of international legal human rights begins in 1948, commencing our histories then, treating earlier developments as the precursors or foundations of the UN framework, erases the longer history of emancipatory social movements that have drawn on human rights discourse in advancing their struggles.<sup>27</sup> In sum, the study of human rights has been something of a drunkard's search, remaining focused on the Regime even though we know that much of the action is elsewhere.<sup>28</sup>

Redirecting the search toward social movements, I submit, provides greater insight into how human rights matter. In the remainder of this chapter, I shall sketch an alternative conception of human rights, what I will call a “grassroots conception,” on which human rights matter as tools of emancipatory social critique and political transformation. This conception makes better sense of the evidence we have about social movements and makes room for a broader and more pluralistic understanding of human rights politics. In outlining the grassroots conception, I shall rely heavily on the work of sociologist Neil Stammers, whose *Human Rights and Social Movements* is a masterful but under-appreciated text (at least among lawyers, philosophers, and political scientists) and a rich resource for anyone interested in how human rights matter.

To begin, let me briefly define some terms. By “emancipatory” I mean *challenging existing configurations of power with the aim of reducing or eliminating domination, oppression, and exploitation*. By “social movements” I mean (building on Stammers) informal networks of interaction among groups, individuals, and

organizations engaged in political, cultural, economic, or ecological conflict on the basis of, or with the aim of constructing, a shared collective identity.<sup>29</sup> So, when I describe human rights as tools of emancipatory social critique and political transformation, I am making a claim about how human rights are actually used by social movements. Moreover, I am making a claim about where rights come from. As Stammers argues, “ordinary people—working together in social movements—have always been a key originating source of human rights.”<sup>30</sup> In his view, “the historical emergence and development of human rights needs to be understood and analyzed in the context of social movement struggles against extant relations and structures of power.”<sup>31</sup>

This is a social constructionist understanding of human rights, one that takes praxis—“the (real) social and political activity of rights-claiming by groups and individuals, including the thinking that orients it and the practices through which it is advanced”<sup>32</sup>—as constitutive of human rights. Social movements function as agents of social transformation and as sites of innovation, creativity, and knowledge production.<sup>33</sup> In challenging domination, oppression, and exploitation, participants in movements draw on their lived experience within existing social arrangements and relations of power, using that knowledge as the basis for developing a critique of those arrangements and relations. Collectively, they imagine and demand alternatives, hoping thereby to effect emancipatory political transformation. In this sense, the practice of rights-claiming is instrumental and goal-oriented; movements seek to achieve specific aims objectives in hopes of improving participants’ lives in tangible ways.

Social movements typically seek to institutionalize the rights, protections, and guarantees they demand. Even the most informal movements frequently demand formalization as a way of preserving whatever gains they might have realized. Emancipatory social movements begin as challenges to power; once their demands become institutionalized as formal human rights, Stammers argues, they stand in a more complex and ambiguous relation to power. Their origins and meaning as struggle concepts can get lost or changed in ways that lead to their being used to support existing configurations of power rather than to challenge them.<sup>34</sup> Both proponents and critics of rights are flummoxed by this “paradox of institutionalization”: the former tend to view institutionalization as an unalloyed victory, while critics see it as an unequivocal catastrophe.<sup>35</sup> It’s neither—or rather, it’s a bit of both. It is certainly true that whatever social exclusions are prevalent at the moment of rights’ formalization in law or other practices tend to be preserved and reflected in those institutions. Yet at the same time,

Formalization ... relieves people of the real and significant burdens that active engagement in struggles for their rights imposes on them. Thus the institutionalization of the emancipatory demands of movements and activists marks a significant political achievement, even as it tames the transformational thrust of those demands. Moreover, and crucially, the

formalization of rights does not bring an end to contestation over their meaning but, rather, marks a shift in the modality of that contestation.<sup>36</sup>

The Regime conception of rights focuses almost exclusively on this institutional(ized) contestation over rights, ignoring or overlooking the origins of rights in social movement demands.

