

# Honing a Critical Cultural Study of Human Rights

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*A critical cultural studies of human rights has yet to emerge as an interdisciplinary field of study. Despite the proliferation of scholarly work in legal philosophy and law and humanities over the past decade, we have seen little by way of sustained dialogue between critics of rights or conversations between rights critics and theorists of culture. Nonetheless, the characteristic approaches, concerns, concepts, and methods of cultural studies are both appropriate and necessary in a global policy environment that has put increasing emphasis upon cultural identity and cultural resources in both rights-based practices and neoliberal governmentalities, suggesting new avenues of inquiry.*

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A critical cultural study of human rights is nascent, rather than emergent. There are numerous studies of international human rights as a dominant discourse and practice informed by many varieties of critical social theory, but those who adopt the perspectives, methods, and concepts characteristic of cultural studies do not yet form a community of interlocutors engaged in a shared critical project. This is not surprising because it is a daunting task. Such an endeavor requires a capacity to read across many fields of specialized expertise in law, philosophy, and politics—while being captured by none of them. If this project were to mirror the richness of critical cultural studies more generally, it might ideally combine the strengths of a rigorous political economy perspective with the interpretive tools of rhetoric, hermeneutics, semiotics, discourse theory, deconstructionism, science and technology studies, and

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psychoanalytic inquiry (readers will no doubt have other ingredients to add to this mix). We might also adopt an analysis sensitive to issues of discipline, subject formation and governmentality, informed by theories of practice, generated through and animated by ethnographic research. Such an ideal is a long way from being realized, but there are many promising efforts on which to build.

### **Culture in Human Rights and the Cultural Studies of Human Rights**

We might expect to find that of all of the various subfields of human rights, cultural studies would have a particular interest in the field of cultural rights. According to the major international covenants, these include rights to the moral and material interests in works of which one is an author (which include but are not limited to intellectual property protections); rights to participate in community cultural life; rights to enjoy the arts and share in scientific advancement and its benefits (often glossed in terms of technology); and state encouragement of international contacts and cooperation. Nonetheless, the scholarship exploring this subfield of law—historically, doctrinally, philosophically, or empirically—is pitifully small. Cultural rights have attracted remarkably little critical theoretical attention. This task may be especially challenging because the individual rights pertaining to culture delineated above are augmented by collective rights to cultural integrity, cultural heritage rights, and rights of indigenous peoples premised on cultural grounds. Recent UNESCO Conventions have put new emphasis upon intangible cultural heritage, cultural diversity, and intercultural dialogue, further populating this field of law and the activities generated in its name.

Indeed, the practice of cultural studies shares with the practice of human rights constitutive conflicts over the meaning of the culture concept fundamental to this universalizing, if never universal, field of endeavour that simultaneously constitutes an institutionalized political economy and a nascent, aspirational politics. Human rights law allows culture to be both subject to and the subject of rights claims in contradictory ways.<sup>1</sup> When professing the rights of individuals to express, enjoy, and have access to culture, modern aesthetic ideals are indexed while other cultural rights, such as those traditionally articulated by state parties to UNESCO conventions, often resemble affirmations of Herderian Romantic nationalism. Subnational and transnational cultural rights have only slowly gained acceptance in international rights fora where anthropological approaches to culture as a way of life coexist with emerging understandings of culture as a popular, expressive, world-making activity. More recently, the enhanced value placed on cultural diversity and protections for minority peoples has encouraged the articulation of an ever greater range of collective rights, expressed culturally, which are used to ground claims for land, education, and environmental protection as well as for new forms of autonomy considered as means of cultural survival.<sup>2</sup> Culture may be used to support progressive as well as reactionary claims, legitimating environmental struggles against predatory modern extractive developments, and anti-globalization movements as well as celebrating old antagonisms and entrenched privileges.<sup>3</sup> Unfortunately, the conflictual meanings of the culture

concept in human rights discourse has tended to mire critics in unfortunate dichotomies, such as those of universalism/relativism, that have forestalled rather than advanced critical reflexivity around issues of rights and culture.

