

The Practice of Human Rights: Tracking Law Between the Global and the Local

edited by Mark Goodale and Sally Engle Merry
Cambridge: Cambridge University Press, 2007

Reviewed by Ken Norman*

The intent of the editors of this volume of essays is to contribute to new ways of conceptualizing the practice of human rights as a key transnational discourse.¹ All of the book's essays address the rampant inflation² of human rights discourse in recent years. They recognize that human rights talk has become the new language of social justice. As Steiner, Alston and Goodman put it, the human rights ideal "... has become a part of modern consciousness, a lens through which to see the world, a universal discourse, a potent aspiration."³ Such talk is grounded in an appeal to common humanness. It is invoked sometimes, but not always, in the name of human rights charters. However, the essays in this fascinating volume illustrate how it is invoked locally in ways that may or may not wholly or partially reflect the concepts of universal human rights articulated in such charters. As one of the editors, Sally Engle Merry, noted in her book *Human Rights and Gender Violence: Translating International Law into Local Justice*,⁴ universal human rights language amounts to standard setting using legal rationality. This language presents local social movements with a paradox. For they appreciate that, to be persuasive, their rights talk needs to be located within local cultural understandings. There is thus apparent tension between global and local human rights talk. What this collection of scholarship demonstrates is the unique contribution of anthropological ethnographic inquiry and analysis to an understanding that this tension doesn't, in fact, stand in the way of localized social change in the name of human rights. The objectives sought and sometimes realized are not, however, what a lawyer guided by international human rights law might expect.

* University of Saskatchewan.

¹ Mark Goodale, "Introduction" in Mark Goodale and Sally Engle Merry, eds., *The Practice of Human Rights: Tracking Law Between the Global and the Local* (Cambridge: Cambridge University Press, 2007) at 27.

² Richard Ashby Wilson, "Conclusion – Tyrannosaurus Lex – the Anthropology of Human Rights and Transnational Law" in Goodale and Merry, *ibid.* at 349.

³ "Preface" in Henry J. Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals*, 3rd ed. (Oxford: University Press, 2008).

⁴ (Chicago: University of Chicago Press, 2005).

There is some historical irony to this new turn in anthropological scholarship, for in 1947 the American Anthropological Association (AAA) presented a strong cautionary *Statement on Human Rights* to the United Nations (UN) Commission on Human Rights.⁵ In order to demonstrate respect for the cultures of various human groups, this document spoke against the sweeping project of drafting a Universal Declaration of Human Rights (UDHR) in anything like the grandiose sort of language of the great declarations of the eighteenth century. Rather, the AAA contended that the Commission on Human Rights needed to draft a declaration that would not only recognize but would embrace the validity of many different cultural ways of life. This plea fell on deaf ears. The UDHR draft voted on by the General Assembly of the United Nations a year later adopted no such relativist stance. In her introduction to Part II of this volume, headed “Registers of Power,” Laura Nader lets her reader in on her continuing allegiance to this resistance to the UDHR. She notes that Eleanor Roosevelt, Chair of the UN Commission on Human Rights, made it very clear that her Commission was dedicated to the UDHR’s proclamation being “...an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries. To her the world was one world.”⁶ Nader then adds the comment, “Eleanor Roosevelt and the New Deal women of that era were reformers or social welfare workers. *They knew what was best for others.*”⁷

Nader notwithstanding, over time the disquiet of the discipline of anthropology about, amounting to disinterest in and resistance to, universal human rights law pretty much came to an end. In the concluding chapter, Richard Wilson credits a 1992 essay, “Anthropology, Law and Transnational Processes,” by Sally Engle Merry, one of this book’s editors, with facilitating this change. For the record, I also note that in 1999 the AAA finally stepped aboard the UDHR bandwagon with its *Declaration on Anthropology and Human Rights*.⁸ In this declaration, the AAA first sticks to its old guns with the assertion that “...the AAA founds its approach on anthropological principles of respect for concrete human differences, both collective and individual, rather than the abstract legal uniformity of Western tradition.” It then, however, endorses the UDHR with the qualifying assertion that:

⁵ American Anthropological Association, “Statement on Human Rights,” (1947) 49 *Amer. Anthropologist* 539.

⁶ Laura Nader, “Introduction to Part II, Registers of Power,” in Goodale and Merry, *supra* note 1 at 117.

⁷ *Ibid.* at 118 [emphasis in original].

⁸ Online: <<http://www.aaanet.org/stmts/humanrts.htm>>.