Alongside this strategic or instrumental dimension of human rights praxis is an expressive dimension, one that captures the affective and normative dimensions of social movement activism. It speaks to questions about “who we are and how we are in the world.”<sup>37</sup> Through this expressive dimension of human rights praxis, collective identities are created, negotiated, and challenged and social ties formed and strengthened. Much of this comes about, as Karen Zivi argues, through the practice of rights-claiming itself. Rights-claiming is a kind of performance, she argues, that can reshape the world by challenging and subverting conventions. This practice generates new political possibilities by asserting new ideas of membership or identity or resignifying existing ones.<sup>38</sup> There’s a great deal of contingency as well as transformative potential in the practice of rights-claiming; by speaking and acting in public, people can create new forms of political subjectivity, build solidarity and community, and find political voice.<sup>39</sup> The Regime conception of human rights misses this dimension of human rights praxis completely.

The Regime conception likewise diminishes the important role human rights play as tools of social criticism. Obviously, rights conventions do provide useful criteria for the evaluation of existing social arrangements and power structures, but the grassroots conception shows just how expansive that critical evaluation can be. After all, human rights claims are frequently articulated in cases where there are no existing rights guarantees in place; in this sense, they are both aspirational and (sometimes) constitutive claims, and as such they can play a key role in galvanizing political identity, mobilizing people to challenge injustice, and imagining alternative political futures.

Perhaps at this point it is worth making a more formal contrast between the two conceptions of human rights I have been discussing here. On the grassroots view, the key *actors* in human rights politics are *social movements*. These movements, which include both organizations and less formal coordination among people and groups, challenge existing social arrangements and, in doing so, create or reinforce forms of identity and solidarity in transformative ways. The key *mechanism* for the realization of rights is social struggle. It is through the practice of rights-claiming and the oppositional politics it entails that social movements achieve their gains, which might take various forms: newly created and perhaps institutionalized rights; newly redefined rights; or, institutional changes that reflect such redefinitions.

The *political character* of rights is *contentious*: as “struggle concepts” used to challenge existing social arrangements and configurations of power, they cannot be neutral or impartial. The contentiousness of human rights explains a great deal

**TABLE 2.1** Two conceptions of human rights

	<i>Regime conception</i>	<i>Grassroots conception</i>
<i>Actors</i>	States	Social movements
<i>Mechanism</i>	Law/enforcement	Social struggle/creative social praxis
<i>Political character</i>	Neutral/impartial	Contentious
<i>Legitimacy</i>	Normative consensus	Socially contingent

about the conflict and controversy in which they are mired—aspects of human rights politics that the Regime conception has always had trouble explaining. If rights are neutral and impartial, opposition to them makes little sense; when we understand rights as disruptive—when we account for their transformative potential—the sources and motivations of opposition become clear. Finally, the *legitimacy* of human rights is *socially contingent*. As contentious struggle concepts, human rights will not command normative consensus; rather, they will prove useful and appealing to social movements seeking to challenge power relations and upend social arrangements. Their broader legitimacy is thus contingent upon societal support for the norms of freedom and equality that animate human rights praxis.<sup>40</sup> The best that rights-oriented social movements can hope to achieve is “contingent progress through social transformation.”<sup>41</sup> Table 2.1 summarizes the key features of the Regime and grassroots conceptions of human rights.

The conservatism of the Regime conception becomes evident when it is juxtaposed with the grassroots conception. The traditional or mainstream focus on laws, institutions, and formalized rights organizations ignores the critical and expressive dimensions of human rights praxis. It also restricts the focus on social movements to their formal interactions with the Regime and emphasizes more formalized rights organizations. This conception reduces rights to their institutional form as legal principles associated with order, stability, and the rule of law. The grassroots conception, by contrast, considers the full life of rights, including their role as crucial components and engines of democratizing practices that continually seek to remake society through social criticism, community formation, and political transformation. Seen in this more comprehensive way, rights can be understood both as legal principles and as contentious and disruptive social practices.

