

SYMPOSIUM ON THE ANTHROPOLOGY OF INTERNATIONAL LAW

AFTER INTERNATIONAL LAW: ANTHROPOLOGY BEYOND THE “AGE OF HUMAN RIGHTS”

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This essay examines the ways in which anthropologists have tracked the rise and fall of international law after the end of the Cold War. It argues that anthropological research has made important contributions to the wider understanding of international law as a mechanism for social and political change, a framework for protecting vulnerable populations, and a language through which collective identities can be expressed and valorized. Yet, over time, international law has lost many of these expansive functions, a shift that anthropologists have also studied, although with greater reluctance and difficulty. The essay explains the ways in which particular categories of international law, such as human rights and international criminal justice, grew dramatically in importance and power during the 1990s and early 2000s, a shift whose complexities anthropologists studied at the local level. As the essay also explains, anthropological research began to detect a weakening in human rights implementation and respect for international legal norms, a countervailing shift that has broader implications for the possibilities for international cooperation and the resolution of conflicts, among others. At the same time, the retreat of international law from its highpoint in the early post-Cold War years has given way to the reemergence of non-legal strategies for advancing change and accounting for past injustices, including strategies based on social confrontation, moral shaming, and even violence.

As if to underscore in the starkest of terms the extent to which international law has become increasingly weakened, this essay was written on the day after the strongman president of Belarus, Alexander Lukashenko, in complete and utter contempt for international aviation law, international human rights law, and the UN Charter, ordered a military fighter jet to pluck a dissident out of the sky. This incident perfectly exemplifies a wider transition in which anthropologists of international law find themselves having to reimagine the object of research: instead of law triumphant, law as the preeminent mechanism for protecting “all members of the human family” (as stated in the Preamble to the Universal Declaration of Human Rights), anthropologists conduct research now on law under very different historical circumstances.

These are the years *after international law*, in which the optimism about the transformative potential of the international legal order has buckled under the weight of both existing and new geopolitical and political economic pressures. If anthropologists tracked the rise of international law with ethnographic sensitivity and theoretical insight during the post-Cold War Golden Age, they now study the afterlives of this brief period of florescence, what is left behind after the backlash, and what logics have rushed to fill the vacuum left by international law’s pervasive marginalization.

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Tracking the Rise . . .

The end of the Cold War gave way to the rapid expansion of international law in the form of human rights mobilization, constitutionalism, and international criminal justice. Although Ran Hirschl used the concept of “juristocracy” in a more limited sense, to analyze the proliferation of constitutionalism in both domestic politics and international relations,¹ I take juristocracy more generally as an apt description for the stunning rise and suffusion of an international legal order that had been conceived in the aftermath of the Second World War, but thereafter subsumed by opposing currents of postwar nation-building, anti-colonial resistance, and Cold War great power politics.

As these opposing currents dissipated by the early 1990s and the delayed postwar international liberal legal order finally took root, anthropologists studied the process of international legal expansion in a variety of institutional, cultural, and political settings. Scholars used the intimacy of ethnography to capture the practical complexities as human rights was transformed into an international language of empowerment during historic global conferences,² Indigenous peoples in the Global South adopted law as a new instrument of justice-seeking,³ and the vast international development apparatus was relaunched as a tool of human rights activism.⁴

There was a sense of certainty and self-confidence among those who viewed the rise of international law as yet one more sign that the “end of history”⁵ was nigh and that, in the great battle between liberalism and all the rest, liberalism had won. This was a sense of certainty that did not brook deviation from the narrative of progress under the guiding hand of international law. Critical interventions to the contrary were often dismissively brushed aside by policy-makers and activists as “unacceptable”⁶ attempts to resist the liberal legal arc of history. By the end of the glorious decade of international legal ascendance, a decade that witnessed the birth of the first modern human rights state (post-apartheid South Africa), the UN Secretary-General could proclaim, with absolute earnestness, that the world had passed into a new epoch, an “Age of Human Rights.”⁷

. . . and Fall of Law

And yet, almost as soon as history had apparently ended, it began again, with a vengeance: a confluence of factors—including the attacks of September 11, 2001, the advent of the surveillance state, and the global financial crisis of 2007–2008—conspired to bring the Age of Human Rights to a close. Its “endtimes”⁸ were celebrated by some,⁹ denied by others,¹⁰ and resisted by those whose lives had become irrevocably intertwined with the promise of political and moral renewal through international law.¹¹ But well beyond the corridors of international politics and global regulation, anthropologists were studying the corresponding fall of law at more granular levels, through

¹ RAN HIRSCHL, [TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM](#) (2004).

