

The Human Rights Project and the Limits of Cosmopolitan Rights

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This essay argues for a critical reconsideration of cosmopolitan human rights and of the post-Cold War Human Rights Project. It begins by contextualizing cosmopolitan rights in their historical and ideological context, showing that they are deeply complicit in a broader regime of neoliberal global governance, helping to justify and to depoliticize new modalities of coercive conditionality that characterize that regime. It shows how specific features of cosmopolitan rights contribute directly to this form of indirect rule and opines that present indifference or hostility toward human rights can and should be understood in part as a product of this complicity and of the wider failures of neoliberal global governance. The essay concludes with some reflections on the study of backlash against human rights amidst the real threat of rising ethno-nationalism and fascistic politics.

Introduction

Over the past 30 years, human rights discourse has become the normative *lingua franca* of global ethics and politics. New rights instruments have proliferated and rights NGOs have multiplied. International prosecutions for extreme human rights violations have become routine, and the doctrine of universal jurisdiction has become an accepted principle of international law. Humanitarianism has become a core modality of global politics and humanitarian intervention commonplace. International negotiations on nearly every topic are saturated with rights talk, and human rights condition aid, trade, development, and diplomacy. In short, the past decades have been what Mark Goodale, following Louis Henkin, has called an Age of Rights.¹

Recently, however, many scholars and political commentators have become increasingly worried that human rights may have crossed their apogee—that the “rise and rise” of human rights² may finally have come to an end.³ While this growing anxiety about

¹ Mark Goodale, *Reinventing Human Rights* (Stanford, CA: Stanford University Press, 2022), 51.

² The phrase belongs to Kirsten Sellars, *The Rise and Rise of Human Rights* (Gloucestershire, UK: Sutton, 2002).

³ It's worth noting that “the end of human rights,” much like the wolf in the fairytale, has often been previously announced – see, e.g., David Rieff, “The Precarious Triumph of Human Rights,” *The New York Times Magazine*, August 8 1999; Stephen Hopgood, “Human Rights: Past Their Sell-by Date,”

a backlash against human rights has numerous sources, the threat is personified in the figure of the populist strongman spouting racist and nativist ideologies and hawking irresponsible economic populism. A central component of this alarmingly fascistic authoritarian nationalism is the rejection of “liberal internationalism,” which I will roughly define as a cluster of related norms around multilateralism, human rights, liberal democracy, and economic integration.⁴ As these strongmen quit treaties, crack down on civil society, denounce international conventions, practice election denialism and interference, propose withdrawal from multilateral military and economic arrangements, and promise to “put [country] first or make [country] great again,” their actions seem to be hastening the liberal world order toward collapse.⁵

The understandable and unsurprising response is often a reflexive defense of existing norms, ideas, and practices of human rights and other elements of liberal internationalism. I shall argue that this reflex should be resisted. Hand-wringing about the end of liberal internationalism ignores that it was always mostly a myth⁶ while at the same time perpetuating the myth by postponing any reckoning with the failures and contradictions of the neoliberal global governance regime—failures that are fueling the emergent fascism liberals profess to abhor.

In this essay,⁷ I focus specifically on the idea and practice of human rights within that regime, arguing that these rights are much more problematic, practically and theoretically, than their proponents recognize. To show this requires locating contemporary human rights in their historical and ideological context.

The human rights project

The “human rights project” is a term of art that is used promiscuously to refer to a broad constellation of actors, ideas, institutions, and practices related to international human rights. I shall use it more precisely to name the singular political project around international human rights that has dominated the global intellectual and geopolitical landscapes since around 1990. For me, the Human Rights Project (HRP) specifies the global advancement of an international legal regime of human rights built on liberal economic, political, and philosophical foundations, anchored in UN and regional systems of treaties, councils, tribunals, and monitoring mechanisms, and backed by the militarized power of liberal democratic capitalist states and the soft power of those states and their corporate, philanthropic, and international NGO partners. The HRP is integral to a wider regime of global governance that promotes liberal democratization, “good” governance, and the “rule of law” against the backdrop of neoliberal economic globalization. This Project was hugely ambitious: it aspired to create a new global constitutional order centered on

Opendemocracy.net (2013); Eric Posner, *The Twilight of International Human Rights Law* (New York: Oxford University Press, 2014). It’s also worth noting that the moral of that story is not that there was no wolf.

⁴ See Hans Kundnani, “What Is the Liberal International Order?,” in *Liberal International Order Project*, no. 17 (*April*), Liberal International Order Project (Washington, DC: The German Marshall Fund of the United States, 2017).

⁵ I shall use “liberal internationalism” and “liberal world order” interchangeably.

⁶ <https://theglobal.blog/2019/04/16/the-end-of-a-liberal-international-order-that-never-existed/>

⁷ This essay draws ideas and material from my book manuscript in progress, which is tentatively entitled *The Enigma of Human Rights*.

protecting rights-bearing individuals from violations.⁸ It has also been hugely successful — at least until very recently.

Human rights have been configured as *cosmopolitan* rights in and through the HRP. This claim assumes that human rights can be differently configured and also that the familiar cosmopolitan configuration is specific to, and somehow a product of, their interpolation into the HRP. To see this requires locating that Project within its historical and ideological context as part of the larger political project of neoliberal global governance that emerged following the end of the Cold War. Human rights played an important part in a new agenda for global governance; they were, in fact, an important instrumentality of that agenda. Put differently, the HRP had its own logic and function within the evolving liberal international order that shaped both the idea and the practice of human rights.

This claim may seem to be in tension with recent revisionist historical scholarship identifying the international human rights movement of the 1970s as the engine of human rights ascendance in world politics. I can't properly engage with that scholarship here, but my argument need not contradict it. My focus is simply different. While Moyn, Hopgood, and others are primarily interested in the history of the movement itself, my concern is with the role that human rights came to play in global governance.⁹ This is a story not of the 1970s but of the 1990s. That said, the international human rights movement's program dovetailed neatly with these developments and shaped them in important ways: NGO discourse and advocacy provided the HRP with crucial support and legitimacy. For the most part, the movement was willingly insinuated into the HRP and the wider project of global governance of which it is a part.

One quarrel I do have with the revisionists is that they treat the HRP as an outgrowth of the movement's advocacy efforts, both the product and the fulfilment of its dreams of a "transcendent moral authority" in world politics. Although human rights do constitute a transcendent moral authority within the neoliberal global governance regime, to depict the creation of this authority as the outgrowth or product of the international human rights movement misconstrues the political nature and function of the Project within the broader architecture and ideology of that regime. International human rights were *remade* in this conjuncture after the Cold War to do specific work, and this remaking profoundly shaped their conceptualization and operationalization.¹⁰

The 1990s was an era of indisputable American hegemony. The United States was the world's predominant military, economic, and cultural power, and that status engendered global ideological dominance.¹¹ A US-led coalition of liberal democratic

⁸ Stephen Hopgood, Jack Snyder, and Leslie Vinjamuri, "Introduction: Human Rights Past, Present, and Future," in *Human Rights Futures*, ed. Stephen Hopgood, Jack Snyder, and Leslie Vinjamuri (Cambridge: Cambridge University Press, 2017), 8.

