

# 10

## Who Needs Human Rights?

### *Cultural Studies and Public Institutions*

John Nguyet Erni

#### Reframing Cultural Studies

My goal in this chapter is to attempt to bring about an articulation between Cultural Studies and public law in order to better understand the changing and complex political context that continuously shapes contemporary ethical debates. More specifically, I am trying to forge a closer relation between Cultural Studies (especially the social movement bend of the field) and human rights (especially critical legal theory as well as the pragmatic practices of the field) — seeing that both share a commitment to social justice work — at a time of enormous global uncertainties and egregious erosion of liberties. I know this is a tall order, so I'd like to keep this project modest by focusing on the way in which we may reconceive human rights and international public law — including the assumptions, institutions, relations, and practices of the rights discourse, as it is imagined politically and legally — in order to remap the ethico-political commitments of Cultural Studies from *within* a “rights imaginary.” This will require a perspective that will enable us to embed the practice of Cultural Studies inside the legal space of, the institutions associated with, and social movements connected to human rights.

Cultural Studies and human rights practices have different genealogies. Whereas the former is grounded in anti-foundational philosophy, critical sociology, critical theory in the humanities, and interpretive social sciences, the latter are influenced profoundly by Kantian philosophy and ethics, natural law, positivist law traditions, and social movement work. While there are philosophical incompatibilities between the two, there are also intellectual and political synergies. To date, however, interdisciplinary dialogue or institutional collaboration remains rare across the two domains.

Without having to put together the list of wars, killings, brutalities, and all forms of social and economic exploitations that we see today in national and international contexts, it is nonetheless possible to mark this current conjuncture as, in David Luban's words, "the end of human rights."<sup>1</sup> At the same time, it is equally possible for us to note a sense of ethico-political renewal of global human rights accountability that has been raised by problems of acute poverty, extreme environmental crises, and deep ethnic and religious conflicts, to name just a few. In this context, how are the concurrent ideas about the "death" and "renewal" of human rights related to Cultural Studies? I ask this question assuming that Cultural Studies is still a project committed to analyzing the changing contemporary conjuncture, and is still supposed to be self-reflexive about its vocational objectives. Political theorist Jean Cohen observes that as capitalist expansion becomes more and more globalized, she conceives of two choices we have in dealing with a possibly obsolete international human rights system. We could either work to strengthen human rights legal institutions and norms by updating them — that is, by cosmopolitanizing them — or seek to suspend consensually established global rule of law in the name of "saving" human rights from "rogue" nations and fringe groups with the underlying intent of restoring the neo-liberal order of "empire."<sup>2</sup> We know full well which of the two options the Bush–Blair regime from 2001 until 2008 took toward the United Nations and the entire global rights discourse. What does Cultural Studies have to say to this at the moment when basic rights are seriously under threat, and when the discourse of human rights has been hijacked to serve the agenda of the imperial powers?

I am trying to think through how Cultural Studies can be *relocated* to meet the current challenges in social and political struggles worldwide, and thus to remap the context for the field itself.<sup>3</sup> Is human rights law a viable political practice that can address what Nancy Fraser calls redistributive and recognition justice?<sup>4</sup> My hope is to take Cultural Studies somewhere from which it has largely stayed away — the domain of formalized institutional rules of engagement in general, and international human rights law in particular — and in so doing, open a door for critical scholarship to flow. To this, Rosemary Coombe's reminder in her article entitled "Is There a Cultural Studies of Law?" seems useful: "Although legal texts, legal forums, and legal processes have been analyzed as cultural forms, no substantial body of work demonstrating the methodological commitments, theoretical premises, and political convictions that characterize the interdisciplinary field of Cultural Studies has yet appeared with respect to law."<sup>5</sup>

In the last chapter of his 1992 book, Larry Grossberg gave a biting critique of the American left's failure to mobilize an anti-war struggle in the wake of the first Iraq War.<sup>6</sup> There is an interesting section of the chapter that reads, "Politics as the Art of the Possible."<sup>7</sup> Referring to the dramatic dismantling of Apartheid in South Africa, Grossberg argues that what the progressive movements did to help bring Apartheid to an end was to "mobiliz[e] popular pressure on institutions and bureaucracies of economic and governmental institutions."<sup>8</sup> He addresses the American left:

