Blackwell Companion to the Anthropology of Politics

<u>Human Rights</u>

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I. Human Rights, Cultural Relativism and the Cold War

In the middle of the twentieth century, cultural anthropology was largely hostile to the notion of human rights, but by the end of the twentieth century, the study of human rights had become a significant strand within political anthropology. This is an account of that realignment of the place of rights in the discipline from marginality to mainstream.

The key to understanding anthropology's historical opposition to human rights lies in the centrality of the concept of 'culture' and the resultant adherence to a moral-ethical position of cultural relativism within the discipline during the Cold War period of 1945-1989. In the United States by the 1940s, cultural anthropology was becoming established in universities as one of the youngest of the social sciences. The founding father of modern cultural anthropology in the US was a German emigré Franz Boas (1859-1941), who carried out empirical research among Inuit (Eskimos) and North American Indians. Boas reacted against the widely accepted evolutionary theories of the time, advocated by those such as the British anthropologist Edward Tylor, the sociologist Hebert Spencer and Lewis Henry Morgan who in turn influenced Karl Marx and Friedrich Engels. Evolutionism broadly asserted that all societies progressed in a unilinear fashion along a scale from the most 'simple' to the most 'complex', with each stage achieving a higher level of moral and societal improvement. In the context of the European colonialism of the time, this social evolutionism involved an explicit ranking of societies which reinforced the colonial project and a sense of western superiority.

Franz Boas sought to explode the myths of the evolutionary writers of the day and adopted a position of moral relativism to do so. He argued that each culture-in the sense of the particular shared symbols, beliefs and practices held in common by a group of people and passed on through socialization- needed to be understood in its own terms according to its own unique logic, using fine-grained ethnographic techniques of investigation. This view of culture as the dominant category through which to understand behavior was carried forward by Boas' students such as Ruth Benedict, author of *The Chrysanthemum and the Sword* (1946), a book which tried to understand Japanese personality types through attention to unique Japanese cultural norms and beliefs.

After the Second World War, the emphasis on cultural specificity and uniqueness in cultural anthropology collided head-on with an international order that was responding to the Nazi Holocaust by creating new universal standards and abstract conceptions of humanity. During the Nuremberg trials of 1946, individual responsibility replaced collective state guilt and a new legal category was created, that of 'crimes against humanity', whose violation in any specific place or context constituted a violation against the whole of humanity. The United Nations was created in 1945 and promptly set about writing a list of those 30 rights which all the worlds' citizens should ideally hold *as individuals*, leading to the UN Declaration of Human Rights in 1948.

The idea of human rights was an old one, going back at least 2000 years to Cicero and Roman conceptions of 'natural rights' which all individuals held by virtue of being human. These ideas had been resuscitated in the western Enlightenment of the eighteenth century and in particular during the French and American Revolutions which threw off the yoke of monarchical rule. Central to the idea of human rights is the view that human nature is knowable and all humans share the same human nature. A humanitarian vision of rights built around an image of the 'essential human being' with basic needs and attributes overrides any cultural variations in practice. For the doctrine of human rights, the right to equality before the law regardless of race, religion or sex, applies whether a culture has traditionally upheld the principle of equality before the law or not.

Within the Kantian tradition, this universalism is underpinned by Reason and the capacity to abstract and generate general propositions using symbols in speech and writing. The ability to reason serves a double function-it is both what makes us human and is also the mechanism through which human rights are discovered. Not all humans reason with equal skill, accepts Margaret MacDonald (1984), a modern defender of the neo-Kantian paradigm, but we all have equal rights regardless, since we all belong to the category of 'reasoning human being'. For MacDonald (p. 32), natural rights are the universal condition for a good society. Human rights protect individual rights and facilitate the realization of human potential as they are constituted on the Kantian premise that 'to treat another human being as a person of intrinsic worth, an end in himself, is just to treat him in accordance with the moral law applicable to all rational beings on account of their having reason.'

In the early post World War II years, cultural anthropologists responded to the emergence of universal human rights by rejecting rationalism and abstract humanitarianism and reiterating the inherent worth of cultural variation and local specificity. Melville Herskovits, a student of Boas, penned the American Anthropological Association's statement on human rights in 1947, which urged the international order to respect cultural difference while promoting an alternative view of the individual and society . Where there was a conflict between rights and culture, say, where a political system denied the participation of a minority population, then the local political culture should be left by the international community to regulate itself. Herskovits stated that each society has 'underlying cultural values' which would force states to recognize their transgressions and limit discrimination. Cultures are politically sovereign and morally self-determining communities and it is not possible to cross cultural boundaries, even for humanitarian reasons.