⁹ The most influential revisionist accounts are Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap (Harvard), 2010). and Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013).

¹⁰ The focus on NGOs also leads to the neglect of grassroots and more radical human rights activity—especially around economic rights and justice and especially in the global South (see, e.g., Paul Nelson and Ellen Dorsey, "New Rights Advocacy in a Global Public Domain," *European Journal of International Relations* 13, no. 2 (2007); Jackie Smith, *Social Movements for Global Democracy* (Baltimore: Johns Hopkins University Press, 2008). This leads to problems for Moyn; see Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Harvard University Press, 2018; cf. Michael Goodhart, "Not Enough: Human Rights in an Unequal World. By Samuel Moyn. Cambridge, MA: Harvard University Press, 2018. 296p. \$29.95 Cloth," *Perspectives on Politics* 16, no. 4 (2018).

¹¹ By ideology I simply mean a constellation of ideas, values, and beliefs that provides explanations and justifications for organized political action and an interpretive framework for making sense of the

capitalist states used this dominance to inaugurate a three-pronged agenda for global governance that would use norms, policies, and institutions to spread liberal democracy, expand membership and participation in the emergent liberal international system, and construct an “open and inclusive” global economy. This program was a self-conscious attempt to operationalize a cosmopolitan worldview and was informed by three specifically neo-Kantian theories: democratic peace, liberal institutionalism, and economic interdependence theory.¹² Once regarded as wildly utopian, these theories appeared newly plausible after 1989.¹³

Ideas shape institutions and orders most effectively when they are shared within strong epistemic communities and when they are introduced in the wake of exogenous shocks.¹⁴ As Richard Rosecrance observes, there was an unusual degree of ideological alignment within the dominant coalition during this period.¹⁵ The US shared a universalist vision with its allies; it was willing to use its power to promote that vision; and, it was unusually unconstrained in doing so.¹⁶ The previous two decades had seen a revivification of Kantian ethics in the influential scholarship of Rawls and Habermas (to which I return later on). Liberal institutionalism was challenging the dominance of realism in International Relations. “Free market” liberalism was ascendent in politics, economics, and popular culture following the Thatcher and Reagan revolutions.

So, when the abrupt end of over four decades of superpower rivalry suddenly upended familiar ways of thinking, politicians and scholars were left grasping for new ideas to help them get hold of the changes remaking the world around them. Neo-Kantian liberalism, in the form of neoliberal cosmopolitanism, provided a handle – it was, in Milton Friedman’s terms, an idea “lying around” waiting to be picked up by scholars, pundits, and policy-makers in urgent need of new ways of thinking.¹⁷ With this opening, “philosophical arguments in favor of universalism... returned with a vengeance, bringing with them renewed advocacy of cosmopolitanism.”¹⁸ A cosmopolitan analytic framework

world and helping to organize and direct political activity within it Michael Goodhart, *Injustice: Political Theory for the Real World*. (New York: Oxford University Press, 2018): 16.

¹² John J Mearsheimer, “Bound to Fail: The Rise and Fall of the Liberal International Order,” *International security* 43, no. 4 (2019): 22-3.. Mearsheimer does not mention Kant in his discussion of these three theories; that insertion is mine. See Immanuel Kant, *Kant's Political Writings*, ed. Hans Reiss, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1970).

¹³ Joseph S Nye, “What New World Order?,” *Foreign Affairs* 71, no. 2 (1992).

¹⁴ Judith Goldstein and Robert O Keohane, “Ideas and Foreign Policy: An Analytical Framework,” in *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca, NY: Cornell University Press, 2019), 14ff.

¹⁵ Richard Rosecrance, “A New Concert of Powers,” *Foreign Aff.* 71, no. 2 (1991).

¹⁶ David C. Hendrickson, “The Renovation of American Foreign Policy,” *ibid.*

¹⁷ Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1982), ix. Friedman famously wrote that “Only a crisis—actual or perceived—produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around.” See also Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (Cambridge: Cambridge University Press, 2002). and Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Metropolitan Books (Henry Holt and Company), 2007) on the uptake of liberal ideas lying around at significant historical junctures.

¹⁸ Robbins differentiates between an “older” neo-Kantian cosmopolitanism and new tendrils of that doctrine that germinated in the Cold War’s rapid thaw. In describing these offshoots, nourished by the new (or newly salient) experiences of mobility, hybridity, uprootedness, and internationalism engendered by globalization, Malcomson coins the phrase “actually existing cosmopolitanism.” I focus on the older neo-Kantian strain because it was the dominant ideology of global governance in the 1990s, the *actually existing cosmopolitanism* of the liberal international order. See Scott L. Malcomson,

provided a way to make sense of this new phase of globalization,¹⁹ and politicians and scholars ran with it. This new-old idea provided a congenial worldview for an era of purported consensus and cooperation, one that often blurred the distinctions between explanatory and normative argument. Political and economic liberalization would encourage peace and prosperity; peace and prosperity would in turn create global conditions conducive to human rights and the pursuit of justice. International human rights guarantees and the rule of law would backstop liberal democracy and ensure the smooth functioning of an integrated global economy.

As Pheng Cheah has astutely observed, this revived neo-Kantian cosmopolitanism features an innovative upgrade: in the place of universal Reason, it substitutes an empirical account of “contemporary globalization and its effects” as the driving force of history and progress.²⁰ Globalizing processes, both past and present, are seen as objective embodiments of different forms of normative, non-ethnocentric cosmopolitanism because they rearticulate, radically transform, and even explode the boundaries of regional and national consciousness and local ethnic identities.²¹ Globalization is thus said to engender a sort of “universal normative consciousness.”²²

As Cheah notes, this reformulation makes cosmopolitanism more palatable for a purportedly post-colonial world, seemingly refashioning it as a de-colonial force. The reformulation also renders globalization’s material processes and outcomes impervious to critical scrutiny by making them definitional of cosmopolitanism itself. As one of the conditions of possibility of cosmopolitanism, neoliberal globalization cannot readily be subjected to critique within a cosmopolitan framework; it is effectively naturalized (hypostatized) in this new ideological formation. The ideological dominance of this reformulated cosmopolitanism helps to explain why mainstream left parties across the OECD accepted neoliberal economic orthodoxy and embraced “third way” programs that were difficult to differentiate from those of their rivals on the right.²³ “This shift and its consequences have been crucial to the rise of a nativist, populist right and to the broader problems facing democracy today in Western and Eastern Europe, as well as other parts of the world.”²⁴ Thus were the seeds of today’s backlash sown.

“The Varieties of Cosmopolitan Experience,” in *Cosmopolitics: Thinking and Feeling Beyond the Nation*, ed. Pheng Cheah and Bruce Robbins (U of Minnesota Press, 1998).