Many of the subfields of cultural rights have been areas of cultural studies concern. The cultural and communicative impact of the growing expansion of intellectual property rights, equity issues with respect to access to information and technology, and the relationship between communications and development are obvious examples. Practitioners of cultural studies have pioneered research on cultural identity, multiculturalism and cosmopolitanism, and the inclusions and exclusions characteristic of the dominant cultural texts and practices of social communities and their imaginaries. We have seen a growth of important studies addressing cultural work, cultural economies, cultural exchange, cultural commodification, and critical evaluation of emergent discourses and practices of creative and cultural industries. We might consider all of these as properly issues of cultural policy,<sup>4</sup> an area of cultural studies appropriately subject to renewed critical scrutiny<sup>5</sup> given new strategies of capital accumulation based on informational capital. These broad-ranging studies have not, however, considered these as interlinked issues within a legal or theoretical field of cultural rights, nor have they normatively deployed a discourse of rights in arguing for social change. Nonetheless, there are grounds for heeding Bennett and Mercer's<sup>6</sup> call to deepen the tools of cultural policy research and analysis by delineating the contours of an emerging legal, institutional, and political terrain in which cultural rights and cultural claims assume new political and economic significance in an increasingly transnational field of cultural policy.<sup>7</sup>

The significance of human rights to cultural studies is, in any case, by no means exhausted by cultural rights, however inadequately the latter have been addressed, and however much one might hope that cultural studies could influence policy by better attending to these as an integrated group of issues. Rather than enumerate categories and types of human rights and scholarly work that consider them to some degree, I will suggest that the very ways in which cultural studies has generally distinguished its topics, perspectives, and approaches suggests particular vantage points and portals into the human rights terrain. For example, we might revisit Richard Johnson's classic essay, "What is Cultural Studies, Anyway?"<sup>8</sup> and propose that cultural studies consider human rights texts in a wide field of contexts including their production and reproduction, interpretive consumption or reception, and circulation within socially and symbolically differentiated fields of practice. The relationship between "the word and the world"<sup>9</sup> in human rights projects is especially daunting because human rights are textual expressions that ideally set out to encompass and abstract principles sufficient to human flourishing. Although this omniscient positioning makes human rights rhetoric an easy target for anti-canonical scholars inclined to undermine meta-theory, the evidently elastic capacity of human rights to encompass and embrace ever greater fields of human difference in a global project of enhancing human dignity, makes most criticism—of their false universalism and actual particularism, their Eurocentrism, androcentrism, heterosexism and degree of inclusivity, for example—a contribution to the practice of human

rights, rather than an indictment of it. To the extent that issues of social exclusion, inequality, identity, power, and representation engage us, cultural studies are *practically* invested in human rights discourse and praxis.

Theoretical work on human rights has proliferated dramatically in the last decade, particularly in the wake of political transformations set in motion by 9/11. First introducing key dimensions of human rights as law, politics, ideology, and governmentality, I will reference work in legal theory and the humanities that adopts approaches with which cultural studies scholars are familiar and takes perspectives with which they are likely to be sympathetic. It is difficult to summarize even this limited range of scholarship given the utter lack of synthetic work accomplished by these scholars to date; one of the more disconcerting revelations of reading across culturally oriented human rights scholarship is how far from dialogic it is. The lack of cross-referencing and critical consideration of contemporaneous arguments (even among scholars who share similar philosophical positions) suggests that even within the closely-related fields of law, literature and rhetoric, nothing approaching a critical cultural studies of human rights is emerging. This survey is not exhaustive; I have chosen representative examples of approaches and positions that seem most relevant to the interests and proclivities of cultural studies scholars. Others no doubt could be chosen.

I will then suggest that some of the scholarship that might best contribute to a critical cultural study of human rights is offered by legal and cultural anthropologists. Although notoriously shy about articulating general theoretical principles,<sup>10</sup> they offer frameworks influenced by continental social and critical theory for the study of rights derived from the ethnographic study of the social and political meaning and consequence of rights-based practices in cultural and historical contexts. I conclude by exploring how a fuller elaboration of George Yudice's<sup>11</sup> concept of culture as a resource in strategies of public action<sup>12</sup> provides promising avenues for the future critical cultural study of human rights.