The Regime conception is also historically conservative and rather misleading, as it erases social movement struggles in emphasizing texts, declarations, and their institutional forms. This erasure has numerous deleterious effects: it cuts off rights off from their (pre-1948) origins in collective struggles for emancipation; it over-emphasizes (contemporary) institutions, creating a liberal and Eurocentric bias in our understanding of human rights praxis that is readily projected backward onto the history of human rights;<sup>42</sup> and, in doing both of these things, it fuels the suspicion that rights are merely tools of the powerful. Many of the

rights that were formalized in the Universal Declaration, for instance, were won through centuries of social struggle. This is easy to forget or overlook, on the Regime conception, unless it is happening before us (as in the case of sexual orientation and gender identity rights).

Earlier I discussed the spiral model and showed how the familiar understanding of it fits within the Regime conception of human rights. I want to briefly consider it again here, to point out that on the grassroots conception the advocacy that the spiral model highlights stands out as one specific type of human rights activism rather than as the paradigmatic case of such activism, part of a broader continuum of emancipatory social practices, in this case tailored to a specific political context and dynamic. Situating that activism this way positions scholars to make more of the insight that trans-local and transnational networks play a key role in human rights activism and to study how such networks come together and fall apart, how actors and ideas move within them, and so on.<sup>43</sup> (Put differently: paying more attention to networks might make the domestic side of the spiral model story more interesting and complicated in ways that could help explain the resilience of the opposition in the second “repression” phase of the model.) This repositioning also helps us to make sense of the differing dynamics in which other forms of social movement activism take place. Movements for economic rights, for example, might find little external support in today’s highly neoliberalized world order, dictating that rights advocates develop other strategies.

Critics might worry that in emphasizing social movement praxis I’m ignoring other important uses of human rights—specifically, ignoring the ways in which human rights discourse and institutions are frequently deployed to preserve social hierarchies and existing power relationships. There are really two issues here that require careful parsing: one has to do with the “paradox of institutionalization” mentioned above, and the other to do with human rights as “instruments of imperialism.” As Stammers has observed, rights undergo a significant change in character when they are formalized, losing their radical and disruptive edge as they become part of established law and policy. Once institutionalized, human rights become conservative: conflicts about rights shift from being about their recognition to being about their interpretation, enforcement, etc. In this sense, the formal inception of rights simultaneously marks the culmination of a (particular) struggle for political change and inaugurates a conservative phase in the life cycle of the newly formalized right—this is the paradox.

The first issue, then, concerns the inevitable alteration in the character of rights at the moment of their formalization. The second, by contrast, concerns the strategic use of human rights to dominate others. Rights can be used as rhetorical cover for imperialism and exploitation or directly as instruments of domination. Examples of such uses are sadly plentiful: the post-hoc justification of the US-led invasion of Afghanistan as an intervention to support women’s rights, or the invocation of human rights as a standard of “civilization” to differentiate colonizing powers from those they are colonizing.

Again perhaps paradoxically, human rights can only be used in these ways when it's widely accepted that human rights in fact *are* tools for emancipatory social criticism and political transformation. François de La Rochefoucauld once famously said that “hypocrisy is the homage that vice pays to virtue.” There's no point in being hypocritical—there is actually no strategic or tactical benefit—unless the virtue appealed to is generally and genuinely recognized *as* virtue. If everyone understood human rights to be tools of imperialism, there would be no point in trying to cloak imperialistic actions in the rhetoric of rights. If rights were not recognized as valuable and appealing, the assertion of human rights as instruments of domination would be ineffective. (This argument applies, I think, in contemporary contexts; the use of rights in colonizing projects is another story. What makes this story even more complicated is that indefensible past uses of rights and rights discourse largely explain why rights have become such a ubiquitous political vocabulary today.) Thus it is only because rights are widely acknowledged to be desirable and effective tools for emancipatory social change that they can also be used in these more nefarious ways—and why those nefarious uses are always vulnerable to human rights-based critique and contestation. That's not to downplay the tremendous harm done by these misuses of human rights, but rather a gesture toward beginning to *explain* it politically. There's much more to say on this topic, but it will have to await another opportunity.