¹⁹ Pheng Cheah, “Given Culture: Rethinking Cosmopolitical Freedom in Transnationalism,” *ibid.*, 291.

²⁰ *Inhuman Conditions* (Harvard University Press, 2009), 18-9.

²¹ *Ibid.*, 18.

²² *Ibid.*. Kant regards international commerce as a form of sociability among states that emerges thanks to the stability provided by a world federation of peace-loving republics. The objective historical tendency of international peace and commerce toward world federation produces universal values and cultural dispositions; the empirical processes of commerce and pacification generate a “cosmopolitical culture [that] is a universally normative ideal because it is an asymptotic historical approximation of the universal moral community, the noumenal realm of human freedom that is no longer bound by deterministic laws of nature.” Cheah, “Given Culture,” 290-1.

²³ See Stephanie L Mudge, *Leftism Reinvented: Western Parties from Socialism to Neoliberalism* (Cambridge, MA: Harvard University Press, 2018).

²⁴ Sheri Berman and Maria Snegovaya, “Populism and the Decline of Social Democracy,” *Journal of Democracy* 30, no. 1 (2019): 6. I return to this point below.

Cosmopolitan human rights in neoliberal global governance

A new conception of human rights was formed through this emergent system of global governance and played a specific and quite important role in its justification. Any system of rule requires justification—some public, accessible, and persuasive account of its legitimacy.²⁵ Cosmopolitan human rights provided such an account for the new liberal international order in the form of what Samuel Moyn memorably called “a politics that [works] precisely by claiming to transcend politics.”²⁶ From the creation of ad-hoc tribunals and the eventual establishment of the International Criminal Court (ICC) to the new conditionality of aid, trade, and development policy and the radical expansion of militarized interventions, human rights provided an “apolitical” rationale for intrusion in states’ domestic affairs by the “international community.”²⁷

Rather than world government, this was rule through disciplinary regimes that reached deep into the economic, political, and social life of states. As Peter Gowan argues, “any form of liberal cosmopolitan project for a new world order requires the subordination of all states to some form of supra-state planetary authority.”²⁸ The rebooted Kantian cosmopolitanism I’m describing facilitates this subordination by naturalizing both the material processes of globalization and the cosmopolitan ethic it purportedly produces, creating an ideology that suited the economic and political proclivities of the new hegemon.²⁹ The genius of neoliberal global governance was to create disciplinary regimes—international financial and military arrangements, aid and trade restrictions—that were justified in terms of human rights and that allowed the United States largely to avoid coercion and to rule indirectly.³⁰

²⁵ I mean empirically persuasive: the account must actually persuade. I don’t mean “persuasive” in the way that scholars in some disciplines might use that term to refer to a rational, coherent, or well-argued account.

²⁶ Moyn, *The Last Utopia*, 137. Moyn has argued that the contemporary human rights movement originated in a kind of anti-politics. He attributes the moral, apolitical character of human rights discourse in the 1970s to the influence of Soviet dissidents, who sought a non-ideological basis for their critique of an oppressive regime during the Cold War, and of Latin American activists, who similarly hoped to win broader sympathy for their cause with appeals that emphasized the injustice of governmental repression. This moralistic tone, he notes, resonated with the Christian morality of Amnesty International, then under the leadership of Peter Benenson (*ibid.*, 129-48). In other words, oppositional movements adopted human rights discourse and framing specifically because they offered an alternative to political channels of dissent, replacing the politics of the state with a morality for the globe (*ibid.*, 43).

²⁷ The intervention-justifying character of human rights is central to several important theories of the nature and content of human rights—so-called “political” theories. See John Rawls, *The Law of Peoples; With "The Idea of Public Reason Revisited"* (Cambridge, MA: Harvard University Press, 1999); Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); Joseph Raz, “Human Rights without Foundations,” in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010).

²⁸ Peter S. Gowan, “Neoliberal Cosmopolitanism,” *New Left Review* 11, no. September / October (2001): 83.

²⁹ Human rights had been similarly configured in the late 18th- and 19th-centuries, during the previous era of cosmopolitan ascendancy.

³⁰ Gowan, “Neoliberal Cosmopolitanism.” As Michael Ignatieff vividly put it, “The United Nations lay dozing like a dog before the fire, happy to ignore Saddam [Hussein’s invasion of Kuwait in 1990], until an American president seized it by the scruff of the neck and made it bark” (quoted in Amy Bartholomew and Jennifer Breakspear, “Human Rights as Swords of Empire?,” *Socialist Register* 40 (2004): 127. Mixing the metaphor, Ignatieff continues: “Multilateral solutions to the world’s problems are all very well, but they have no teeth unless America bares its fangs The 21st century imperium is a new invention in the annals of political science, an empire lite, a global hegemony whose grace

As embodiments of the new cosmopolitan ethos produced by inexorable material processes of globalization, human rights norms could be considered universal, neutral, and impartial and their enforcement consensual and apolitical, transmogrifying the politics of neoliberalism into a kind of benign managerialism. Indirect rule is crystallized in the seemingly anodyne discourse of “good governance,”³¹ which creates new forms of coercive conditionality³² that, as Gowan explains, subordinate sovereignty to robust international oversight and regulation.³³ Good governance notions like transparency, rule of law, free and fair elections, and anti-corruption were used to promote quite specific policy outcomes, including in the economic domain.³⁴

Human rights had to be practically and ideologically *reconfigured* to do this justificatory work. The Universal Declaration of Human Rights (UDHR) and the UN Charter did not set up a system of coercive conditionality, nor did they establish the transcendent moral authority of human rights.³⁵ The UDHR eschewed philosophical grounding,³⁶ enumerating a list of rights that, while broadly liberal in orientation, were articulated independently of any philosophical foundation and were in some ways mildly challenged liberal orthodoxy.³⁷ The machinery of human rights was part of a larger UN system that enshrined state sovereignty, self-determination, and non-interference as pillars of the post-War order. Human rights worked through diplomacy—that is, they were subjects of debate and negotiation among UN member states.³⁸

Within the HRP, human rights were shaped into a particular and distinctive political form. They are substantively *universal*: the same rights apply to everyone, everywhere, in broadly the same way. The 1993 Vienna Declaration proclaimed that the universality of human rights is “beyond question.”³⁹ Cosmopolitan rights are also understood as *moral* rights; their normativity is categorical and provides everyone with valid and binding reasons for action and restraint. These reasons trump political or cultural

notes are free markets, human rights and democracy, enforced by the most awesome military power the world has ever known” (quoted in *ibid.*).

³¹ Gowan, “Neoliberal Cosmopolitanism,” 80.

³² Ved P. Nanda, “The ‘Good Governance’ Concept Revisited,” *The ANNALS of the American Academy of Political and Social Science* 603, no. 1 (2006).