Our understanding of human rights is constantly evolving as we come to know more about the human condition. It is therefore incumbent on anthropologists to be involved in the debate on enlarging our understanding of human rights on the basis of anthropological knowledge and research.⁹

In his introduction to Part IV of this book, Balakrishnan Rajagopal notes that “After almost fifty years, the anthropology profession has turned almost completely around,” abandoning its 1947 “anti-activist and relativist” objections to the UDHR.¹⁰

This collection of essays is the child of such revisionism. Wilson submits that Merry’s watershed 1992 essay facilitated “... the entry of anthropologists into a whole new terrain of human rights and international legal processes.”¹¹ I here give fair warning, however, that, since what informs this fascinating new research is Foucauldian discourse theory and Geertzian theories of “law as culture,”¹² some of this volume is heavy going for the uninitiated. That said, the book has much to offer to the reader who may well be perplexed by the apparent gulf separating the overarching posited legal norms of universal human rights and the cultural and regional particularities of places where oppressed people(s) struggle to find words to advocate for their right to live better lives.

In the most radical such example, Shannon Speed, in chapter 4, describes the appropriation of international human rights talk by the Zapatistas of Chiapas to illuminate a collectivist vision of indigenous self-determination. In this rights language of resistance there is no call to have anything at all posited or recognized in the laws or institutions of what the Zapatistas regard as their oppressor, the Mexican state. Rather, by establishing five local *Juntas de Buen Gobierno* [Good Governance Councils] Zapatista leaders demonstrate a claim that their human and indigenous rights arise “...from their *exercise*, not their establishment in the state’s legal regimes.”¹³ This, as Speed puts it, amounts to “... a direct hit to the primary site of both legitimation and subject-making processes of the neoliberal state.”¹⁴

Jean Jackson, in chapter 5, examines how the claim by indigenous human rights activists in Colombia to a “right to culture” has yielded gains

⁹ *Ibid.*

¹⁰ Balakrishnan Rajagopal, “Introduction to Part IV, Encountering Ambivalence” in Goodale and Merry, *supra* note 1 at 273.

¹¹ *Supra* note 2 at 344.

¹² *Ibid.* at 343.

¹³ Shannon Speed, “Exercising Rights and Reconfiguring Resistance in the Zapatista” in Goodale and Merry, *supra* note 1 at 164.

¹⁴ *Ibid.* at 183.

in making courts more accessible to indigenous pueblos and to their collectivist values. Three case studies lead Jackson to conclude that certain Colombian Constitutional Court judges have shown themselves to be surprisingly open to fundamentally different visions of justice.¹⁵ She muses that this may have something to do with those judges wanting to demonstrate that the judicial system can seriously consider what indigenous justice entails so as to lend some credibility to the courts in a Colombia where 98 percent of all crime goes unpunished.¹⁶ Nonetheless, human rights talk by indigenous activists creatively “engaging the logics of liberal multiculturalism”¹⁷ has achieved some on-the-ground social transformation effects that serve the collective goals of the pueblos.

A much darker story is chronicled, in chapter 1, by Daniel Goldstein who leads his reader into the depths of the barrios of Cochabamba, Bolivia. There, rights talk is mostly about the right to “citizen security,” and this manifests itself in the form of vigilante lynchings. This is practiced in the face of some recognition that lynching is a denial of human rights. Goldstein notes that it “... is widely believed in the barrios of Cochabamba that human rights advocates [*Derechos Humanos*] speak up in defence of delinquents.”¹⁸ Some barrio leaders and intellectuals build on this sentiment with denunciations of *Derechos Humanos* as “accomplices of capitalism.”¹⁹ With no hope that adequate policing will ever be dispatched to their barrios by the Bolivian state, however, the citizens of the barrios resort to collective violence against the delinquents in the name of protecting their fundamental right to security. Goldstein sees a powerful irony in this hybrid situation where mob violence is being done in the name of human rights while conventional human rights defenders are demonized by the mob.²⁰

In a similar vein, Lauren Leve’s chapter 2 is a study of the double-bind that traps Nepali Theravada Buddhists by appealing to human rights norms in struggling for religious freedom. Their claim against the Hindu state of Nepal to have the right to freedom of religion is necessarily located in a Western idea of the self as a rights-bearing entity. Yet as Buddhists they respect no such self. Rather, they focus on the non-self. For Leve, this may “... constitute a subtle, epistemic form of violence.”²¹

¹⁵ Jean Jackson, “Rights to Indigenous Culture in Colombia” in Goodale and Merry *supra* note 1 at 233.

¹⁶ *Ibid.* at 234.

¹⁷ *Ibid.* at 210.

¹⁸ James Goldstein, “The Violence of Rights – Human Rights as Culprit, Human Rights as Victim” in Goodale and Merry, *supra* note 1 at 64.

¹⁹ *Ibid.* at 65.

²⁰ *Ibid.* at 72.

²¹ Lauren Leve, “Double-binds of Self and Secularism in Nepal – Religion,

On that tantalizing note, I will end this review with an invitation to readers to tackle this book of excellent ethnographic studies filled with ambiguity and hope.

Democracy, Identity and Rights” in Goodale and Merry, *supra* note 1 at 81.