The AAA statement advanced fundamental tenets of cultural relativism, for instance in its objection to the assumption of the autonomous and freely-acting individual within human rights discourse. In order to undermine the image of the isolated and rational actor of western liberalism, Herskovits (1947:539-541) began with the premise that the 'personality of the individual can develop only in terms of the culture of his society.' This has implications for human rights insofar as 'The individual realizes his personality through his culture, hence respect for individual differences entails respect for cultural differences.' In this way, Herskovits articulated a view of the culturally constructed personality type found in the 'culture-and-personality' school that had emerged from a group of Boas' students and included Ruth Benedict and Margaret Mead. By emphasizing how different cultures produce different personalities through socialization and child-rearing practices, then the universal human individual required by human rights starts to disappear into thin air. The AAA statement was

thus a communitarian riposte to the growing international emphasis on the universal rights of the individual, regardless of social, historical and cultural context. In this way, cultural anthropology positioned itself squarely in the tradition of Romantic and communitarian thinkers such as Jean-Jacques Rousseau and Johann Gottfried Herder. These thinkers contradicted French Enlightenment universalism by emphasizing the primitive, the exotic and remote, the uniqueness of each *volk* and its mystical attachment to land and tradition.

II.   Political Violence and State Repression

The views articulated by Herskovits held sway in US cultural anthropology for several decades, at least until the 1960s, when cracks began to appear in the cultural relativist edifice. New influences from Marxism and feminism challenged the organicist and culture-bound models of Boas, Herskovits and Benedict and instead developed analytical categories such as class and patriarchy which could be used comparatively and cross-culturally[1]. These new currents within the discipline also called for a different kind of political engagement with the world. Famously, the annual business meeting of the 1966 AAA meeting passed a resolution condemning human rights violations (including torture, genocide and use of napalm) in the war in Vietnam and urging all governments to agree on a peaceful settlement.

Although the proponents of the 1966 resolution were motivated more by socialist ideals than anything else, they used the language of human rights in order to denounce US foreign policy in Vietnam and this allowed them to appeal to mainstream liberals. This increasingly became the pattern-that human rights talk became the language of denunciation of abuses that united both the left and liberal center-left and allowed them to make universal statements on suffering across the globe that ruptured the confines of conservative Boasian relativism.

The emergence in anthropology of the language of denunciation of human rights abuses and US foreign policy was no where more evident than in 'America's backyard'-Central America. Throughout the twentieth century, the United States had intervened militarily and supported local dictators such as Nicaragua's Anastasio Somoza or Guatemala's Castillo Armas, who was installed by the Central Intelligence Agency during a coup in 1954. These military 'strong men' presided over some of the most unequal societies in the world, where racism towards indigenous peoples was endemic and where a small number of plantation-owning families utterly dominated the political economy of the country. Conditions of extreme deprivation for the majority led to massive levels of conflict in the region. Political violence was particularly acute in Guatemala, a country with a large indigenous majority and as one might expect, a large number of US anthropologists as well. In the late 1970s and early 1980s, a Marxist guerilla insurgency managed to win over a section of the Mayan rural poor and was met with one of the most vicious counter-insurgency policies the Americas has ever seen. In Guatemala's 36 year war, the military razed 440 villages to the ground in its scorched earth policy, killed up to 200000 mostly indigenous civilian non-combatants and made refugees of 1 million people.

In this context, anthropologists ignored cultural relativism and denounced the massive human rights violations and the role of US governments in supporting the successive military *juntas*. Anthropologists dropped the idea that 'underlying cultural values' would come to the rescue and check state repression. Indeed in the case of racism by *Ladinos*[2] towards Guatemala's Maya majority, 'underlying cultural values' seemed to be part of the problem. In their

denunciations of state violence, their target audience was clear-US public opinion-and so was their aim- to shift the direction of US foreign policy and end covert aid for violent and repressive regimes.

Throughout the 1980s, anthropologists documented the unprecedented wave of violence in publications of *America Watch*, *Cultural Survival* and the *New York Times*. Two Latin American anthropologists played a key initial role in documenting the actual violence and its consequences-Beatriz Manz (1988) author of *Refugees of a Hidden War* and Ricardo Falla (1992), who meticulously documented the massacres carried out by the Guatemalan army in *Massacres of the Jungle*. A group of US-based anthropologists responded to state terror against Mayan villagers in an edited volume *Harvest of Violence* (Robert Carmack, 1988), in a conscious attempt both to comprehend the utter devastation of the Mayan communities they knew well and to shape US public opinion and alter the direction of US foreign policy.

In his concluding chapter to *Harvest of Violence*, Richard Adams (1988:275) noted that 'Anthropologists have not been at the forefront in the study of violence, terror and war', but by the 1990s, the anthropology of political violence and human rights began to move center-stage. The style of documentation of abuses also began to change-there were fewer direct narrative accounts from victims, and anthropologists began to ask deeper questions of conflict and violence from more of an analytical distance. Researchers went beyond denunciations of violations aimed at public opinion to attempting to explain the causes, motivations, experiences and socio-cultural consequences of violence.

In Carol Smith's (1990) *Guatemalan Indians and the State, 1540 to 1988*, contributors attempted a social history of Guatemala over four centuries. This edited volume asserted that the relationship between Mayan Indians and the state has been the most important determinant of the Guatemalan social, political and economic order. Using mostly Marxist theories of domination and resistance, it was argued that Indians, far from being passive victims of the political and economic order, have shaped the very nature of the state through their violent and non-violent resistance. The human rights violations of the 1980s are contextualized and better understood when placed into this dialectical history of state-community relations. Carol Smith emphasized the structural nature of power and the ways in which the Guatemalan state became increasingly despotic and coercive as it failed to build a lasting infrastructure in rural Maya communities and thus to create legitimacy and some degree of ideological commitment.