³³ Gowan, “Neoliberal Cosmopolitanism,” 79.

³⁴ Nanda, “The ‘Good Governance’ Concept Revisited”; see also Thomas G Weiss, “Governance, Good Governance and Global Governance: Conceptual and Actual Challenges,” *Third World Quarterly* 21, no. 5 (2000).

³⁵ This is to say nothing of the many other uses of human rights that predated the UDHR.

³⁶ Standard histories treat this as a pragmatic requirement of achieving consensus on the Declaration itself; see Jacques Maritain, *The Rights of Man and Natural Law* (London: Centenary Press (1944) for the source of this notion.

³⁷ Scholars continue to debate this originary moment of the UDHR, as if getting the story “right” might somehow resolve controversies about what human rights are, what they mean, and what they do *now*.

³⁸ For a good discussion of how this worked, often in surprising ways, see Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge: Cambridge University Press, 2016).

³⁹ UN General Assembly, “Vienna Declaration and Programme of Action,” (New York: The United Nations, 1993). Of course, the universality of rights was and remains in profound question; the Declaration did little to quiet the roiling “Asian values” debate at the time, and it’s arguable that human rights became more imperialistic in the era of humanitarian intervention than they had been during the Cold War (see, e.g., Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (New York: Routledge-Cavendish, 2007). My point is about the role Vienna played in constructing the cosmopolitan ideology of human rights at the core of the HRP.

tradition. Universality and morality work hand in glove to construct a cosmopolitan international community whose authority supersedes politics. As Willy Moka-Mubelo describes this community, it is “based on the conviction that all human beings are members of a community of fate and they share common human values that transcend the limits of nation-states. These values cannot be limited by any political power.”⁴⁰

Ideologically, cosmopolitan rights are *liberal*: they are the rights of individuals conceived as autonomous rational agents. Civil, political, and security rights are core rights, negative “freedoms from” rather than “freedoms to.” Social and economic rights are merely aspirational—with the inexplicable exception of property rights, which are expansive and sacrosanct. As aspirational rights, they are left for states to address through their own domestic political processes, so long as those processes don’t interfere with the workings of the global economy. Cosmopolitan human rights have a *juridical* social form. They are articulated in treaties, enshrined in international and domestic law, monitored and enforced through quasi-judicial international mechanisms, and so on. Finally, cosmopolitan rights are *international* in scope; they are matters for states to address, although failure to respect civil and political rights in particular becomes a matter of “international concern” sometimes warranting militarized intervention.⁴¹

Human rights configured in this way are *cosmopolitan* in two tightly related senses. First, they closely approximate the international ideal articulated by Kant three centuries ago: a liberal framework for peaceful and prosperous interactions among sovereign states.⁴² Second, they are cosmopolitan in that a reformulated version of that ideal animates liberal thinking about global governance (the democratic peace, liberal institutionalism, economic interdependence); cosmopolitan rights are rights configured to support and advance this governance project.⁴³ To elaborate: institutions of neoliberal global governance claim merely to protect and promote human rights. Understanding human rights as universal moral rights that transcend politics renders the new disciplinary structures of indirect rule rational and apolitical, requirements of a new era of material global interdependence—and its associated ethos. In this way, self-determination is reconciled with interventionism, and democracy with conditionality, by making respect for human rights and other practices of good governance the basis on which the international community grants the license of sovereignty.⁴⁴ Rights violations can trigger militarized intervention, while rights promotion justifies conditionality in aid and trade deals, political reform, development programs, and the like.

⁴⁰ Willy Moka-Mubelo, “A Cosmopolitan Human Rights Regime,” in *Reconciling Law and Morality in Human Rights Discourse* (Springer, 2017), 169; cf. Robert Fine, “Cosmopolitanism and Human Rights: Radicalism in a Global Age,” *Metaphilosophy* 40, no. 1 (2009): 8.

⁴¹ E.g., Beitz, *The Idea of Human Rights*; Joseph Raz, “Human Rights in the Emerging World Order,” *Transnational Legal Theory* 1, no. 1 (2010); Andrea Sangiovanni, *Humanity without Dignity: Moral Equality, Respect, and Human Rights* (Cambridge, MA: Harvard University Press, 2017).

⁴² Kant, *Kant's Political Writings*.

⁴³ So much so, I would argue, that cosmopolitanism and liberal internationalism have become nearly synonymous.

⁴⁴ This is a view shared by those who endorse and who criticize this conditionality: compare Gowan, “Neoliberal Cosmopolitanism,” 80; Fernando R. Tesón, “The Liberal Case for Humanitarian Intervention,” in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J.L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003); Rawls, *The Law of Peoples*.

The normalization of cosmopolitan rights

That cosmopolitan human rights are so deeply embedded in the ideology and practices of liberal internationalism from the 1990s onwards goes a long way to explain the reflexive defense of the liberal world order by human rights advocates in the face of mounting challenges to its authority and legitimacy. We can, however, go even further: over the past 30 years, cosmopolitan rights have been conflated with human rights, so that for many observers—proponents and critics alike—cosmopolitan rights are identical with, they define, human rights.

Jack Snyder recently observed that most human rights practice developed in the post-Cold War context, “where it was assumed that cosmopolitan liberalism had become the only game in town.” Much the same thing can be said about human rights scholarship: academic interest in the topic only really took off in the mid to late 1990s, by which time the HRP was in full swing. Neo-Kantianism was in vogue, as we have seen, and neoliberalism was politically ascendent and virtually unchallenged in those early, euphoric days of the End of History.⁴⁵ So, when scholars turned our attention to human rights, the HRP was the obvious, and in many ways appropriate, object of study—especially in those empirically-oriented disciplines (law, political science, anthropology) that were first to engage the subject.

Theorists and philosophers likewise embraced the cosmopolitan conception of human rights as something like orthodoxy and did so, in a sense, without realizing it. What I mean is that in the particular historical and ideological moment when theorizing human rights suddenly became urgent, it is unsurprising—and again, perhaps, appropriate—that scholars would seek to theorize the dominant conception of rights at the center of contemporary political debate. In that moment, when the bandwagon effect for human rights was unusually powerful and the idea of cosmopolitan rights was embraced by politicians and public intellectuals of all ideological stripes, it was easy to treat the dominant conception of human rights as if it were *the idea* of human rights. All of this is rather unsurprising and just another way of naming neo-Kantian cosmopolitanism as the dominant idea animating the new hegemonic political formation of the era.⁴⁶

It is therefore also unsurprising that leading historical and ethical treatments of human rights (whether penned by philosophers, theologians, political theorists, or whomever) both reflected and reproduced this notion. Historical accounts naturalized the contemporary idea and practice of human rights by recreating the past as its prologue, positioning the HRP as the culmination of a centuries- or even millennia-long struggle to

⁴⁵ The phrase belongs to Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992); the sarcasm is mine.