## How do human rights matter?

I want to return to the question I posed at the outset of this chapter: how do human rights matter? By way of conclusion, I want to elaborate on my answer in light of the arguments developed above. To begin, let me try to reconcile the two rather different formulations of that answer: that human rights matter because and in the ways that people take them up and use them in the world, and that they matter as tools of social critique and political transformation. The grassroots conception of human rights sketched here links the two by showing that the latter statement simply fills out the former. That is, people take up and use human rights *as* tools for social critique and to effect political transformations in their local communities, wider societies, social networks, and the world.

Groups and movements choose a human rights frame for their work (if they do) because they believe that frame is appealing and potentially effective in ways that align with their political, cultural, economic, or ecological goals and commitments. What it means to say that the proof of how human rights matter is “in the pudding” is that we'll know human rights matter as long as significant numbers of people invoke them for strategic, expressive, and critical ends. Should they cease to do so, human rights will have lost their relevance.

Paying attention to the reasons why people take up and use human rights could potentially help us to answer some questions about their effectiveness. While we cannot know what the world would look like without human rights,

we can study how and why different social movements adopt different frames (ideally in the same or similar contexts) and assess their strategies, tactics, and success (in terms of how they themselves define it). So it might be possible, say, to show that in certain contexts (authoritarian regimes), claims to economic rights might be more common, both because they are safer to voice (as they don't *necessarily* challenge the legitimacy of the government's rule) and because they might be effective in leveraging concessions (as the government seeks to "buy off" the opposition). On the other hand, economic rights might prove a less effective frame in democratic regimes where a great deal of electoral politicking concerns precisely economic questions such as the nature and extent of the welfare state. I have no idea if these propositions are true; my point is only to illustrate the kinds of empirical questions we might ask about the uses of human rights within the grassroots framework.<sup>44</sup>

Invoking human rights is no guarantee of success for a social movement, and success itself is a complex notion in human rights praxis. It refers not to a single dimension or domain of activity but might refer to various strategic, expressive, or critical uses of human rights in which a movement might engage. It is easy to imagine an "unsuccessful" campaign for a right that nonetheless fosters solidarity among a group of like-minded people and strengthens network ties among similarly-oriented groups or movements. It is likewise easy to imagine a vigorous human rights movement—say, against government repression—that relies on powerful social critique and wins significant reforms but doesn't engender lasting social or political solidarities. The grassroots conception of human rights suggests that we might adopt more nuanced measures of success for human rights movements, including measures calibrated to a movement's own goals and undertakings. Questions of success and effectiveness, I submit, might be usefully and rigorously addressed with reference to the aims of particular campaigns or movements.

To illustrate some of the points I have been hammering on here, I shall close by considering the recent debate among scholars and activists about whether and how human rights might be useful in the struggle against economic inequality—which, by all measures, has reached levels unseen in nearly a century.<sup>45</sup> Samuel Moyn has argued that human rights are utterly ineffective in the face of inequality, mere bystanders to the forces of neoliberal capitalism that are reshaping the global political economy and exacerbating already extreme inequalities. Human rights are conceptually inadequate vehicles for egalitarian politics, Moyn contends, content with achieving a minimum and unconcerned with inequality.<sup>46</sup>

He reaches this conclusion in part on the basis of his own very narrow reading of the history of human rights. Again, by defining human rights as international legal rights inaugurated in 1948, Moyn excludes the long history of social movement struggles for economic rights dating back to the 17th century and continuing to the present. He also mistakenly understands rights as necessarily entailing hostility to the state. Moyn's view is formed by his (correct but

partial) reading of the human rights politics of the 1970s, 1980s, and 1990s, which had a distinctively anti-authoritarian (and therefore anti-state) valence. While the human rights politics of this particular era were thus directed largely against the state, we have seen that many social movements aim explicitly at institutionalization and thus view the state (at least potentially) as a vehicle for political transformation in precisely the way Moyn thinks is required to mount an effective egalitarian political project today.