The structural focus of Smith's account was complimented by subsequent studies which emphasized social memory, personal experience and subjectivity. In Linda Green's (1994) article 'Fear as a way of life' we get a sense of what a chronic state of fear actually feels like for Guatemalan Mayan women and the anthropologist who interviews them. Green (p. 230) documents not only the observable structures of Guatemalan political economy, but also the invisible experiences of the people of the village of Xe'caj in order to lend her voice 'on behalf of those who have witnessed and lived through the macabre.' The result is a highly personal and experiential account of a culture of fear and insecurity and a fine-tuned analysis of the embodiment of suffering among Mayan women. Wilson's (1995) monograph on the Q'eqchi', also focuses on subjectivity and violence, but deals more with collective representations of religious symbols rather than personal experience. Wilson attempts to understand the cultural consequences of the violence for indigenous culture by looking at how the military and the guerrillas struggled over indigenous symbols such as the mountain

spirits. He draws upon Foucault to understand the military's infrastructure of surveillance in Mayan communities and like Green, discusses the embodiment of violence by referring to the effect of war on indigenous masculinity.

In the first instance, then, anthropologists denounced the human rights violations carried out by the military in Guatemala, and as time moved on, they tried to explain the causes and consequences of the violence. They produced very different types of accounts, some structural and materialist, and others more personal and experiential, but all generally wrote from a position of opposition to the military and tacit or open support for the opposition. This unanimity was fractured by the publication of David Stoll's (1993) *Between Two Armies in the Ixil Triangle of Guatemala*, which advanced an avowedly revisionist account which challenged the widespread assumption held by many anthropologists and all human rights organizations that Mayan villagers actively supported the marxist guerrillas.

Instead of being stalwarts of the 'revolution', Stoll argues that Ixil Mayas were 'rebels against their will' having been caught between the two fires of the army and the insurgents. Instead, most Ixils practiced an active neutrality, which the guerrillas tried to lever them out of by provoking the army, who then attacked the villagers rather than the armed guerrillas. In this way, argues Stoll (p.301) the guerrillas were ultimately responsible for the state terror against villagers who 'were hammered by the army only after being placed on the anvil by the guerrilla.' Stoll's iconoclastic argument did not garner a great deal of support within anthropology, and it suffers from weaknesses in its selection of informants (most of whom lived in army-held towns) but its very existence represented a greater maturity in scholarly discussions of political violence in Guatemala. Crucially, it confronted the pro-guerrilla conformity of the Left, challenged those who purported to speak for 'the masses' and it opened up the debate about the causes of the Guatemalan conflict.

The discussion on political violence and state terror we have just seen in Guatemala has been replicated over the last 15 years in a number of other contexts around the world. The end of the Cold War and the collapse of the Soviet empire lead to rise in ethno-nationalism and an intensification of internal and civil wars with massive civilian casualties. There is now a vast literature on political violence within anthropology, and it represents a major focus of research for a significant number of anthropologists around the world.   Anthropological research has dealt thoroughly with communal violence in the Indian sub-continent [Das 1990, Kapferer 1988, Spencer 1990], as well as the rise in ethno-nationalist wars in the Balkans [Bringa, Bowman 1998, Cowan 2000, Denich 1994]. The collapse of the state in parts of Africa has prompted a number of studies, especially in countries with a long history of anthropological research such as Sierra Leone [Ferme 2001, Richards 1996].

This literature is now rich and varied; some studies are motivated by internationalism and humanitarian ideals, whereas others draw our attention to the cultural specificities in experiences of political violence, which are closer to the tradition of cultural anthropology. What all of this literature does is to draw our attention to the inter-connectedness of the world and the globalization of networks of terror and conflict. Political violence is never just the product of local circumstances, and is never just caught within the boundaries of one culture. Hegemonic states intervene clandestinely in the political conflicts of other states and provides arms to one side, or in cases like Angola, both sides of the conflict. The guns and weapons used in any conflict are provided by a global arms trade which is greater than the entire gross domestic product of the African continent. The poverty and social exclusion that foments

violence is produced in part by the global political economy. The ability of African or Latin American states to deliver services and build legitimacy is heavily constrained by a number of international factors including their subordinate position in a mobile and flexible world capitalist economy, the vagaries of development aid and the structural adjustment policies of the World Bank and International Monetary Fund.

III.   Globalization and Human Rights

The moral imperative must be to stop crimes against humanity wherever they occur.

Geoffrey Robertson (1999:410), international human rights lawyer.

At same time as the growing emphasis on political violence began to challenge the certainties of cultural relativism, world events interceded to further erode the position of culture and cultural relativism within the discipline. Since the mid 1990s, there has been a sea change in the terrain of global politics, a shift towards global justice that has shaped how anthropologists approach rights. At this juncture, new global justice institutions with universal jurisdiction have become a tangible reality. From the UN Declaration on Human Rights in 1948 until the early 1990s, international human rights law had been a marginal, even fanciful, topic with little purchase outside a small community of utopian academic lawyers. In the 1960s, 1970s and 1980s, the UN issued one convention after another, and these were signed by states that had no intention of ever implementing them. These conventions were diplomatic, paper exercises with no mechanisms of enforcement.