² See, e.g., ANNELESE RILES, [THE NETWORK INSIDE OUT](#) (2000).

³ See, e.g., SHANNON SPEED, [RIGHTS IN REBELLION: INDIGENOUS STRUGGLE AND HUMAN RIGHTS IN CHIAPAS](#) (2008).

⁴ See, e.g., MARK GOODALE, [DILEMMAS OF MODERNITY: BOLIVIAN ENCOUNTERS WITH LAW AND LIBERALISM](#) (2008).

⁵ FRANCIS FUKUYAMA, [THE END OF HISTORY AND THE LAST MAN](#) (1992).

⁶ See Aryeh Neier, [Asia's Unacceptable Standard](#), 92 FOREIGN POL'Y 42 (1993).

⁷ Kofi Annan, [The Age of Human Rights](#), PROJECT SYNDICATE (Sept. 26, 2000).

⁸ STEPHEN HOPGOOD, [THE ENDTIMES OF HUMAN RIGHTS](#) (2013).

⁹ MAKAU MUTUA, [HUMAN RIGHTS STANDARDS: HEGEMONY, LAW, POLITICS](#) (2016); see also Makau Mutua, [Is the Age of Human Rights Over?](#), in THE ROUTLEDGE COMPANION TO LITERATURE AND HUMAN RIGHTS 450 (Sophia McClennen & Alexandra Schultheis Moore eds., 2016).

¹⁰ KATHRYN SIKKINK, [EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY](#) (2017).

¹¹ RHODA E. HOWARD-HASSMANN, [IN DEFENSE OF UNIVERSAL HUMAN RIGHTS](#) (2018).

ethnographic snapshots that revealed various moments in the steady disintegration of human rights and international criminal justice.

This process of disintegration took different forms and was linked to many specific legal, political, and social histories, which could appear disconnected when considered in isolation. When considered together, however, what emerges is an anthropological record in which the liberal legal optimism of the early post-Cold War period gives way to disenchantment, disingenuousness, and even a kind of nascent anti-legalism (which is not the same as lawlessness). For example, the failure of international law to mediate intractable social and religious conflicts led to cynicism among historically marginalized populations, who played along strategically only in order to keep international actors on the ground as buffers against even greater potential violence.¹² Elsewhere, anthropological research showed how the use of categories drawn from international law within national development plans proved to be disastrous, since abstract concepts like “freedom” and “rights” bore little relation to everyday problems of material impoverishment and structural inequality.¹³

At the same time, anthropologists witnessed the unraveling of faith in international law within the global system of criminal justice and post-conflict intervention. The International Criminal Court, which was created with such fanfare in 1998, soon after found itself, on the one hand, facing charges of neo-colonialism, because of its near-exclusive prosecutorial focus on conflicts in Africa,¹⁴ and, on the other, stymied by international politics, in which the possibility of indictment had no effect as a deterrent among the world’s most influential leaders and states. Instead of a “justice cascade,” anthropologists with cultural and linguistic knowledge of particular mass atrocities discovered something quite different: that international law brought a simulacrum of justice, a “justice façade,” a superficial reckoning with the horrors of genocide that was almost completely detached from the lived experiences of collective violence and its lengthy aftermath.¹⁵ Even more, when the tools of international criminal justice were used to oversee something as culturally-nuanced as the public memorialization of the dead, the result was what Carol Kidron has described as the “perfect failure” of international justice.¹⁶

The Return of the Revolution

In light of the above, the anthropology of international law¹⁷—that is, the anthropological study of the rise and fall of international legal norms and aspirations after the end of the Cold War—is increasingly giving way to something like the anthropology of *after* international law. At the same time, the underlying social, economic, and political problems for which human rights, international justice mechanisms, and constitutionalism were believed to be solutions remain as deep-seated as ever. Given this, what is coming to replace law as the framework for social change, the protection of vulnerable populations, and resistance to the political economic forces underpinning the global climate crisis?