### **Human Rights as Ideology, Discourse, and Neoliberal Hegemony**

Human rights nominate a field of law and politics that has its conceptual origins in Western political philosophy and statecraft. It frames a field of legal power, politics, and sites for particular kinds of struggle. As legal theorist Costas Douzinas<sup>13</sup> summarizes, human rights denote a diverse group of constitutional, legal, judicial, academic, and popular texts and commentaries; legal, political, and cultural institutions; governmental and nongovernmental agencies, and personnel and the campaigns in which they are waged. Rights, a relational legal category, are linked to the human as a moral one that gives these a special, if not transcendent, value in liberal ideology. As a topic of jurisprudence, they constitute a morally-inflected ideal that serves as a "trump card" in political argument. Thus they can and often are deployed cynically for political purposes. Human rights have become a major strategy for resisting public and private domination and exploitation; they are central to a long history of rebellion, resistance, new articulations of injustice, and new

understandings of freedom. At once vehicles of law, they are also the primary source of its limit, restricting its force and its positivity.

Douzinis provides a passionate and ambiguous account of the place of human rights in the constitution of a new world order in the first decade of the new millennium, asking: “[A]re human rights an effective defensive tool against domination and oppression or are they the ideological gloss of an emerging empire?”<sup>14</sup> He clearly believes that human rights are inherently contradictory and thus, paradoxically, both, but he devotes more energy to illustrating the latter than exploring the former. Deploying semiotic, deconstructionist, psychoanalytic, and poststructuralist theory he explains the pursuit of human rights by reference to the endless pursuit of a human desire for recognition, respect, and self-realization in negotiations of identity that continuously fall short of fully embracing (most of) us while providing compensation for ever greater socio-legal subjection.

Indian legal philosopher Upendra Baxi<sup>15</sup> articulates two current concepts of human rights: a “modern” paradigm based on classic Enlightenment ideas of human essentialism and reason, and a “contemporary” variant marked by its diversity, pluralism, and multiculturalism. The dominant ideological narrative maintains that human rights are the fruits of a peculiarly Western tradition of philosophy. Baxi finds this genealogy limited and self-serving, but convincing to the extent that the evil occasioned by the “modern” paradigm of human rights may be attributed to Enlightenment liberalism as an ideology of exclusion that provided the imperialist West with a rationale for both declassifying huge groups of disadvantaged others from the category of those who possessed rights and a moral legitimation for racism and colonialism. Moreover, it enabled the perpetuation of an imperialist ideology in which human rights are a continuing “gift from the West to the rest” in which others must continually show themselves to be worthy of “our” largesse. Instead, Baxi insists that we recognize people in struggle as the originary authors of human rights considered as an open and morally imaginative practice.

Postcolonial legal theorist, Balakrishnan Rajagopal,<sup>16</sup> for example, explores how international legal institutions of human rights have been shaped historically by social contexts of colonialism, as well as by anti-colonial nationalist movements. He advocates closer attention to new social movements as alternative sites of resistance that provide new models of social justice outside of modern human rights frameworks. Protesting international law’s promotion of human rights as the only appropriate route to emancipation and social justice, he shows how international human rights law has repeatedly developed so as to contain resistance movements and challenges to Western hegemony while enabling and extending new forms of governance over Third World masses envisioned through colonial tropes of fear and loathing.

Nonetheless, Rajagopal shows that some of these new anti-globalization movements have had some influence even within UN rights-based institutions.<sup>17</sup> His critique could be developed as a critical cultural study of rights if it were to explore the ways in which these “other” movements have translated rights concepts for new ends, pluralizing the rights field, particularly via the “turn to culture” which, he

acknowledges, has put new emphasis on identity, territory, autonomy, and alternative understandings of development.<sup>18</sup> His position is also challenged by the near global ratification of the Declaration of the Rights of Indigenous Peoples in 2007, which has put those “place-based, concrete strategies for survival of individuals and communities in the Third World . . . aimed at building radical alternatives to the received models of markets and democracy”<sup>19</sup> he champions squarely into the global human rights arena, along with regional rights charters and many national constitutions, particularly in Latin America, which have enabled cultural difference to assume a new role in a transnational subaltern politics.

Clearly human rights laws are the fulcrum of a pervasive, powerful, and authoritative normative discourse that requires the same powerful instruments of analysis that a critical cultural studies brings to bear on other discourses. Critical theories of law have long recognized law’s legitimation functions, its cultural role in constituting the social realities we recognize. Human rights, as expressed in canonical texts, as talk, as a way of thinking, and as a form of practice, might be approached *as* culture to the extent that this discourse entails certain dominant constructions of self and sociality, and specific modes of agency. As a field of law, human rights constitute a worldview and structuring discourse that shapes the way we apprehend the world. Legal discourse provides a powerful imaginary, and the human rights imaginary appears to have increasing influence at multiple scales of jurisdiction and influence, shaping the practices of an ever greater range of actors, institutions, and agencies.