The end of the Cold War and the ethnocidal conflicts in the former Yugoslavia and Rwanda changed all that. For all the failings of the UN Security Council to protect civilians from slaughter in Rwanda and Bosnia, one ground-breaking initiative involved the setting up of two UN war crimes tribunals; one for the former Yugoslavia (ICTY, 1993) and one for Rwanda (ICTR, 1994). The conviction of Duško Tadíc in 1997 by the ICTY was the first successful prosecution for crimes against humanity by an international tribunal since the Nuremberg trials, some 50 years earlier. At the time of writing, the ICTY trial of Slobodan Miloševíc for genocide is underway, an historical precedent since he is the first head of state to be prosecuted for genocide by an international human rights tribunal.

In the late 1990s, there were number of other unexpected developments which give more credence to the idea of an international rights regime. Between 1990-2000, there were twice as many UN humanitarian missions as there had been in the entire 1948-1990 period. In many cases, these were justified on human rights grounds as in Kosovo and East Timor in 1999. In October 1998, General Augusto Pinochet was placed under house arrest by Scotland Yard while the Chief Justice and then the British Law Lords considered the request for extradition by the Spanish magistrate Balthasar Garzón. Pinochet was eventually released but not before a two important legal precedents had been created: the Spanish *Audiencia Nacional* court asserted that it had universal jurisdiction to try cases of genocide which had occurred to non-nationals outside of its territorial boundaries. In Britain, the Law Lords ruled that a head of state does not enjoy immunity for criminal actions such as torture that are outside the normal and legitimate state functions of a head of state. Finally, in Rome in 1998, 120 countries adopted the statute to set up an International Criminal Court that would be administered by the UN system and would have universal jurisdiction to try crimes against

humanity, genocide, war crimes and aggression.

The above discussion refers to developments in the human rights regime, but a more diffused rights talk has simultaneously expanded into other areas.   Long standing concerns over gender inequality became reconceptualized as 'women's human rights' at international conferences such as the UN Conference on Women at Beijing in 1995. In the world of economic development, key agencies such as the World Bank and government development ministries became converts to a 'rights based' approach to development. Amartya Sen's (1999:231) *Development as Freedom* has been hugely influential in the policy and academic world and Sen bases development primarily in ideas of freedom, but sees rights as a necessary supplement, and the book includes a significant discussion of human rights. Indigenous groups increasingly make land claims and political demands for self-determination with reference to rights charters such as the International Labor Organization's Convention 169 of 1989. Attempts to prevent discrimination on grounds of sexuality have been enshrined into a national Bill of Rights for the first time in the South African Constitution of 1996. With the expansion of rights beyond the narrow sphere of civil and political rights has come a proliferation in their manifestations, conceptualizations and implications.

At same time as these real world events made human rights more relevant to world affairs than even before, the literature on globalization gained ground in the social sciences and this had a profound impact on approaches to human rights within anthropology. Globalization theories, do appear to take us beyond the confines of a neo-romantic relativism and an unreflexive universalism. A central insight is that globalization is not the same as westernization or standardization, but involves a proliferation of diversity as well. The globalization of political values does not create uniformity (as universalism might have it) but may generate distinct political and social identities, and diverse legal and moral codes[3]. These are not created out of isolation as relativists would have it, but out of interaction and relationality. Thus, globalization does not obliterate the local or the particular in the steamrollering fashion of some brands of universalism, but actually presupposes it and engenders it. It is only possible to think 'locally' if one has the idea that the global exists, and vice versa.

Globalization theories challenge in turn the isolated fragmentation of relativism by asserting that the world is becoming more integrated instead of being composed of a mosaic of separate and distinct societies or cultures. This occurs through an ever more monopolized communication industry, the deregulation of financial capital, the movement of cultural images and icons across the world, the mass movements of people across huge distances, and finally the application of transnational juridical and political values-from long distance nationalism to human rights. Human rights may even be considered the global political value *par excellence* as human rights are being taken up by people who may have viewed it once as an alien framework. In my research on human rights organizations clustered in Braamfontein, Johannesburg, I never encountered African staff who gave even the slightest credence to the view that being black and African precluded them from appealing to international human rights charters (Wilson 2001). Indeed the language of the political transition in South Africa, from the Freedom Charter of 1955 to Nelson Mandela's election in 1994 demanded a shift of discourse from the unequal 'group rights' of apartheid towards egalitarian concepts of citizenship and human rights based on the individual.

Through what mechanisms does the globalization of political values such as human rights take place? Central to all globalization theories is an assurance of the demise of the nation-state, that we are entering a post-national era caused by the diminution of the state's regulatory capacities. The state is increasingly bypassed as the global comes into direct contact with the local; these levels enter into an unmediated relationship across great distances as both time and space are compressed. Globalization theories do not posit an inherently hierarchical or asymmetrical relationship between the global and the local, as did earlier theories of imperialism, colonialism, or the world system. Instead, globalization theories tend to place emphasis on non-hierarchically organized global structures, which are captured in metaphors such as the 'networks' of Ulf Hannerz (1992) or Michael Kearny's (1996) use of the rhizomic transnational communities of Deleuze and Guattari[4]. Such nodes and networks are 'postmodern' in their lack of boundaries and formal internal structures. In contradistinction to the situation under colonialism, persons, values, information, signs and commodities flow through them in all directions.