The Left too often thinks that it can end racism and sexism and classism by changing people's attitudes and everyday practices ... Unfortunately, while such struggles may be extremely visible, they are often less effective than attempts to move the institutions ... which have put the economic relations and Black and immigrant populations in place and which condition people's everyday practices. The Left needs institutions which can operate within the systems of governance, understanding that such institutions are the mediating structures by which power is actively realized ... The Left does in fact need more visibility, but it also needs greater access to the entire range of apparatuses of decision making and power. Otherwise, the Left has nothing but its own self-righteousness.<sup>9</sup>

Grossberg's call for an increased institutional visibility of the left, which he made at that time in response to Reaganism, is entirely relevant — if not more so — today in an era shaped by a global regime of military and economic aggression bolstered by an ever-expanding neo-liberal cultural order, even in the Obama years.

### *Cultural Studies and Ethics*

In recent years, many have expressed dissatisfaction about the relevance of Cultural Studies. The myriad forms of intellectual and political interventions that have been made under the broad rubric of Cultural Studies, it has been said, have promulgated at best a discourse of general dissent, but at worst a space for self-reproduction.<sup>10</sup> Whatever "success" there is for Cultural Studies in engendering new intellectual formations in and outside of universities, it is generally tainted by a nagging lack of clarity or ethical force. Joanna Zyliniski puts it this way:

[W]hile the more overtly articulated political questions shape the Cultural Studies agenda, ethics seems to be its hidden, unrecognised and

uncalled-for other. Whenever ethics does make an appearance in Cultural Studies, it risks being reduced — even if mainly by press commentators and supporters of the traditional model of “excellence” in education — to either moralism or “victim recognition.”<sup>11</sup>

In ethico-political debates today, is Cultural Studies that which one cannot not want?

I still remember being profoundly struck by a lecture Stuart Hall gave at the 1990 Cultural Studies Now and in the Future conference in Illinois, when he talked about the marginality of critical intellectuals in “making real effects in the world.”<sup>12</sup> At that time, Hall spoke in part in response to the HIV/AIDS crisis in the United States and worldwide. If the crisis, at its deeply despairing moment in 1990, both biomedically and politically speaking, ushered in Hall’s own despair (when he said, “Against the urgency of people dying in the streets, what in God’s name is the point of Cultural Studies?”<sup>13</sup>), then what are the choices for Cultural Studies today when confronted by all of the political violations we see in front of us? If Hall explicitly refuses to let Cultural Studies off the hook (of its political and theoretical obligations), this cannot be explained by any reluctance to recognize the innovations Cultural Studies has brought to the political field and the enterprise of theory, but it can be explained perhaps by the urgent need to metamorphose the very notion of Cultural Studies as a type of practice in the world. Put more explicitly, I think the problem is in part how to recharacterize Cultural Studies *after* the exuberant proliferation of its own spaces. In academic corridors at least, is Cultural Studies a newly remodeled humanities discipline, a consciousness-raising flagship operation on behalf of politics in the streets, or a new form of applied research? Or can it be a reformulated type of discipline built on the advancement of pragmatic justice through a tripartite investment in critique, professional training, and public participation? I am certainly not the first person to ask this kind of constitutional question about Cultural Studies,<sup>14</sup> but I have in mind a specific way of (narrowly) posing the question, which is this: In the (re)turn to both distributive and recognition justice, how will Cultural Studies clear a space for a parallel intellectual and political engagement with human rights law as a global professional, interdisciplinary, and pragmatic humanitarian practice?

I came into contact with human rights debates through an interdisciplinary program at Columbia University. In 1999, I held a Rockefeller Fellowship that enabled me to participate in Carol Vance’s then newly established Program on Gender, Sexuality, Health, and Human Rights.<sup>15</sup> The program was an