Before briefly considering what is coming to replace law, we must remember what law itself replaced with the end of the Cold War. Throughout much of the world, progressive politics were shaped by various versions of Marxist socialism, which revolved around radically non-liberal conceptions of the person, the relationship between the individual and society, and the causes of long-term structural conflict. Although Marx did not write extensively

¹² See LORI A. ALLEN, [THE RISE AND FALL OF HUMAN RIGHTS: CYNICISM AND POLITICS IN OCCUPIED PALESTINE](#) (2013).

¹³ See HARRI ENGLUND, [PRISONERS OF FREEDOM: HUMAN RIGHTS AND THE AFRICAN POOR](#) (2006).

¹⁴ See KAMARI MAXINE CLARKE, [AFFECTIVE JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE PAN-AFRICANIST PUSHBACK](#) (2019).

¹⁵ See ALEXANDER HINTON, [THE JUSTICE FACADE: TRIALS OF TRANSITION IN CAMBODIA](#) (2018).

¹⁶ Carol Kidron, *The “Perfect Failure” of Communal Genocide Commemoration in Cambodia: Productive Friction or “Bone Business”?*, 61 CURRENT ANTHROPOLOGY 30 (2020).

¹⁷ See MARK GOODALE, [ANTHROPOLOGY AND LAW: A CRITICAL INTRODUCTION](#) (2017).

about international law or the “rights of man,” when he did it was clear that the worldview that would give birth to socialist politics had no place for liberal legality and its values. According to Marx, the very idea of the “rights of man” violated the social nature of human life, which should ideally allow our individual “species-being” to flourish. As he put it, in a scathing critique of the French Revolution, the “right[s] of man [are] not founded upon the relations between man and man, but rather upon the separation of man from man. It is the right of such separation. The right of the *circumscribed* individual, withdrawn into himself.”¹⁸

This skepticism toward the place of law and rights-based frameworks for change would continue to define progressive politics even within early postwar debates over the Universal Declaration of Human Rights. As recent archival research has shown,¹⁹ many leading intellectuals, political leaders, theologians, and trade union officials, among others, were dismissive of the UN project to make an “international Magna Carta for all mankind”—as Eleanor Roosevelt memorably described it—the political and moral foundation for the postwar settlement. Despite the fact that some pointed to the Soviet Constitution of 1936—which recognizes the right to full employment as the first fundamental right—as an example of how socialist politics could be reconciled with law, many other progressive thinkers simply rejected the idea that human rights, and international law more generally, had any relevance at all for understanding, and, more importantly, ameliorating the political economic causes of global conflict.

With the collapse of the Soviet Union and the political systems of the entire communist bloc, however, the socialist vision for revolutionary change rapidly lost legitimacy and global adherence. This process of intellectual and ideological disintegration was no doubt accelerated by the historical linkages between Marxism and a long line of mass atrocities, from the Stalinist purges to the killing fields of Cambodia. When “new” left political parties were created from the ashes of this history in the early 1990s under the sign of neoliberalism, the commitment to revolution was replaced with a commitment to human rights and the rule of law, thus setting in motion the events that would usher in the decade-long proliferation of international law described above.

Yet with the post-Cold War international legal order now losing legitimacy, the progressive left has rediscovered revolutionary politics, albeit in a curious form—one in which street-level protest and social uprising resemble the revolutionary mobilizations of the past, but without a unifying ideology of change, much less a clear commitment to overturning capitalism as the dominant global economic system. Nevertheless, from the Black Lives Matter movement to Extinction Rebellion, the progressive left has turned its back on the failed promises of liberal legal transformation in favor of a much more immediate politics of confrontation and righteous struggle.

In the midst of this uncertain transition, anthropologists of international law have struggled to find ways to maintain the kind of disciplinary focus and dynamism that characterized their work for much of the last three decades. This malaise is also related to the fact that much of the anthropological study of the rise of international law in the post-Cold War was combined with a parallel disciplinary movement known as “engaged anthropology,” in which anthropologists conducted research—with human rights organizations, Indigenous communities, or transitional justice institutions, for example—as a form of politically-engaged scholarship.²⁰ With the retreat of international law from these domains of social and political life, however, a number of “ex”-anthropologists of law, including those whose scholarship was closely identified with the ethnographic study of rights, international justice, and international legal institutions, have turned to different topics,²¹

¹⁸ Karl Marx, *On the Jewish Question*, quoted in ROBERT C. TUCKER, THE MARX-ENGELS READER 42 (2d ed. 1978) (emphasis in original).