In this new historical juncture in the 1990s, when internal conflicts intensified, when global human rights institutions claimed an unprecedented authority and when the globalization literature came to shape anthropology, came a number of anthropological publications on human rights. Anthropologists responded differently than they had in 1940s, not with relativism and an emphasis on the importance of culture, nor with the universalist assumptions often found in Marxist and feminist approaches, but instead they wrote pieces that illustrated a cautious engagement with some of the main ideas of globalization theory and its implications for human rights.

The edited volume *Human Rights, Culture and Context: anthropological perspectives* (Wilson 1997) was the first book in which anthropologists directly addressed human rights talk and institutions themselves. Wilson's introduction asked what happens to local moral or political values within the models of globalization theory of long-distance mediation and communication. Political scientists had focused upon how human rights may extend their reach through international charters or national constitutions, but they had neglected to enquire how human rights are related to and interpreted in different ways in diverse contexts. This interconnectedness is what social scientists should be studying-the complex interactions between overlapping legal and normative codes, where rule-based orders are mutually influencing one another. Within globalization theory, it is still possible to ask micro-social research questions such a what are the local notions of justice and how do they relate to transnational codes of human rights? Under what conditions are global human rights appropriated, ignored, acquiesced to, embraced, implemented or resisted? Thus, globalization theories seem to be getting us somewhere, allowing us to problematize historical relationships between transnational and local levels, and at the same time go beyond the unsatisfactory confines of either an unquestioning universalism or a neo-romantic cultural relativism.

A number of the chapters in *Human Rights, Culture and Context* examined the concrete relationship between global human rights and the specific contexts in which they carried out fieldwork. Sally Engle Merry (1997) asserted that although human rights was originally a Western legal regime framed in the hegemonic categories of Western law, a close examination of the way it is used in an indigenous rights movement in Hawai'i reveals that this movement operates at three legal levels simultaneously: global human rights law, national law, and local Kanaka Maoli law. This is the process of legal globalization and

vernacularization: the deployment and refiguring of Western law in more plural terms, both global and local. Such transnational cultural appropriations are fundamentally creative and represent forms of resistance to global homogenization.

Legal vernacularization is part of a process of the emergence of new national identities and Merry's study details the appropriation and reinterpretation of international law by the Hawaiian Sovereignty Movement at the People's International Tribunal of Native Hawaiians in 1993. The Tribunal was constituted as a criminal trial, with the US government indicted on nine charges, and drew upon the symbolic power of law to recommend the return of Kanaka Maoli land and water rights, and political sovereignty for the Kanaka Maoli people. The Tribunal provided a legally plural framework in which to express the claims of an emergent nationalism, in that it drew together claims based upon notions of descent, culture and tradition, but also used the language of sovereignty, citizenship and constitutionalism. Merry concludes that law is a site of contestation, where the hegemony of state law may be undermined by the pluralising of law and the redefining of the legal subject.

Thomas Hylland Eriksen (1997) documented multicultural debates and practices in Mauritius in order to explore some of the contradictions between multiculturalist ideas and individual human rights. He argues that the dual origin of nationalism in Enlightenment and Romantic thought created the contradiction between the right to be equal and the right to be different, which has since been exacerbated by the increasing polyethnic character of states.   Eriksen asserts that all modern societies are now 'multicultural,' that 'multicultural politics' are universalistic in their operation, and that some versions of multiculturalism are compatible with human rights whereas others are not. Multiculturalism is universalistic in that differences between people are the result of closer relationships which engender comparability and similarity; that is, that the assertion of 'cultural uniqueness' implies a shared subscription to a global political discourse.

These points are illustrated in Mauritius by reference to conflicts around discrimination on the basis of religion in private schools and the application of state and customary law to divorce among Muslims. With regard to the place of customary Muslim family law in divorce, it became apparent that the disparity in perspective between younger and female, and older male Muslims belied any multiculturalist claim that 'cultures' (as bounded and unified) have a single set of discrete 'values'. Another multiculturalist paradox exists where collectivist notions of cultural identity conflict with the notions of personal autonomy inherent in human rights. In the present climate of movement and hybridity, one must also have the individual right not to have an ethnic identity. Eriksen cites the example of Mauritian socialist politicians who refused to register their ethnic identity (which entrenches parliamentary representation along ethnic lines) with the result that a white Mauritian of foreign birth was registered as a Hindu on the election rolls. For multiculturalism to coexist with individual human rights, Eriksen asserts that it must include a 'dialogic principle' in political communication, as well as being enmeshed in political and economic commonalities and shared meanings.

IV.   Human Rights, Neo-Colonialism and Empire

Despite its clear advantages over the universalism-relativism debate, the concept of 'globalization' has come under attack from a number of quarters. Globalization is not a

strong enough term for sociologist Susan Silbey (1997) to describe the types of interconnections between local sites and transnational institutions. There is not enough of a sense of the hierarchy of transnational centers which control the flow of finance capital, cultural images, and commodities. Instead, 'globalization' posits a kind of benign equivalence between the local and transnational which is very different from the sense of inequality and exploitation inherent in previous epochs of imperialism and colonialism.