Historically structured and locally interpreted, human rights law provides means and fora for legitimating and contesting privileged narratives and the social hierarchies they support in practices of articulation in which hegemonic and oppositional strategies both constitute and reconfigure each other. Social worlds need to be represented, performatively expressed, and institutionally inscribed; human rights provide authoritative rhetorical means, media, and arenas for articulating improved human worlds and incorporating new visions of society, but they can also be deployed to ratify new forms of oppressive power. There is now a large body of law and society literature that considers the prospects and limits of legal rights as the basis for political struggle, much of this coming from critical reflection upon the civil rights struggle in the United States.<sup>20</sup> Liberal rights politics that interpret Enlightenment equality principles have engaged issues of sameness and difference as they challenge invisible norms that operate as formidable forms of privilege. Civil and political rights, however, are only one area of human rights, and movements to achieve economic, social, and cultural rights must also concern us. These latter are less likely to privilege litigation strategies, and are more likely to involve civil society or nongovernmental organizations (NGOs) who engage mass and digital media to shape public opinion, shame corporations, and sway legislatures.

Critical scholarship on international human rights is far more eclectic, far less sanguine, and less focused upon their efficacy in achieving progressive social change. Baxi,<sup>21</sup> for instance, is at pains to illustrate the different ways in which human rights are used and understood, insisting on the *radical contingency* of “human rights futures” that share no definite *telos* or principle of gradual realization. Indeed, he feels

that the future of human rights lies in such diverse phenomena as the overproduction of human rights norms, the repressive as well as emancipatory potential of these norms, and the effects of the globalized market. Cultural diversity will and should play a guiding role in shaping human rights futures, which must expand well beyond the guarantee of bourgeois rights.

Although human rights law provides vehicles to constrain state power, human rights discourse is also frequently politicized and deployed for state ends. Not surprisingly, the historical development of human rights reflects Cold War priorities and animosities; its contemporary deployment advances neoliberal governmental agendas according to Douzinas.

Governmental actions in the international arenas are dictated by national interest and political considerations, and morality enters the stage always late, when the principle invoked happens to condemn the actions of a political adversary. When human rights and national interest coincide, governments become their greatest champions. But this is the exception . . . A state that adopts the international treaties can claim to be a human rights state, turning human rights into a ploy for state legitimacy. Natural and human rights were conceived as a tool against the despotism of power and the arrogance of wealth. Their co-optation by governments means that they have lost much of their critical force and their initial aim and role has been reversed.<sup>22</sup>

In the United States, government officials, legislators, NGO leaders, and media celebrities have adopted human rights as the ideological banner under which both culture wars and international political battles have been fought.<sup>23</sup> Douzinas sees human rights as an invaluable American ideological weapon that has enabled the US to assume the moral high ground in international affairs, especially since 1989 when these became “the only ideology in town.”<sup>24</sup> Highjacked by governments to form the basis for new forms of colonialism in which an ideology of the rich is imposed on the poor, he still believes that a residue of transcendence remains in human rights discourse for the protests, resistances, and struggles of others.

Far less optimistically, Baxi traces the emergence of what he deems “human rights markets”, entailed by the need for activists and NGOs to compete for scarce resources in arenas in which human rights investors, producers, and consumers must be identified and targeted, given widespread media desensitization and scarcities of funding. Moreover, he postulates the emergence of “an alternative paradigm of human rights” in which institutions of global capital—from the World Trade Organization (WTO) and International Monetary Fund (IMF) to multinational corporations—use human rights vocabularies to justify corporate well-being and dignity even when these entail “gross and flagrant violation of human rights of actually existing human beings and communities.”<sup>25</sup> Such trade-related, market-friendly neoliberal human rights threaten to foreclose “human-rights oriented, redistributionist governance practices” and the progressive realization of economic, social and cultural rights.<sup>26</sup>

In a cogent argument for the relevance of humanities scholarship and deconstructionist theory to the study of human rights as a global discourse and movement,