intellectual enterprise established by Vance to engage with the multiple forms of social, political, cultural, and postcolonial wars against non-normative genders and sexualities. This enterprise culminated in the weekly seminars, which saw participation from feminists, representatives of community groups, critical-minded staff and graduate students, and human rights advocates, analysts, and practitioners. While very few of those participants directly allied themselves with Cultural Studies *per se*, the discussion in the weekly seminars intersected tacitly with it by means of a shared critical sensibility, a more or less common academic vocabulary drawn from a broad Marxist, feminist, subalternist, and postmodernist ethos, and finally, a crypto-critique of the relevance of Cultural Studies itself. As our discussion began to take shape around a complicated set of concerns brought about by theories of gender and sexuality, the various forms of public health practices that contoured international body politics, and the community-based activist-oriented critique, the discussion was also frequently dominated by a human rights legal perspective. A rights-based discourse in formal legalistic terms, as well as in the more informal terms of oppositional critique of law, was not only leading our discussion, it effectively colonized it. I mentioned earlier the presence of a crypto-critique of the relevance of Cultural Studies. The inadequacy of Cultural Studies, in using its analytical tools to speak about the problematics at hand, became a tacitly agreed-upon fact among the participants. The “shame,” if you will, was subtly cast in the form of Cultural Studies’ lack of institutional knowledge of, or strategic political capital in, either rights-based discourse or legal-based intervention. The tacit or hidden agreement about the seeming irrelevance of Cultural Studies, while not manifesting in any direct attack on Cultural Studies, nevertheless silenced it. To me, the experience was one of intellectual reinvigoration via a strange form of (self-)silencing. I found myself troubled by a certain kind of theoretical as well as political reductionism in an intellectual atmosphere dominated by human rights discourse and international law. In this particular context, are human rights discourses and international law that which one cannot not want?

Mostly, I remember feeling very uneasy about a certain kind of self-assurance of political certainty. I felt that human rights were too easily taken as a rallying point to either express various modes of injury or to attack various forms of nationalism that inflict those injuries. Yet at the same time I was immensely seduced by the rights discourse and international law. I felt that those were clearly blind spots in Cultural Studies’ whole theoretical apparatus for thinking

through questions of power and politics. That a complicated engagement through an oscillation between skepticism and seduction was conducted via (self-)silencing, convinced me that Cultural Studies somehow must render itself more “relevant” without sacrificing its anti-reductionist stance.<sup>16</sup>

Facing the problem of Cultural Studies’ apparent lack of relevance, we may be compelled to ask what is *after* Cultural Studies as we know it today, by abandoning those elements of the field that lead to mere self-reproduction, thus relinquishing a certain barrier to other critical impulses. Larry Grossberg has continuously called for a necessary “relocation” of Cultural Studies in relation to the pressing conjunctural struggles. To do so, he argues, would require us:

not only doing Cultural Studies conjuncturally but also reinventing Cultural Studies itself — its theories and its questions — in response to conjunctural conditions and demand. It is for this reason, I think, that Cultural Studies (along with many other critical paradigms and practices) has had surprisingly little to contribute to the analysis of the very significant struggles and changes taking place within many national formations as well as on a transnational scale. Without an understanding of what is going on, Cultural Studies cannot contribute to envisioning other scenarios and outcomes, and the strategies that might take us down alternative pathways.<sup>17</sup>

## Refiguring Human Rights

Let me now briefly sketch an integrated framework of analysis that serves to redirect Cultural Studies toward a symbiotic convergence with human rights political and legal practices. This is a framework underscored by the notion that human rights is, simply put, “a site of legal-cultural struggles.” By this I mean three critical dimensions: (1) a conceptual reorientation of human rights as a political representation of modernities-in-struggle; (2) a perspective of human rights as a nodal point of transnational social movements; and (3) a utilization of human rights as a global legal apparatus with notable impact on the discourse of public social justice.

### *Human Rights as Modernities-in-Struggle*

The genealogy of the modern human rights regime suggests that not only were distinctive states engaged in a search for a common humanity, they were also in search of a common modernity. Those were at least the expressed motivations

for constructing a new and peaceful international community in the early twentieth century. The price for peace and stability took the form of an enactment of a moral-juridical discourse of universal rights buttressed by the rational science of international relations. However, in this embryonic stage of industrial modernity, there were already two signs that suggested the fragility of that universalist project. First, the League of Nations formed at the end of World War I instituted a series of minorities treaties as soon as a remapping of territoriality was underway in Europe. It was realized that the redrawing of state borders and the creation of new states necessitated the creation of minorities treaties and declarations to protect displaced ethnic groups, especially those in Eastern Europe. This was the first sign of a nascent but localized particularism in the world conception of human rights. But a more serious threat to universal rights came in the contentious debate over the question of slavery. The reluctance of many members within the League to abolish slavery, needless to say, seriously called into question the moral foundation of the rights discourse. Despite efforts to address the question of slavery, such as the 1926 Slavery Convention, the notion of a unified modernity was breaking at the seams. With that, the property-based conception of human rights looked all too suspect, and the concern for the plight of workers felt all too phony. Yet at a deeper level, this second sign that punctured the universalism in human rights revealed a larger problem, which is the question about modernities-in-struggle.