For Silbey (1997), international social exchanges are better described as 'postmodern colonialism'. Transnational forces of economic restructuring and privatization are hegemonic, and in the end do lead to standardization and westernization. Silbey locates the place of legality in this new world order by drawing attention both to the ubiquity of law and its ideological claims to a transcendent Truth. Legal power is internal to the global market and is therefore a precondition to its functioning, as the 'global exchange of persons, capital and culture is managed through legal forms (p.209)'. Law is there to create and police the boundaries between the private and the public, between the economic and the political. Law and rights are ideological in their function, structuring a field of action so as to maintain a set of asymmetrical relationships. In the hands of many social scientists, argues Silbey, globalization is none other than the repackaged and anesthetized version of an old product: free market capitalism and legal liberalism. Although local practices and expressions of local identities can influence global practices, we cannot lose sight of the fact that nothing like an equal exchange is taking place: the relationship between the local and the global is one of domination and control by transnational centers.

Empire, by Hardt and Negri (2000), shares the dystopian vision of Silbey's brand of neo-Marxism and similarly asserts that state sovereignty is being replaced by an asymmetrical global system of domination and regulation. Yet Hardt and Negri's formulation of 'Empire' draws from the post-structuralism of Foucault and Deleuze and Guattari or order to distinguish itself from earlier theories of imperialism and colonialism. For them, Empire is not simply a taking over by one superpower (the United States) of the earlier extensions of state sovereignty by European colonial powers. Instead a new type of sovereignty is being created which is decentered, unbounded and deterritorialized, and which realizes itself through an array of institutions such as the United Nations and transnational non-governmental organizations.

Hardt and Negri place great emphasis on the juridical aspects of this deterritorialization of sovereignty. For them, human rights cannot be emancipatory since they are an integral part of a system of authority which established itself in a context of crisis and emergency and which justifies international policing operations in the name of peace and humanitarianism. Stated directly, human rights cannot be part of the solution to domination and oppression and war since they emerge from the global capitalist and universal value system which creates the conditions of war and suffering. Hardt and Negri (2000:18) make this clear when they write: 'What stands behind this intervention is not just a permanent state of emergency and exception, but a permanent state of emergency and exception justified by *the appeal to essential values of justice.* In other words, the right of the police is legitimated by universal values [their emphasis].'

Elements of Hardt and Negri's critique of western liberalism are useful for thinking about the global context of human rights and their place in the new international order since the end of the Cold War. Yet their analytical framework suffers from a number of fatal weaknesses

which should preclude its adoption *tout court*. Firstly, there is no single, integrated and unified global order that is unhindered by internal contradictions and fissures. National and supranational organisms are not 'united under a single logic of rule' (Hardt and Negri, p. xii). In contrast, we can see a multiplicity of human rights institutions and processes which are constituted according to different regimes and have diverse and sometimes incompatible trajectories. There are distinct sites of human rights conceptualization and implementation, from the UN war crimes tribunals for Yugoslavia and Rwanda, to national supreme courts to the Special Court for Sierra Leone, to the truth commission for East Timor. Reducing them to a single logic is only possible though great abstraction and simplification and at the expense of a thorough and detailed enquiry into their aims, social consequences and unintended consequences.

Secondly, *Empire*'s totalizing, holistic and organicist structuralism utterly denies any agency on the part of local actors and social movements in Asia, Latin America or Africa which are not workerist and revolutionary and instead seek to realize their claims for justice through the human rights institutions of the international order. Hardt and Negri (2000:14) state that the structural logic of Empire 'sweeps all actors within the order of the whole', fixing each local strategy within the global hierarchization of authority. There seems to be no place in this vision for the pluralistic kinds of strategies which social actors actually adopt in countries characterized by authoritarian rule. There also seems to be no understanding of how transnational conceptions of rights and sovereignty might play out differently due to local cultural and political circumstances. For instance, in Africa and Latin America, women's organizations have repeatedly challenged the patriarchal characteristics of domestic legislation by appealing to international human rights formulations of equality and justice[5].

Anne Griffiths (2001) documents this well in her consideration of the Unity Dow case in Botswana. Dow, a lawyer, mobilized human rights language in order to overturn the patriarchal rule in Botswana's Citizenship Act of 1984 which denied citizenship to the children of women who married foreigners but which did not deny the children of Botswanan men who had married non-nationals. She won her case in 1995 and overturned this normative piece of gender discrimination with the support of national and international feminist groups and by reference to international human rights charters which upheld the principle of equal treatment for women. As Griffiths (2001:120) concludes, 'Power is not confined to, or solely derived from, the formal legal settings in which it operates, but derives more generally from the broader domain of social life.' Understanding the complexity of that embedding of rights in social life seems to be one of the main components of anthropological perspectives on human rights, and one of the main components missing from Hardt and Negri's Gothic Left rendering of *Empire*.