As Kathryn Sikkink has observed, it is also a mistake to suggest that human rights are unconcerned with inequality. Even during the period Moyn highlights, the human rights movement was highly successful in combating status inequality through its focus on anti-discrimination.<sup>47</sup> In doing so, it advanced an avowedly egalitarian agenda; moreover, this agenda clearly cuts against socioeconomic inequality, much of which is linked to marginalization or exploitation of lower-status people (whether women, racial or ethnic minorities, immigrants, etc.). That economic inequality has continued to grow despite this success is a sobering testimony that socioeconomic inequality must be attacked directly. Still, as Sikkink's point underscores, human rights are conceptually adequate to tackling at least some forms of inequality, and there might be lessons to learn from the success of these efforts to remedy status inequality globally.

That said, I think Moyn is right to be worried about decades of seemingly peaceful coexistence between major human rights organizations and the mainstream human rights movement, on the one hand, and neoliberal economic policies on the other. He offers valuable insight into the origins of this mutual indifference in the particular political context of Eastern Europe in the 1980s. (Briefly: since economic equality was built into the ideology of a communist system, activists were primarily concerned with the repressive state. Leaving economics out of the equation made possible alliances between committed communists desirous of a reformed, open political system and liberal reformers who sought greater political freedom and market reforms.) I also agree with Jessica Whyte, Zehra Arat, and others who argue that neoliberalism has long promoted its own narrow and tendentious understanding of human rights, elements of which have crept or leapt into mainstream discourse and policy.<sup>48</sup> These factors undoubtedly weigh heavily in the minds of activists engaged in the fight.

There is much more to be said on this topic than I can say here, but in conclusion, I want to emphasize a point that follows directly from the view I have been developing in this chapter—namely, that this is not the kind of question that can be resolved through academic debate. Whether a struggle against inequality takes hold and whether movements engaged in that struggle will appeal to human rights can only be answered empirically (and retrospectively). We can say that many movements and organizations in their networks have been articulating a human rights case against inequality for some time. Because the social praxis of human rights is one of creativity and innovation, questions about the “conceptual adequacy” of rights to problems of inequality seem

inapposite. Whether a human rights movement against economic inequality succeeds will depend on what form the movement itself takes and what resources it develops. It may well be that the general appeal of human rights politics will be diminished if human rights prove unhelpful or even secondary in contesting inequality. (That's what it means to say that their legitimacy is socially contingent.) One thing that's clear is that any such struggle will take place outside of the Regime, providing an opportunity for re-evaluating our understanding of human rights in ways that the grassroots conception enables.