Pheng Cheah argues that contemporary celebrations of cosmopolitanism radically discount the degree to which the discourses of human rights have become contaminated by the inequities of global capitalism and the capture of state agencies by neoliberal economic policies.<sup>27</sup> The World Bank, transnational advocacy networks, and the elite civil society of NGOs are all similarly indicted as undermining the state as the proper guardian of social justice by Cheah, for whom globalization appears to be a singular and totalizing force. Despite his emphasis on the humanities, his case studies of economic elites, women's rights, and migrant workers' treatment in China and Southeast Asia use sociological and anthropological theory when considering the interlinked concepts of humanity and inhumanity at work in legal practice. While critical of the concepts of universalist transcendence central to liberal rights ideologies, Cheah expresses desire for a human rights that transcends the capitalist world system; he privileges the modern state as its only possible progenitor.

Although state activity continues to be subject to global scrutiny by international actors, and states are clearly primary actors in international governance, human rights activity and monitoring increasingly encompasses a wider field of agency. A transnationally networked field of institutionalized advocacy involving NGOs, development banks, aid organizations, and indigenous peoples has emerged in the last two decades in which the discourse of human rights is deployed at multiple scales to design, influence, shape, and resist projects and programmes implemented by many different kinds of private and public actors. Human rights practitioners are increasingly professionals who operate within a political economy that has its own forms of expertise, values particular forms of social capital, engages in particular forms of subject formation, and creates its own fields of knowledge and power. As such, it is a field that lends itself to the Foucauldian analytic lens of governmentality studies that has been so fruitfully taken up in cultural studies.<sup>28</sup>

In *Transnational America* for example, Inderpal Grewal explores how circulations of goods, social movements, and discourse in the 1990s created new transnational subjects.<sup>29</sup> Neoliberalism, she argues, was constituted through assemblages of disciplinary power and governmental technologies legitimated through a nationalist discourse that produced subjects and agencies far outside US borders. "America" has long been a symbol of freedom and democratic rights as well as imperial power, but only recently, it seems, have rights discourses been conjoined with consumer culture to convince others that they are disenfranchised so as to recruit them as subject to new forms of asymmetrical internationalism, corporate power, and white nationalism.<sup>30</sup> Grewal's ambitious (and often unwieldy) analysis traces the increasing use of human rights as a pedagogic discourse of transnational tutelage, in which the capacity to exercise "choice" held by those in market-oriented societies is continuously distinguished from the oppressions of others who lack human rights and need to be actively reconstructed as appropriate rights holders through technologies of knowledge production.

In this work of "managing the crisis of continuing inequalities,"<sup>31</sup> NGOs became transnational instruments of governmentality, using the discourse of human rights to instrumentalize new regimes of good governance, construct new apparatuses as indices of population welfare, and produce new subjects in need of rescue, charity,

and care so they might see themselves as autonomous individuals. In the process, “America” was positioned as the site for authoritative condemnation of rights “abuses,” and constructed as the centre of utmost freedom and rights, and preeminently privileged in adjudicating their lack elsewhere.<sup>32</sup> Human rights thus became governmental tools for managing populations—used, for example, to decide which persons were appropriate to be granted refugee asylum. Human rights legitimated the generation of new knowledges by transnational NGOs while an ethic of humanitarian concern animated new technologies for combining geopolitics and biopolitics.

The World Bank also deploys human rights for biopolitical intervention in former socialist and less developed countries, Anne Orford<sup>33</sup> shows, through pedagogical packages designed to teach values of market capitalism, efficiency, and approved modes of compliance. Nutrition, youth development, reproductive health, disease management, and sanitation are all issue areas that bring multilateral institutions, NGOs, and activists into huge enterprises for the control, normalization, and policing of the poor to effectively transform them into appropriate forms of human capital for new markets. Law professor David Kennedy also asserts that contemporary humanitarianism has become a new form of industry in which governments, armies, NGOs, and erstwhile activists forge new combat alliances using the vehicles of neoliberal governmentality to further “ruleship” and military policy-making under contemporary conditions of empire.<sup>34</sup> As Douzinas concurs:

... it looks like an imperial officer corps and bureaucracy is emerging ... a new professional class, the “humanitarians” or “internationals.” ... The group includes the usual suspects: human rights activists, lawyers, international civil servants, NGO operators and assorted do-gooders and all those whose task is to spread the principles of the new world order, if necessary, by force ... the task is now to consolidate and generalize this project of osmosis between humanitarians, the military and politicians and turn it into a world ideology.<sup>35</sup>