   V.   Human Rights, Reconciliation and the State

   Without the UN and a host of other inter-governmental organization the nation-state
   would not be the global form of political ordering that it has become.
   Anthony Giddens (1985:291)

The assumption within globalization theories is that there is an unmediated encounter between transnational processes and specific local contexts. This view is susceptible to the criticism that principles of transnational law may be very different, functionally and

conceptually, from local social norms. Local and global values and practices may not encounter each other at all, or may do so only via intermediary structuring levels such as the state. The assumptions of globalization theory ask the transnational to do too much and are too general to describe the variety of individual and local responses to international human rights law. The over-generalizing nature of globalization theories exalt the transnational and its counterpart, civil society, instead of generating empirically-based theories of the concrete interactions between a number of stratified and unequal regulatory orders (i.e., not solely the 'global' and the 'local').

Further, the dichotomy between the 'global and local' is too triumphant about the demise of the nation-state. One thing all globalization scholars agree on is that we are entering a post-national context which represents a radical break with the past. Transnational processes are delinked from nation-states and generate challenges to their regulatory capacities and claims, eroding national sovereignty. State-centered approaches to politics and culture, hopelessly wedded to a previous transitory phase in world-historical terms, are now seen by the advocates of globalization theories as anachronistic and misconstrued. Yet as Anthony Giddens asserts in the quote above, supranational institutions such as the League of Nations and its successor the United Nations have contributed not too the weakening and demise of state sovereignty, but have instead reinforced and strengthened the power of the state.

In practical terms, the nation-state remains firmly in the picture as a key locus of sovereignty and a dominant and powerful array of institutions of social regulation.   Accepting too straightforwardly the claims of gobalist thinkers undermines our ability to comprehend how human rights both constitute and rely upon the power and authority of the state. There is a long and valuable tradition of theorizing state-local relations within legal anthropology that can help us to understand the new human rights functions within state institutions. The work of anthropologist Sally Falk Moore (1978, 1986, 1991) provides a useful point of departure, as she maintains a local and contextual perspective while keeping the state firmly within the scope of her analysis. In Moore's view, local law in Africa is the product of historical competition between local African power holders and central colonial rulers, each trying to maintain and expand their domains of control and regulation. Law is imposed upon 'semi-autonomous social fields' with uneven and indeterminate consequences. We must not over-estimate the power of law to exert its will, as the connection between native courts on Kilimanjaro and the British colonial high court was often 'nominal rather than operational' (1986:150). One might apply the same insights to the present relationships between local justice and transnational human rights in order to preserve a space of political agency for Africans.

Moore takes us away from a static view of the articulation of legal systems to examine the historical transformations of regulatory practices, and her work oscillates between small scale events (individual court cases) and large scale social processes such as colonialism, imperial rule and decolonization . Moore accepts that local law was profoundly transformed by colonialism, yet her more interactionist focus upon the Habermasian 'life world', and more specifically upon the kinship basis of Chagga society, means that she allows room for local strategizing in pursuit of greater political autonomy. She concludes in one essay (1991:125) that 'local law cases reflect the local history of African peoples rather than the history of the Europeans who ruled them.'

The application of Moore's legal anthropology to human rights questions would analyze how

adjudicative contexts are transformed over time by the social actions of individuals and collectivities within a wider context of state regulation and discipline. In any locale there are a variety of institutions and competing value orientations which have emerged via a long process of piecemeal aggregation, rupture, and upheaval and they continue to be transformed by social action. In order to understand the impact of human rights on conceptions of justice, the question to be answered is how social actors (encompassing both individuals and collectivities) have contested the direction of social change in the area of justice and what the effects of this are for state formation and the legitimation of new forms of authority. This is a legal anthropology of action, transformation, and interaction between legal orders in the wider context of state hegemonic projects.

In my own work on post-apartheid South Africa (Wilson 2001), this involves looking at how TRC Commissioners, magistrates, township court officials, Anglican ministers and other combine human rights talk, religious notions of redemption and reconciliation, and popular ideas of punishment and revenge in an effort to control the direction of social change, or what the French sociologist Alain Touraine (1995:219, 368) refers to as 'historicity'. Touraine defines historicity as a set of relations between the social actors who contest the bearing which social change takes. The struggle over historicity in the area of ethics in post-apartheid South Africa presents itself as a struggle over how to deal with the political crimes of the apartheid past and how to construct discontinuities with the past and in so doing to reconfigure legal authority in the present.

The advantage of Touraine's theoretical framework is that it moves us away from static views of 'the global order' towards an examination of the remarkably rapid movement in the production of legal and moral norms. This rapid change in social values is symptomatic of the rise of modernity:

> Modernity rejects the idea of society. It destroys it and replaces it with that of social change…The reason why…I constantly focus my remarks on the idea of *historicity*, is that social life can no longer be described as a social system whose values, norms and forms of organization are established and defended by the State and other agencies of social control, and that it must be understood as action and movement. Social life is therefore a set of social relations between the actors of social change [emphasis in original].