## Notes

- 1 Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton, NJ: Princeton University Press, 2017). argues that pessimism about human rights is unwarranted or overstated because it rests on doubts about their legitimacy and effectiveness that can be resolved through better appreciation of their diverse historical origins and more careful specification of non-ideal criteria for evaluation of their impact. As I hope will be clear by the end of this chapter, I am somewhat optimistic about the potential usefulness of human rights; my epistemological skepticism is simply a different matter.
- 2 Michael Goodhart, *Democracy as Human Rights: Freedom and Equality in the Age of Globalization* (New York: Routledge, 2005).
- 3 In the past 20 years, anthropologists, historians, and sociologists have joined the field in growing numbers, creating a parallel body of work on rights grounded in starkly different ontological and epistemological premises (e.g., Mark Goodale, *Surrendering to Utopia: An Anthropology of Human Rights*, Stanford Studies in Human Rights (Stanford, CA: Stanford University Press, 2009); Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Co., 2007); Lydia Morris, "Sociology and Rights—an Emergent Field," in Morris, ed., *Rights: Sociological Perspectives* (London: Routledge, 2006); Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap (Harvard), 2010); Damien Short, "Social and Anthropological Approaches," in Michael Goodhart, ed., *Human Rights: Politics and Practice* (Oxford: Oxford University Press, 2009); Richard A. Wilson and Jon P. Mitchell, eds., *Human Rights in Global Perspective: Anthropological Studies of Rights, Claims and Entitlements*, vol. 40, Asa Monographs (London and New York: Routledge, 2003).
- 4 Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).
- 5 Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge: Cambridge University Press, 2013).
- 6 E.g., Kurt Mills and Alan Bloomfield, "African Resistance to the International Criminal Court: Halting the Advance of the Anti-Impunity Norm," *Review of International Studies* 44, no. 1 (2017), 101–127; Manisuli Ssenyonjo, "State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia," *Criminal Law Forum* 29, no. 1 (2018), 63–119.
- 7 Rajan Menon, *The Conceit of Humanitarian Intervention* (Oxford: Oxford University Press, 2016).
- 8 Julia Kreienkamp, *Responding to the Global Crackdown on Civil Society* (London: Global Governance Institute, 2017).

- 9 This characterization is broadly consistent with the argument made by Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013).
- 10 Eric Posner, *The Twilight of International Human Rights Law* (New York: Oxford University Press, 2014).
- 11 Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Harvard University Press, 2018).
- 12 See, e.g., Courtenay R. Conrad and Emily Hencken Ritter, “Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law,” *Journal of Politics* 75, no. 2 (2013), 397–409; Emily Hafner-Burton, *Making Human Rights a Reality* (Princeton, NJ: Princeton University Press, 2013); Oona A. Hathaway, “Do Human Rights Treaties Make a Difference,” *Yale Law Journal* 111, no. 8 (2002), 1935–2042; Eric Neumayer, “Do International Human Rights Treaties Improve Respect for Human Rights?,” *Journal of Conflict Resolution* 49, no. 6 (2005), 925–953; Beth A. Simmons, *Mobilizing for Human Rights: International Law and Domestic Politics* (Cambridge: Cambridge University Press, 2009). About the most that can be said is that some treaties matter under rather specific circumstances.
- 13 Menon, *Conceit*.
- 14 Maliheh Bitaraf, “Reflecting on 70 Years of the Genocide Convention: Is it Effective?,” *International Policy Digest* (2018).
- 15 Posner, *Twilight*.
- 16 Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton, 2011). On a broader conception of human rights, democracy and development would (in my view) count as part of a broader human rights politics—or one could say, human rights would count as part of a broader politics of democracy and development. The point is that the Regime conception is too narrow to register such a complex relationship.
- 17 Simmons, *Mobilizing for Human Rights*.
- 18 Risse et al., *The Power of Human Rights*.
- 19 Sanjeev Khagram, “Restructuring the Global Politics of Development: The Case of India’s Narmada Valley Dams,” in Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis, MN: University of Minnesota Press, 2002).
- 20 Karen Bakker, “The ‘Commons’ Versus the ‘Commodity’: Alter-Globalization, Anti-Privatization and the Human Right to Water in the Global South,” *Antipode* 39, no. 3 (2007), 430–455; Oriol Miroso and Leila M. Harris, “Human Right to Water: Contemporary Challenges and Contours of a Global Debate,” *Antipode* 44 (2012), 932–949.
- 21 André Drainville, “Present in the World Economy: The Coalition of Immokalee Workers (1996–2007),” *Globalizations* 5, no. 3 (2008), 357–377.
- 22 Here the murder of activist and organizer Berta Cáceres by operatives of a corporation seeking to build a dam that she opposed is a recent prominent example; Nina Lakhani, “Berta Cáceres: Seven Men Convicted of Murdering Honduran Environmentalist,” *The Guardian* online, November 29, 2018.
- 23 Karen Zivi, *Making Rights Claims: A Practice of Democratic Citizenship* (New York: Oxford University Press, 2012); Neil Stammers, “Social Movements and the Social Construction of Human Rights,” *Human Rights Quarterly* 21, no. 4 (1999), 980–1008.
- 24 Alison Brysk, *Speaking Rights to Power: Constructing Political Will* (New York: Oxford University Press, 2013); Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, “From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics,” in Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis, MN: University of Minnesota Press, 2002); Risse et al., *The Power of Human Rights; The Persistent Power of Human Rights*.