Sharply diverging from Kennedy’s complacent pragmatism, however, Douzinas believes that human rights continue to “work in the gap between ideal nature and law, or between real people and universal abstractions.”<sup>36</sup> The so-called “universal ethics” of professional humanitarians who have turned the priorities of American elites into global principles that generate governmental legitimacy represents a peculiar new form of hegemonic enterprise. Nonetheless, like Baxi, he would:

... insist against realists, pragmatists and the ideologues of power that the energy necessary for protection, horizontal proliferation, and vertical expansion of human rights comes from below, from those whose lives have been blighted by oppression ... Human rights professionals, whether radical or pragmatic, are at best ancillary to this task, which cannot be delegated.<sup>37</sup>

### **Anthropological Studies of Human Rights: Practice and Identity**

Exploring human rights’ structurations and governmentalities is significant work for cultural studies scholars who must, also, however, recognize that such configurations

of power face challenges and limits from alternative histories, imaginaries, and moral economies of value and solidarity as these figure in local struggles. From a cultural studies perspective, human rights can never be approached exclusively as ideology, but only through the social life of rights' textuality in fields of political practice. To paraphrase Toby Miller, while marrying approaches from the humanities and social sciences, we can afford neither abstracted empiricism nor grand moralism in the service of critique; a critical cultural study of human rights must marry the interpretive strengths of textual analysis with the distributional concerns of political or cultural economy, the scepticism of critical theory, and the anti-foundationalism of poststructural philosophies while considering networks, technologies, and traditions.<sup>38</sup> Moreover, we need to link characteristic forms of interpretive practice and agency with specific modes of interpellation and subject formation.

Towards this end, sociologist Fuyuki Kurasawa provides an "action-based" approach that reconfigures human rights as the products of particular human practices rather than the application of a universal normative system. He argues that we must move beyond philosophical normativities, cosmopolitan ethics, the endless work of justifying human rights frameworks, an emphasis on institutions, and empiricist preoccupations with civil society networks.<sup>39</sup> Proposing "critical substantivism" as an approach that "mak[es] sense of the realities of participants involved in the social labor of global justice and the meaning they give to this labor,"<sup>40</sup> he suggests a critical cultural sociology of human rights that focuses on practice.<sup>41</sup> Practice is understood as both structured and structuring, shaping larger institutional fields through interpretive practices that critically rework historical, social, and cultural systems of thought and action.<sup>42</sup>

Five activities enact global justice and thereby produce human rights in his study: bearing witness, forgiveness, foresight, aid, and solidarity. Each of these projects of social labor constitutes a form of struggle that inevitably encounters obstacles that lead to the repetitive enactment of a "repertoire of social tasks" that thereby forms a "mode of practice."<sup>43</sup> In the labour of "bearing witness," for example, actors find means of overcoming silence, incomprehension, indifference, and forgetting, and thereby *produce* human rights as social capacity. Although he intends to provide an "interpretively thick" explanation of what actors are doing when they advance human rights, it is doubtful that human rights practices are as unified, intentional, and seamlessly productive as the rather tidy social processes that Kurasawa outlines. Unfortunately, the practices he explores are sociologically quite "thin" because they are presented as if they are engaged in by socially undifferentiated actors. We get little understanding of the historical contexts that shape their agency or the self-understandings they bring to human rights activities. Despite an early acknowledgment that "relations of power structure the fields of action in which modes of practice operate,"<sup>44</sup> the volume largely ignores such structurations. How, we might wonder, do such practices shape, influence, or transform the social identities of actors in the world thereafter?

Legal anthropologists have long seen law as a site for cultural construction and social struggle in the constitution of both individual and group identities.<sup>45</sup> Even as local identities and concerns are translated and transformed in legal language, people

put the law's idioms, categories, limits, and opportunity structures to work in their own struggles; rights function ambivalently in fostering and constraining the development of community and individual identities. As anthropologist Mark Goodale suggests, as "one of the most consequential of transnational regimes," human rights have both instrumental and ideological aspects:

A political economy of human rights discourse is one that studies the ways in which human rights ideas and practices—which are rendered discursively inseparable in specific social contexts—have become preeminently constitutive, so that collective identity, social meanings, and personhood cannot be understood in other terms even when—perhaps *especially* when—moves are made to suggest alternatives . . . [it is] to recognize that "the work of [human rights] is necessarily grammatical: naming, constructing and positioning the [normative] and doing so in a way which builds social relations of power and knowledge" . . . rather than as international human rights doctrine presupposes, *discovers* them within the natural order of things.<sup>46</sup>