¹⁹ See MARK GOODALE, *LETTERS TO THE CONTRARY: A CURATED HISTORY OF THE UNESCO HUMAN RIGHTS SURVEY* (ed., 2018).

²⁰ See, e.g., SETHA LOW & SALLY ENGLE MERRY, *Engaged Anthropology: Diversity and Dilemmas*, 51 CURRENT ANTHROPOLOGY S203 (2010).

²¹ For example, my own research has moved away from the anthropology of human rights and international law to examine lithium industrialization, mobility, and green energy politics. See <https://energy-assemblages.com/>; but see MARK GOODALE, *REINVENTING HUMAN RIGHTS* (forthcoming 2022).

while others have managed to uncover questions of legal and ethical importance even in places like the corridors of global financial markets.²²

Three Possible Futures for the Anthropology of International Law

Let me conclude by briefly sketching three possible ways the anthropology of law might develop in the future. First, anthropologists might continue to study the afterlives of international law—the ways in which the disintegration of juristocracy gives way to cultural or political practices in which the concept of “human rights” is retained, but without a connection to international legal documents or institutions. For example, the Singaporean sociolegal legal scholar Lynette Chua has shown how LGBTQ activists in Myanmar, under extremely oppressive conditions, think of human rights as a “way of life” that has almost nothing to do with courts, political parties, or international treaties.²³ Instead, activists transform human rights into a new language of empowerment, which they use largely among themselves as a way to express pride in their sexual identities.

A second possible future for the anthropology of international law lies in the past. In the decades before the rise of international law during the post-Cold War, most anthropologists of law conducted research on small-scale conflicts and conflict resolution procedures. From the “trouble cases” of the legal realists,²⁴ to the study of “legal consciousness among working-class Americans,”²⁵ anthropologists focused their research on highly contextualized and localized legal practices. Although the “classic” anthropology of law did not have the same global ambitions as the new anthropology of law that supplanted it, there is no reason why this more modest approach couldn’t be taken up again.

And finally, a third possible future for the anthropology of international law would see it mostly disappear as a distinct subdiscipline. Although the death of the anthropology of international law has been foretold more than once, the stakes appear to be different this time. With so many anthropologists now conducting engaged research with movements for racial and social justice, decolonization, and the fight against climate change, the former anthropology of international law is fast becoming absorbed by the anthropology of global politics and identity.

In the United States, this process of absorption is particularly noticeable within the Association for Political and Legal Anthropology, in which symposia, research networks, and publications seem to revolve almost exclusively around political anthropology. At the same time, when current anthropological research *does* indirectly involve international law, it usually focuses on other questions, such as the ideological nature of international organizations,²⁶ or the relationship between bureaucracy and state power.²⁷ In short, current international law appears to be fading as an object of research and analysis as it becomes increasingly detached from the areas of social and political life of most concern to anthropologists.

²² See ANNELISE RILES, [COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS](#) (2011).

²³ LYNETTE CHUA, [THE POLITICS OF LOVE IN MYANMAR: LGBT MOBILIZATION AND HUMAN RIGHTS AS A WAY OF LIFE](#) (2018).

²⁴ See, e.g., KARL N. LLEWELLYN & E. ADAMSON HOEBEL, [THE CHEYENNE WAY](#) (1941).

²⁵ SALLY ENGLE MERRY, [GETTING JUSTICE, AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS](#) (1990).

²⁶ See, e.g., [PALACES OF HOPE: THE ANTHROPOLOGY OF GLOBAL ORGANIZATIONS](#) (Ronald Niezen & Maria Sapignoli eds., 2017).

²⁷ See, e.g., Agatha Mora, [Black Hole State: Human Rights and the Work of Suspension in Post-War Kosovo](#), 28 SOC. ANTHROPOLOGY 83 (2020).