⁴⁶ I don’t mean to suggest that the dominance was *complete*; hegemony is never total. Human rights have in fact been the object of intense, ongoing contestation within the United Nations itself (see Abigail B. Bakan and Tasmeen Abu-Laban, eds., *Human Rights and the United Nations: Paradox and Promise* (New York: Routledge, 2025)), in international law more generally (see Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, U.K.: Cambridge University Press, 2003)), and by grassroots social movements around the world (see Upendra Baxi, *The Future of Human Rights*, 3 ed. (New Delhi: Oxford University Press, 2008); Jackie Smith et al., eds., *Social Movements and World-System Transformation* (New York: Routledge, 2017)). Part of my point is that much of this contestation is overlooked, ignored, or explained away by mainstream scholarship.

realize a prophetic vision of human freedom.⁴⁷ (Of course, the revisionists, Moyn in particular, have challenged these histories, but have done so in a way that cuts off human rights from any history other than that of the HRP, which has the same effect of reproducing its centrality.⁴⁸) Ethical treatments normalize cosmopolitan rights in several ways: by conceiving of them as moral principles in need of ontological grounding and epistemological elucidation, which tends to hypostatize them; by adopting fidelity to existing human rights norms, culture, and practices as a key constraint on their moral theorizing, which makes them conservative (in a *status quo* sense); and by appealing to tradition for authorization of present practices,⁴⁹ which distorts past ideas in and ignores or erases alternative theories and practices of rights.⁵⁰

This is not to say that scholars have been uniformly supportive or uncritical of cosmopolitan rights—just the opposite. Alongside the defenses and justifications there has been deep skepticism and scathing critique. My point is that even the doubters and critics generally take cosmopolitan rights as the target of their concern and criticism. Again, this is hardly surprising: many of them are critical of liberal internationalism, and much of their work is a direct rebuttal of the celebratory scholarship that has dominated the academy and the wider political conversation. The point, however, is that proponents and critics alike conflate cosmopolitan rights with human rights. As a result of that conflation, mainstream human rights scholarship disguises the particularity (the socially constructed, historically contingent character) of cosmopolitan rights as natural and universal; it distracts from the relations of power that uphold the HRP; and, it erases from view the subversive and disruptive politics that people make with human rights within, outside, and against the HRP.⁵¹

What's remarkable, though it's rarely remarked upon, is the extent to which conversations about human rights over the past three decades have been conversations about the HRP and its distinctive conception of cosmopolitan human rights—and not, therefore, about much else. Together, the geopolitical dominance of cosmopolitan rights and the related intellectual fixation on them have engendered a belief in the singularity of human rights. The naturalization and normalization of a conception of human rights—which is anyway said to be the product of objective material processes of globalization—foster the idea that human rights is (that is, must be) an analytically coherent concept and a politically coherent practice. This belief is difficult to square with what we actually

⁴⁷ See, e.g., Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, CA: University of California Press, 2004); Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*, 3 ed. (Philadelphia: University of Pennsylvania Press, 2011).

⁴⁸ Moyn, *The Last Utopia: Human Rights and the Uses of History* (New York: Verso Books, 2014).

⁴⁹ Lena Halldenius, "On the Use and Abuse of History in Philosophy of Human Rights," in *Discursive Framings of Human Rights: Negotiating Agency and Victimhood*, ed. Karen-Margrethe Simonsen and Jonas Ross Kjærgård (Abingdon, UK: Birbeck Law Press (Taylor and Francis), 2017).

⁵⁰ Sumi Madhok, *Vernacular Rights Cultures: The Politics of Origins, Human Rights, and Gendered Struggles for Justice* (Cambridge: Cambridge University Press, 2021).

⁵¹ Bhambra and Shilliam have written about silences created by the dominant human rights discourse. I emphasize erasure, rather than silences, because—as they and their contributors show—alternative and subaltern human rights discourses do exist. Erasure thus draws attention to the active repression of these discourses while insisting on their continuance. See Gurminder K. Bhambra and Robbie Shilliam, "Introduction: 'Silence' and Human Rights," in *Silencing Human Rights: Critical Engagements with a Contested Project*, ed. Gurminder K. Bhambra and Robbie Shilliam (Basingstoke, UK: Palgrave Macmillan, 2009); Robbie Shilliam and Gurminder K. Bhambra, "Conclusion: Human Rights in Contemporary Global Perspective" (ibid).

observe about human rights in the world: that they comprise a complex multiplicity of ideas and practices that makes it impossible to say what or how they *really are*.

If the singularity hypothesis is correct—as I believe it is—it provides a further explanation for why so many human rights advocates are anxious about threats and challenges to the liberal world order: if one has conflated cosmopolitan rights with human rights, or simply never thought much about the distinction, those threats seem like threats to human rights themselves. Put differently, the choice seems to be between defending cosmopolitan rights or abandoning human rights altogether.

The limits of cosmopolitan rights

One of the many ways in which the singularity thesis distorts our thinking about human rights is by creating false dichotomies like this one—which produces (among other problems) the defensive reflex I have been scrutinizing. This reflex functions as a kind of deflection, both diminishing problems with existing human rights theory and practice and absolving theorists from worrying too much about them. I want to focus here on a few important problems and limitations of cosmopolitan rights that the reflex to defend them obscures. These limitations relate to the role that these rights play in maintaining the increasingly wobbly system of neoliberal global governance and can help us understand why many people around the world seem to reject cosmopolitan human rights, or at least, remain indifferent to them.

The first limitation concerns the political inefficacy of cosmopolitan human rights in combating or even mitigating the rampant social and economic inequalities generated by neoliberal economic policies.⁵² We have seen that the neo-Kantian consensus forged in the 1990s naturalizes globalization and its effects, making them part of the rationale for human rights and for neoliberal global governance more generally.⁵³ A tolerance for inequality is thus conceptually hard-wired into good governance discourse alongside cosmopolitan human rights, in the form of protections of neoliberal economic “rights” and “freedoms” such as low taxes, capital mobility, privatization, “deregulation,” and the “right to work.”⁵⁴ These rights-like notions, which are interwoven throughout the fabric of neoliberal global governance and intertwined with cosmopolitan human rights, make any serious critique of neoliberal capitalism impossible; their global enforcement—again, largely through coercive conditionality alongside a strong dose of “market discipline”—makes a transnational egalitarian politics unthinkable. Progressive socio-economic projects are relegated to the domestic politics of “sovereign” states, where they must contend with capital flight, tight fiscal and monetary policy, races to the bottom in tax and regulatory regimes, and other constraints imposed by a fully neoliberalized global economy.

Thus in the richer states, social and economic provisions are continuously pared back in the name of low taxes and austerity, policies allegedly dictated by irresistible market forces. In the poorer states, social and economic security are promises of “economic development” predicated on the adoption of so-called structural adjustment programs that impose, again, low taxes, limited regulation, and public austerity as supposedly temporary

⁵² See Moyn, *Not Enough*, and the numerous responses it provoked.