Applying this to South Africa, we can see that legal institutions, be they township assemblies, magistrates' courts or human rights commissions, are simultaneously subjected to *centralizing* and *pluralizing* forms of social action and knowledge production. Modern states continually attempt to rationalize and institutionalize their legal dominion, and yet encounter resistance from strategizing social actors.   These countervailing tendencies emanating from informal justice and popular legal consciousness are a contradiction at heart of modernity. Weber noted in his analysis of the emergence of legal authority that the character of national law is: Structured by the competition between central rulers trying to maintain the maximum of power over their subjects and the local power-holders trying to carve out their own domains of arbitrary power over their dependants and limit the central government's claims on them[6].

At different historical moments, one set of strategies may exercise dominance over another and become hegemonic. In the mid 1980s, as the internal anti-apartheid movement led by the United Democratic Front reached its crescendo and 'popular courts' punitively enforced counter-hegemonic values and political strategies, the dominant tendencies in the area of

justice were fragmenting, decentering and pluralizing.

Since the post-apartheid elections of 1994, the main direction of legal change has been towards greater centralization as state officials attempt to restore the legitimacy of state legal institutions. Government officials and members of the new political elite have sought to integrate certain non-state structures such as armed units of the liberation movements and Inkatha Freedom Party into the criminal justice system, and exclude others such as township courts. Part of my general thesis about the South African Truth and Reconciliation Commission is that it represented one effort on the part of the new government to formulate a moral leadership and to establish a unified and uncontested administrative authority. This is a common strategy of regimes emerging from authoritarianism, which seek to unify a fragmented legal structure inherited from the *ancien régime*. The notion of 'reconciliation' found in human rights talk is the discursive lynchpin in the centralizing project of post-apartheid state governance. Human rights talk performs a vital hegemonic role in the democratizing countries of Africa and Latin America; one which compels the population away from punitive retribution by characterizing it as illegitimate 'mob justice'.

The new values of a rights culture are formulated primarily by intellectuals and lawyers representing a new political elite which has sought to superimpose them upon a number of semi-autonomous social fields. These values engender new discursive and institutional sites of struggle and their impact is uneven and emergent, raising questions for research such as, Has the human rights project of state institutions altered the terms of the debate on post-authoritarian justice, and, if so, how? How can we more precisely conceptualize the specific continuities and discontinuities between local, state and transnational formulations of justice? In what areas of social life are human rights ideas and practices resisted, when are they appropriated, and when are they simply ignored?

VI. New Directions in the Anthropology of Human Rights

The anthropology of human rights is still an area of political and legal anthropology which is in its infancy. More empirical ethnographic studies and better theorization are needed of human rights talk and rights institutions and their practices. A number of anthropologists have contributed effectively to the interdisciplinary debate on truth commissions and institutions designed to explore questions of social memory and history-making after authoritarianism and massive human rights violations (Borneman 1997, Buur 1999, Das 2001, Ross 2001, Wilson 2001). Yet there are new areas of global interest which have received less coverage, such as the large scale, UN-led humanitarian interventions in Sierra Leone and East Timor, and the UN war crimes tribunals for the former Yugoslavia and Rwanda.

Anthropologists interested in human rights also need to respond to the intellectual and political challenges raised by the aftermath of September 11th, 2001. The subsequent brutalization and militarization of global politics means that human rights are in a more difficult and demanding position in international affairs than during the era of the 'new humanitarianism' of 1991-2001. It seems evident that at one level there has been an attempt at a 'securitization of rights', in the sense of a subordination of human rights to a global security regime. Evidence for this comes in the withdrawal of the US from plans to establish an International Criminal Court (ICC) in 2002 that acts as the world's first permanent war

crimes tribunal and exercises universal jurisdiction for genocide, aggression, crimes against humanity and war crimes. The Bush administration has stated in 2002 that it will not recognize the jurisdiction of the ICC nor submit to any of its orders.

In this new international security regime, individuals have rights, but only so long as they operate within the rules of the game. Once they stray outside the boundaries of acceptable international practice, then their rights may be deprived and they may be placed in inhumane conditions that violate international standards of due process, fair procedure and treatment, and full rights to legal representation. The rights of the combatants captured in Afghanistan and interned in Camp X-Ray at the US naval base in Guantanamo Bay, Cuba, were clearly violated on a number of accounts, according to a report of the International Committee of the Red Cross. These are individuals who, if guilty of the crimes of which they have still not been formally charged, should engender little or no political sympathy on our part. Regardless of this, international treaties must be respected and the civil liberties of prisoners must be ensured so that the principles of open societies which are said to motivate the war on terror are not themselves sacrificed in that war. That is, they should be protected as a precondition for any credible claim to be an open and liberal society.

In this context, human rights emerge, as they have done in different historical epochs, as contrary to the aims of international security regimes, and as one way of articulating opposition to empires old or new which seek to curtail civil liberties. As always in this short but rapidly-changing history of relationship between anthropology and human rights, the new global context of human rights requires anthropological theory, ethnographic research and a renewed political engagement with the world.

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Endnotes

[1] See for instance Wolf (1969) and Worseley (1956).

[2] Individuals who claim Hispanic descent.

[3] See Friedman 1992, 2002 on the relationship between global processes and local identity and cultural diversity.

[4] See Gledhill 1997 for a useful discussion of Kearny and globalisation.

[5] On Latin American women's human rights organizations see Fisher 19XX and Zur 19XX.

[6] Cited in Humphreys 1985.