Douzinis shares this view of human rights practices as socially generative, suggesting that every exercise of rights potentially rearranges social hierarchy, opening new vistas, that "if petrified, becomes itself an external limitation that must be again overcome . . ."<sup>47</sup> Legally produced boundaries are always contested and, "in this sense, freedom can be enhanced by the potential of rights to extend the limits of the social and to expand and redefine self and group identities."<sup>48</sup>

The last decades of the twentieth century witnessed a dramatic increase in negotiations between social groups phrased in the language of rights, leading anthropologists especially to suggest that philosophical and theoretical studies of rights needed to be augmented with contextual studies of rights processes and the power relations at work in legal constructions of culture, tradition, and community.<sup>49</sup> Anthropologists consider the role of rights discourse in essentializing social categories and fixing identities for legal purposes, a point which is still underappreciated by those for whom locating imagined communities and allegations of the invention of tradition constitute self-sufficient critiques.<sup>50</sup> Popular terms such as "strategic essentialism," for instance, may denote an instrumentality that fails to do justice to the constitutive social work of human rights discourse and practice. Some of the "cultures" caught up in rights processes may indeed come to exist after rights claims are made on their behalf: "[T]o the extent that claimants are compelled to use a language of rights in pursuit of what they need or want, and to portray themselves as certain kinds of persons, when these may be alien to their self-understandings, it is evident that rights discourses are not ethically unambiguous or neutral."<sup>51</sup> We should explore the possibility that self-understandings and community identities may become constitutively transformed by rights projects, yielding new and different kinds of persons and sociality, particularly under neoliberal pressures.

Just as promising for a cultural studies of rights is the anthropological call to move beyond Western philosophical discourse and critical theory to consider human rights as a more dialectical and intercultural process of *articulation*—exploring how local concerns, worldviews, categories, and understandings shape the way putatively

universal categories of rights are implemented, resisted, and transformed.<sup>52</sup> In these processes, claimants become involved in transnational political connectivities even and especially as they struggle to assert the significance of local specificities. Refusing to posit the relationship between rights and culture oppositionally, Jane Cowan et al. suggest, anthropologists now see the dominant discourse of human rights as one that incorporates:

... both universal rights premised on sameness and an awareness—increasingly even a celebration—of cultural differences, making exhaustive debates forcing the “choice” between universalism and relativism seem both dog-eared and dogmatic . . . Just as there are no singular social cultures with fixed values and meanings, there is no unitary field of human rights with absolute certainties . . . Both are fields of creative interchange and contestation . . . There are no societies without access to human rights, and it is precisely those whom are most marginalized and stigmatized because of their differences whom are most likely to need the political tools that human rights provide. States have, through forced assimilation policies, long made sameness the price for granting rights and when they do, rights based on difference may be emancipatory. On the other hand, when states insist upon particular forms of difference being calcified and performed according to rigid scripts, they may also violate rights . . . Both innate cultural differences and abstract universal principles are fictions that can be rhetorically deployed opportunistically in political tactics and to obscure other interests and further other agendas.<sup>53</sup>

Conceiving of rights as authoritative texts and key symbols inevitably interpreted and deployed in particular contexts, many ethnographers now recognize legal processes as practices of critical hermeneutics in which law (despite its positivist tendencies) must continually readjust to local realities, social change, and new demands.<sup>54</sup> They have chosen to explore the proliferation of mutually transformative conversations between local worlds of meaning and global ones that constitute a new transnational *culture* of human rights practice.