⁵³ This discussion draws heavily on ideas previously discussed in Michael Goodhart, “The Future of Human Rights Is Local” in *Human Rights at the Intersections: Transformation through Local, Global, and Cosmopolitan Challenges*, ed. Anthony Tirado Chase, et al. (London: Bloomsbury/I.B. Tauris, 2023).

⁵⁴ On how such policies are defended in human rights terms, see Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso Books, 2019).

measures to stimulate investment and spur growth. The result everywhere is the massive enrichment of a tiny elite and stagnation or deterioration in the material circumstances of most people.⁵⁵ At the same time, growing and legitimate popular anger and frustration with these neoliberal economic policies—which again, have been promoted by all mainstream political parties since at least the 1990s—is readily channeled into racism, misogyny, queerphobia, and hostility to migrants, at first by fringe parties and figures, but increasingly by mainstream politicians cognizant of the need to respond to this widespread resentment but reluctant or unable to question neoliberal orthodoxy. If it was once true that antisemitism was the socialism of fools, today’s ersatz socialism is more pluralistic in its hatreds.

I am not claiming that cosmopolitan human rights somehow *cause* ethno-nationalist authoritarianism; I am instead arguing that cosmopolitan human rights—which again, are implicated in the wider system of neoliberal global governance that creates these circumstances and constraints—are ineffective in theorizing or challenging contemporary social and economic injustices, which the new cosmopolitanism understands as resulting from the same objective material processes that constitute globalization and engender the cosmopolitan ethos in the first place. The liberal ideological character of cosmopolitan rights explains why: they are conceived in a way that accepts neoliberal globalization itself as natural and inevitable. So, as they—unsurprisingly—prove unhelpful in addressing people’s real concerns, people look elsewhere for answers. This is in no way to justify or excuse the ugly and often violent politics of ethno-nationalism; it is rather an attempt to think about why cosmopolitan human rights are not a more effective or more appealing alternative in the eyes of many.

The imposition of good governance and structural adjustment program points to a second limitation of cosmopolitan rights: neocolonialism. For many people around the world, coercive conditionality has been an insidious continuation of past practices of European and American domination, and like those past practices, it is closely associated with a universal, moralized liberal conception of human rights. It is a mistake—one encouraged by the singularity thesis—to dismiss or downplay this concern or attribute it to malicious actors, the proverbial “bad apples.” Part of the reason I have tried to contextualize cosmopolitan human rights as an integral part of neoliberal global governance is to show that their function in the liberal world order is precisely to license coercive conditionality, especially for poorer, weaker states (which are, in fact, mostly former colonies). The problem is not the apples, it’s the barrel.

Reaction against neocolonialism is not limited to the economic domain. A major source of concern over backlash among many scholars and advocates is the trend of states opting out of the ICC and similar international human rights institutions or refusing to comply with their determinations.⁵⁶ I read the politics of these examples differently, as

⁵⁵ E.g., Thomas Piketty, *Capital in the 21st Century*, trans. Arthur Goldhammer (Cambridge, MA: Harvard University Press, 2013).

⁵⁶ E.g., Genevieve Bates, “Backlash and Beyond: Three Perspectives on the Politics of International Justice,” (Oxford University Press UK, 2024); Laurence R Helfer and Anne E Showalter, “Opposing International Justice: Kenya’s Integrated Backlash Strategy against the ICC,” *International Criminal Law Review* 17, no. 1 (2017); Mikael Rask Madsen, “Two-Level Politics and the Backlash against International Courts: Evidence from the Politicisation of the European Court of Human Rights,” *The British Journal of Politics and International Relations* 22, no. 4 (2020); Mikael Rask Madsen, Pola Cebulak, and Micha Wiebusch, “Backlash against International Courts: Explaining the Forms and Patterns of Resistance to International Courts,” *International Journal of Law in Context* 14, no. 2 (2018). {Oloka-Onyango, 2020 #5711}

instances of corrupt rulers and ambitious politicians taking action to avoid accountability, project strength, and maintain or increase their power—that is, as normal politics. This reading does not excuse unethical behavior, but it does remind us that withdrawals and repudiations can be self-serving political ploys *and* that the track record of these international mechanisms—which have almost exclusively targeted poor, mostly African, former colonies while ignoring similar infractions elsewhere—makes it easy for those rulers to frame their actions as defiance of neocolonialism.

A likely objection to my argument is that while the application of cosmopolitan human rights might be flawed, that fact does not impugn the rights themselves. No principle is immune from misuse, and it would be a terrible mistake to throw out or give up on human rights because of such abuses; what's needed is to reform and perfect them. Note that this and similar objections assume, and their persuasiveness depends upon, the singularity of human rights: our only choice is between rights as they are conceptualized and practiced through the HRP or impunity, relativism, and chaos. This incorrect assumption, which is a byproduct of the hegemonic reproduction of cosmopolitan human rights through the HRP and of the mainstream scholarship and advocacy within and around it, conveniently hides the way that the specific configuration of cosmopolitan rights—particularly their universality and their morality—explains why they are so easily instrumentalized for domination and imperialism. That is in effect what they were designed for.

This claim too will seem surprising and worrisome to many readers—even as many others find it straightforward. Universality and morality are widely regarded as definitional features of human rights, a core aspect of their political appeal and a crucial bulwark against relativism and discrimination. At the same time, claims about universal Reason, Nature, humanity, autonomy, or whatever are just as widely recognized as key instruments of domination, oppression, exploitation, and dehumanization. The belief in the singularity of human rights forces us to choose between these two interpretations, to accept or reject human rights altogether—a false choice that Kurasawa has described as “human rights blackmail.”⁵⁷ If cosmopolitan human rights are flawed, we should look to other conceptions of human rights as possible alternatives.

Against universality

The exploration of such alternatives must await another forum. Here, I want to point out that while generality is a conceptual feature of human rights, universality is not.⁵⁸ Generality means that in principle, human rights refer, apply, and are available to everyone. Universality is a particular way of interpreting generality as *morally significant sameness*. Paradoxically, universality makes human rights exclusive by making them conditional on people being the same in the specified ways—on some substantive idea or trait of humanity like autonomy or vulnerability. In practice, the operative metric of universality has most often been “like or the same *as us*.” This could not be clearer historically: when encountering people unfamiliar to them, Europeans almost invariably concluded that those people fell short of the “universal” standard: they were not civilized

⁵⁷ Fuyuki Kurasawa. *The Work of Global Justice: Human Rights as Practices*. New York: Cambridge University Press, 2007.