- 25 Simmons, *Mobilizing for Human Rights*.
- 26 Neil Stammers, *Human Rights and Social Movements* (London: Pluto Press, 2009), 13–14.
- 27 Samuel Moyn has insisted that nothing before 1948 qualifies as part of the history of human rights: Moyn, *The Last Utopia*. But this is less an argument than a stipulation: the claim only holds up because Moyn defines human rights as (only) the international legal rights of individuals.
- 28 The “drunkard’s search” is an anecdote in which a man walks out of a bar and finds a drunk down on his knees feeling around the sidewalk under a lamppost. The man asks the drunk what he’s doing, and the drunk replies, “I’m looking for my wallet.” The man gets down and starts to help. After several minutes of fruitless searching, the man says, “Are you sure this is where you dropped it?” The drunk replies, “No, I dropped it over there,” pointing to a dark area of the street halfway up the block. “Then why are you looking for it here?!” the man asks, exasperated. “Because,” the drunk replies, “the light is better.”
- 29 Cf. Stammers, *Human Rights and Social Movements*, 35ff.
- 30 *Ibid.*, 1.
- 31 *Ibid.*, 2.
- 32 Michael Goodhart, “Constructing Dignity: Human Rights as a Praxis of Egalitarian Freedom,” *Journal of Human Rights* 17, no. 4 (2018): 407.
- 33 Stammers, *Human Rights and Social Movements*, 37.
- 34 *Ibid.*, 3.
- 35 *Ibid.*, 106.
- 36 Goodhart, “Constructing Dignity,” 408.
- 37 Stammers, *Human Rights and Social Movements*, 164–165.
- 38 Zivi, *Making Rights Claims*, 14–19.
- 39 *Ibid.*, 22–23.
- 40 See Goodhart, *Democracy as Human Rights*.
- 41 Stammers, *Human Rights and Social Movements*, 30, citing Sztompka.
- 42 Stammers, *Human Rights and Social Movements*, ch. 2.
- 43 See Shareen Hertel, “A New Route to Norms Evolution: Insights from India’s Right to Food Campaign,” *Social Movement Studies* 15, no. 6 (2016): 610–621.
- 44 My hunch is that, while there’s some truth to these propositions, they are stated much too broadly: which economic rights, claimed by whom, would be among the further questions we’d need to ask to begin getting traction on this question. I’m grateful to Dr. Leslie Marshall for illuminating conversations on these topics.
- 45 Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: Belknap Press (Harvard University Press), 2014).
- 46 Moyn, *Not Enough*.
- 47 Sikkink, *Evidence for Hope*, 236–237.
- 48 Jessica Whyte. “Human Rights and the Collateral Damage of Neoliberalism.” *Theory and Event* 20, no. 1 (2017): 137–151. <https://muse.jhu.edu/>(accessed December 2018). Zehra F. Kabasakal Arat, “Human Rights Ideology and Dimensions of Power: A Radical Approach to the State, Property, and Discrimination,” *Human Rights Quarterly* 30 (2008), 906–932.