Anthropologists engaged in fieldwork in the 1990s increasingly found human rights to be a transnational discursive framework deeply imbricated in local political and moral practice; advancing human rights regimes were interacting with indigenous cultural forms and local interpretations to produce dialectically reciprocal transformations. New conceptions of rights are inevitably interpreted through locally relevant and sometimes traditional senses of obligation, just as they are tied up with philosophies, histories, and utopian constructs usually honed in the histories of former colonizing powers. Novel justice imaginaries are forged when Europe is provincialized and Enlightenment conceptual vocabularies encounter, challenge, and accommodate other regimes of meaning and value. Thus they suggest that we need to understand human rights “in the vernacular”<sup>55</sup> recognizing that “human rights must be both theorized and legitimated *in terms of* the groundedness of social practices, those mundane (yet often transformative) occurrences of . . . the ‘practice of everyday life.’”<sup>56</sup> Moreover, we might argue that any consideration of the “vernacularization” of human rights must also attend to the multiplicity of other normative and ideological frameworks (environmental sustainability, human capabilities, neoliberalism, indigeneity) with which these are increasingly enmeshed. We cannot lose sight

of the global political economic contexts in which human rights practices emerge and take shape; neither, however, should we assume that hegemonies are fixed or always already in place.

### Some Cultural Studies' Human Rights' Futures

I have suggested that the cultural studies of human rights might develop more profitably through greater attention to and in dialogue with a range of interdisciplinary work on human rights that adopts similar methods, and shares theoretical orientations with work in cultural studies more generally, particularly scholarship that attempts to develop analyses of emerging cultures of rights in transnational fields of politics and in the global cultural economy. One area of potential departure was signaled by George Yudice in *The Expediency of Culture*,<sup>57</sup> when he suggested that communications and cultural studies scholars need to understand the growing significance of “culture as a resource,” a paradigm shift which posed fundamental challenges to scholarly understandings of culture. To paraphrase his thesis, in contemporary political economies and expressive political practice, culture has become an object of new economic attention and policy insight, as well as the rhetorical basis for new forms of social struggle. This prescient insight still needs to be theoretically elaborated, institutionally grounded, situated in a larger field of international cultural policy, and positioned in the emerging field of transnational cultural studies. Moreover, we need to more fully understand the legal conditions of culture’s emergence as a resource, and the political agencies through which new fields of cultural rights have assumed prominence so as to consider the conditions under which new political economies of culture might do justice to new forms of social struggle as well as new forms of capital accumulation.

Emerging social justice struggles increasingly make assertions on cultural grounds, possessive claims to culture are proliferating,<sup>58</sup> and cultural traditions provide the basis for new forms of political and social initiative, industry, and investment around the world.<sup>59</sup> Cultural rights claims are unquestionably tied to changing patterns of global capital accumulation.<sup>60</sup> Culture has acquired a new value in rural, sustainable, and rights-based development projects and consumption practices. New forms of ethno-development, including cultural tourism and the cultivation of culturally distinctive export goods, for example, are understood by diverse actors to have the capacity to foster rural economic revitalization and secure sustainable livelihoods.<sup>61</sup>

Neoliberal governmentality profoundly “shapes cultural realms in the production and affirmation of diversity through the commodification of difference”<sup>62</sup> as well as in its investments in creative classes, creative industries, and its newest subjects, “the creatives.” Its mandates are interpreted—worked by the subjects it enables<sup>63</sup> through and with locally relevant systems of meaning. As an analytic category, neoliberalism may be approached “as an assemblage of technologies, techniques, and practices that are appropriated selectively”<sup>64</sup> in contexts in which people may also become more conscious of their rights and more reflective about what makes them uniquely human.

A critical cultural studies of human rights attentive to culture as a resource might address both the local needs and desires of actors engaged in transnationally linked social movements that inspire claims to cultural “goods” as well as the neoliberal interpellation of market-based subjectivities that seek to naturalize possessive relationships to culture as a development asset, while interrogating their relationship. To pose just a few questions likely to emerge on this terrain: Under what circumstances do neoliberal desires to locate social capital and invest in its (market-based) futures fit within, come up against, or become transformed by rights-based struggles? When do new forms of property introduced into cultural spheres simply extend the logic of the commodity, and when do these further new forms of political citizenship or autonomy? Are self-governing market-oriented subjects of neoliberalism eclipsing modern individual human rights holders, or are new hybrid subjects emerging? How does the recognition of collective proprietary cultural rights enable new forms of subjectivity to be expressed? Culture is doing distinctive and different kinds of work in global markets, neoliberal governmentalities, indigenist movements, and environmentalist regimes to name only a few contemporary fields of transnational power and knowledge. Exploring the “friction”<sup>65</sup> produced when attachments to cultural expression, cultural work, cultural industries, and cultural traditions encounter, transform or are transformed by human rights practices suggests new opportunities for critical cultural studies scholarship.

## Notes

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- [47] Douzinas, 13.
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