⁵⁸ I can't provide a conceptual definition and defense of human rights here, though I do so in forthcoming work.

or enlightened (not Christian or white), and therefore not in (full) possession of human rights. When exclusive sameness is moralized, it is activated politically, creating an enforceable pretext for invasion, conquest, occupation, and extraction. In these ways (and others), universality is an obstacle to emancipation.⁵⁹

Unfortunately, many proponents of human rights confuse or conflate universality with universalism. A certain kind of critical universalism – what Elena Namli has called *open universalism* – is a powerful emancipatory idea.⁶⁰ As she explains, this concept is purely normative: instead of a substantive account of what it means to be human (an account of *sameness* or *universality*), open universalism is a commitment to the idea that no formulation of human rights can be sufficiently universal. This normative commitment precludes any attempt to claim universality for a specific formulation or interpretation of rights; it provides a critical tool for highlighting injustice and demanding redress.

For Namli, open universalism is best understood as an implication of the principle of equal respect for human dignity, which she understands as a “constitutional” principle in the Habermasian sense that “it allows for an ongoing and never finalized constitutive political practice.” Human rights are an outgrowth of an ongoing process of democratic will formation and formalized processes of legalization, both a precondition and a product of those processes. When the principle of equal respect for human dignity is taken up critically, it focuses attention on those who experience modern liberal democratic societies as unjust; this focus makes injustice clearly visible and informs the ongoing critical revision of human rights through democratic politics. Since much of the injustice that minoritized populations experience is linked to their material conditions of existence, this same critical principle demands the expansion of democratic authority over the economy.

I am very sympathetic with Namli’s twin aims of subordinating the economy to democratic control and of drawing attention to those injustices that are normalized by dominant accounts of justice. I also share the standpoint-theoretical normative and epistemological commitments that animate her exhortation to foreground the experiences of dominated, oppressed, exploited, and dehumanized people.⁶¹ Nonetheless, I worry that tying these aims to a project of rational reconstruction like Habermas’s is a mistake. *Rational reconstruction* is an inherently conservative project.⁶² It seeks to provide new grounds for existing ideas and understandings, not to open them to serious critical interrogation. This reminds us that the rationality at work in Habermas’s reconstructive project is the liberal rationality of neo-Kantian cosmopolitanism. Habermas’s view – echoed in the arguments of his acolytes – is essentially that a Kantian ideal of human dignity and a set of human rights that concretizes and protects that ideal can be shown to be rationally correct and necessary for liberal democracy.⁶³ While this reconstruction is

⁵⁹ Antony Anghie, “The Evolution of International Law: Colonial and Postcolonial Realities,” *Third World Quarterly* 27, no. 5 (2006); cf. Nelson Maldonado-Torres, “On the Coloniality of Human Rights,” *Revista Crítica de Ciências Sociais*, no. 114 (2017); Walter D Mignolo, “Who Speaks for the ‘Human’ in Human Rights?,” *Cadernos de Estudos Culturais* 3, no. 5 (2011); Anthony Pagden, “Human Rights, Natural Rights, and Europe’s Imperial Legacy,” *Political Theory* 31, no. 2 (2003).

⁶⁰ See Namli (this volume) and Elena Namli, *Human Rights as Ethics, Politics, and Law*, Uppsala Studies in Social Ethics (Uppsala, Sweden: Uppsala University 2014).

⁶¹ See Goodhart, *Injustice*, ch. 5.

⁶² Namli recognizes this in her critique of Habermas for abandoning the possibility of social revolution and accepting capitalism as a natural and pre-social phenomenon; see Elena Namli, *Legal Positivism, Politics, and Critical Ethics*. New York: Bloomsbury, forthcoming, chs. 5&6).

⁶³ See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996); Seyla Benhabib, “Another

supposedly ongoing and open-ended, it must perforce remain within the confines of the liberal democratic project, since equal dignity and cosmopolitan rights are the logical and communicative preconditions for democratic politics and thus the principles that democratic citizens would (must) accept as constitutional prerequisites of their own freedom. Thus to rationally reconstruct cosmopolitan human rights is simultaneously to endorse them and to frame other interpretations of rights as *irrational* and opposed to the modern liberal democratic project.

It seems to me that it is precisely through the rationality of neo-Kantian liberalism operative in this reconstructive project that universality is weaponized against minoritized populations like those Namli wants to prioritize. The claim to universality contradicts open universalism, makes it impossible, illogical. In addition, I am skeptical whether this rationality or the reconstructed cosmopolitan rights it produces can mount an effective critique of neoliberal political economy, for reasons already discussed. Further, reconstructive projects are always in part idealizations. Habermas and his followers don't claim that society actually works as they describe it; what they depict is instead an idealized version of how society ought to work if it were to be consistent with its purported foundational principles. Many people, however, evidently do not share the belief in equal human dignity that supposedly grounds human rights on this view; assuming that they do share it seems debilitating for a critical theory of injustice. Consider Namli's example of Muslim migrant populations in Europe against whom human rights are frequently deployed as an instrument of domination and exclusion. She is correct in thinking that focusing on their experience can provide critical theorists with insight into injustice, but I wonder how that insight is supposed to matter *politically* when the mechanism through which it is meant to operate, democratic will formation through idealized deliberation, is a fiction—which is of course why the injustice occurs in the first place.

The political question seems paramount to me. If one believes, as I do, that cosmopolitan rights and liberal democracy are part of the problem—that frustration with their failures is at least part of what drives growing anger, frustration, and resentment against elite politics and makes people susceptible to ethno-nationalist appeals—then finding better arguments or justifications for them is not a promising way forward. I remain unpersuaded that we need to—or can—get “underneath” our normative commitments.⁶⁴ We need a different conception of human rights to challenge capitalist economic power and to fight for genuine inclusion; such a conception will emerge, if it emerges, not through rational reconstruction but through political organization and social mobilization. As Richard Rorty “crudely” put it, “let your view of human dignity fall out from your politics; don't milk your politics out of such a view.”⁶⁵

Cosmopolitanism,” in *Another Cosmopolitanism*, ed. Robert Post (Oxford: Oxford University Press, 2006); Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, trans. Jeffrey Flynn (New York: Columbia University Press, 2012)..

⁶⁴ Here I follow Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989); “The Priority of Democracy to Philosophy,” in *The Virginia Statute for Religious Freedom*, ed. Merrill D. Peterson and Robert C. Vaughn (Cambridge: Cambridge University Press, 1988).

⁶⁵ The full quotation is “I do not see much point in saying that [all human beings] are now ... all equal in dignity. This doubt is a result of my more general suspicion of arguments of the form “We ought to seek to establish a utopia of the following sort, because such-and-such is presently the truth about us.” My attitude is: let's try to figure out what kind of utopia we want, and let the truths about us be whatever we have to believe in order to work together for its creation. To put it crudely, let your view of human dignity fall out from your politics; don't milk your politics out of such a view.” Richard

Besides, efforts to ground or justify human rights, like efforts to identify their origins, are never merely philosophical endeavors; they are part of a larger struggle over who gets to define human rights today. The inadequacy of the cosmopolitan ideal can be traced back to the origin stories reproduced in those naturalizing histories to which I referred earlier. Sumi Madhok argues that these familiar stories are the symbolic continuation of a mythologized Western tradition into the present. They “invariably begin with an orientalist and racist assumption that the conceptual, philosophical, and empirical experiences of rights across the globe owe their formulation to” the Glorious, the American, and the French revolutions.⁶⁶ Moreover, as Baxi argues, the “universal” rights declared by European revolutionaries were predicated on the rightlessness of women, servants, enslaved people, colonial subjects, and others. While universal rights did offer grounds on which this rightlessness could be contested,⁶⁷ the biases and hierarchies that produce rightlessness nonetheless taint the conceptual structure of rights in the Western tradition and their universality—as feminist critics noted at the time and have been arguing ever since.⁶⁸ This taint complicates and belies simplistic stories about the gradual universalization and perfectibility of Western human rights and puts reconstruction into question. What, exactly, are we doing when we seek to reconstruct cosmopolitan human rights? The entire exercise, as Baxi maintains, betrays a kind of “arrogance” that treats the “human rights imagination” as something inherently Western that others can only mimic.⁶⁹

Insistence on the singularity of cosmopolitan human rights, which procedures of rational reconstruction presume, rules out the possibility of (recognizing) Third World contributions to authorship of the content or meaning of human rights, wherever they originate.⁷⁰ Such procedures deny epistemic authority to people who use human rights to mobilize against the HRP and cosmopolitan rights. Scholars do study what are often called—from the dominant perspective—alternative or subaltern practices of human rights, but these practices are often treated as local variants of the hegemonic practice or else as alternatives to or wholesale rejections of human rights. (The universality of cosmopolitan human rights helps to explain contemporary cosmopolitans’ skepticism of and hostility toward local human rights activism and resistance, which necessarily appear as particularistic, relativistic, and atavistic in comparison with the universal morality of cosmopolitan rights.⁷¹ The very idea of local(ized) human rights politics jeopardizes the

Rorty, “Response to Appiah.” In *Globalizing Rights: The Oxford Amnesty Lectures 1999*, ed. Matthew J. Gibney. Oxford: Oxford University Press, 2003, 233.

⁶⁶ Madhok, *Vernacular Rights Cultures*, 36.

⁶⁷ Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999); Sankar Muthu, *Enlightenment against Empire* (Princeton: Princeton University Press, 2003).

⁶⁸ Olympe de Gouges, “The Rights of Woman,” (<https://olympedegouges.eu/1791>); Mary Wollstonecraft, *A Vindication of the Rights of Men and a Vindication of the Rights of Woman*, ed. Sylvana Tomaselli (Cambridge: Cambridge University Press, 1995); cf. V. Spike Peterson and Laura Parisi, “Are Women Human? It’s Not an Academic Question,” in *Human Rights Fifty Years On: A Reappraisal*, ed. Tony Evans (Manchester, UK: Manchester University Press, 1998), among many.

⁶⁹ Baxi, *The Future of Human Rights*, 214; cf. Michael Goodhart, “Liberal Pragmatism and Liberal Fantasy in the Era of Backlash Politics,” *Political Science Quarterly* 138, no. 4 (2023): 549–62.

⁷⁰ The reason for this slightly awkward formulation is that the Third World is a conceptual rather than geographical space; it exists everywhere, including within the “liberal democratic” states.

⁷¹ See Goodhart, “The Future of Human Rights Is Local”; “Forget Cosmopolitanism! The Future of Human Rights Is Global,” *OpenGlobalRights* (2020), <https://www.openglobalrights.org/forget-cosmopolitanism-the-future-of-human-rights-is-local/>.

legitimacy of the coercive conditionality on which neoliberal global governance depends.). Both interpretations deny the originary power of *located rights practices* as meaning-making strategies, placing the local (Southern or Third World) in a position of permanent epistemic and political subordination to the global (Western).⁷²

So it is not enough, as Baxi recommends, to localize and particularize moments like 1789 as a way to open up space for consideration of other narratives – though it would be a welcome step. The proliferation of local stories (alone) won't solve the problem. Exclusion and erasure cannot be remedied simply by inclusion. Likewise, reconstruction can't rehabilitate the cosmopolitan conception of rights. As Gurminder Bhambra and Robbie Shilliam argue, it is necessary actually to dismantle and refashion the originary paradigms that produced the exclusions and erasures.⁷³ An emancipatory human rights program is one of deconstruction rather than reconstruction.

Conclusion and beginnings

It is important to resist reflexive defenses of cosmopolitan rights and the liberal international order because this deconstructive project is, for reasons that I hope I have made clear, essential in countering rising ethno-nationalist and fascistic politics.⁷⁴ If, as I have argued, this order actively facilitates neocolonialism, austerity, and the upward redistribution of wealth, popular frustration with it – taking different forms in different parts of the world and among different populations – is both unsurprising and appropriate. Retrenchment, doubling-down on neoliberal cosmopolitanism, will allow existing injustices to fester and spread and is likely to further alienate people whose rejection of the system that produces those injustice is treated by cosmopolitan elites as ignorant, irrational, or malicious.

This conclusion suggests two beginnings. First, scholars need to rethink how we conceptualize and study backlash. To continue to treat it as an atavistic or reactionary response to neoliberal cosmopolitanism will commit us to continually misapprehending people's anger, fear, and frustration with the status quo. Letting go of a belief the singularity of human rights can be a huge help in this regard: once the choice is no longer between the status quo and the abyss, it becomes easier to identify the limits of dominant conceptions of human rights and of the Human Rights Project and easier to begin imagining alternatives.

Second, and following directly from the previous point, we need a new approach to the study of human rights. Despite the grave problems with cosmopolitan rights and the wider regime of global governance in which they are enmeshed, human rights remain a popular form of discourse among minoritized populations and social justice advocates around the world – key, as Baxi maintains, to subaltern struggles of all kinds. Instead of reading the popularity of human rights as an endorsement of the dominant conception of them, scholars might seek to learn from how people engaged in struggles against injustice use human rights in making emancipatory politics. This kind of approach would move us

⁷² Madhok, *Vernacular Rights Cultures*, 13. ;34

⁷³ Bhambra and Shilliam, "Introduction: 'Silence' and Human Rights," 2.; cf. Fine, "Cosmopolitanism and Human Rights: Radicalism in a Global Age," 13.

⁷⁴ I use the term fascistic because, following Alberto Toscano, *Late Fascism: Race, Capitalism and the Politics of Crisis* (London: Verso Books, 2023). and Jason Stanley, *How Fascism Works: The Politics of Us and Them* (New York: Random House Trade Paperbacks, 2020)., I think it's better to understand fascism in terms of processes and strategies rather than as an ideology.

away from the modes of reflection and reasoning with which ethicists—theorists, philosophers, theologians—are most comfortable and toward more engagement with located rights practices as sources of ideas and inspiration. This requires not the defense or reconstruction of liberal democracy and cosmopolitan rights but rather the embrace of a genuinely pluralistic politics that cannot be defined or contained by exhausted Enlightenment universals.

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