What the modern system of human rights exposes is a competition of modernities, manifested through rivalry among immutable colonial powers as well as recognition of vestiges of cultural differences around the globe. Western nations formed their own power bloc in order to proffer Enlightenment ideals of human emancipation, while continuing to advance their imperial interests around the globe. Meanwhile, pre-industrialized African nations banded together to formulate what an appropriate rights regime might look like for their indigenes. The League of Nations was widely perceived as a failed revolutionary project, since it succeeded neither in banishing armed conflicts, nor in inaugurating a new modernity of equality and human emancipation.<sup>18</sup>

The history of human rights leading up to the current moment continues to annex a history of encounter between industrial and post-industrial modernity of the West and alternative visions of modernity embodied chiefly by the colonized others. Agrarian modernity, Islamic modernity, Confucian modernity: these are but provisional notations gesturing toward visions of humanity and of rights that are *excluded* from, or made *secondary* to, colonial modernity.

It is therefore not by chance that the modern human rights structure under the United Nations saw a stratification of rights into primary and secondary rights, or successive “generations” of rights. The second and third generations of rights are those rights that are most closely relevant to non-Western nations, including development rights, cultural rights, indigenous rights, and various forms of social and economic rights. Meanwhile, the imagination of primary or first-generation rights coincides with the political imperative of protecting industrial interests, processes of marketization, Judeo-Christian rights, and the development of the legal architecture of modern governance.

To date, the most visible and controversial retort to the hegemonic discourse of primary rights linked to Western liberal models of democracy has come from industrialized East Asia. With the 1993 Bangkok Declaration on Human Rights, an apparent consensus was reached to oppose the universalizing norms in the Western conception of human rights. The Bangkok Declaration attempted to reframe human rights as a question of sovereignty defense by Asian nations — a kind of putative regional rights platform to plan their own alternative future without interference from the West. Article 6 declares that “all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development.” Here, an ethno-national argument is clear, when elevated to the status of a political consensus for a regional right of self-determination, emboldening Asian governments to achieve hegemony over an ostensibly “alternative” polity. The consolidated tag of the “Asian values” debate in fact exposes the chauvinistic nationalisms of industrialized East Asia, which in many ways mirror the colonial nationalisms of the industrialized West. In fact, right after the Bangkok meetings, in barely three months’ time, the Vienna Declaration in 1993 saw many NGOs from the developing world, including those from Asia, *reject* the “Asian values” push. Many of the groups still wanting to work toward establishing local human rights commissions in their countries nonetheless refused to let the ethno-nationalism of the Bangkok Declaration go unchallenged.<sup>19</sup> Pheng Cheah takes this kind of sentiment one step further by arguing that the polarization of modernities masks an underlying hegemonic order:

[W]hat is at stake in the elaborately media-staged skirmishes between states over international human rights [at the Bangkok meetings] is not really Western or Northern imperializing universalism versus Eastern or Southern cultural difference. The two poles of that binary opposition are

complicitous. The fight is between different globalizing models of capitalist accumulation attempting to assert economic hegemony. The coding of this fight in terms of cultural difference diverts our attention from the subtending line of force of global capital that brings the two antagonists into an aporetic embrace *against* the possibility of other alternatives of development, feminist or ecological-subalternist.<sup>20</sup>

Here, Cheah strikes a cautionary note on any sense of statist alterity that captures “culture” as simultaneously a defense and a mask. What is ultimately excluded is the possibility of an autonomous politics of human rights in the Global South, the site of a range of emergent modernities that have variously been called indigenous, post-developmental, or post-socialist. The human rights system as a whole has not adequately responded to these emergent modernities that, despite their marginality in the global geopolitical sphere, must struggle with all forms of political and economic violence brought about by global capitalist expansion. We must ask: How does the modern human rights system move forward to address post-Enlightenment and post-capitalist rights by considering the rights discourse’s own postcolonial condition? How do we reconceive of an outside to the modern human rights regime, by thinking from *within* the regime’s configuration of modernities?

To work through this conundrum, some international lawyers from the Global South have sought to reconceptualize a new, and perhaps more genuine, conception of universalism in human rights. They argue that international law must be “decolonized,” without threatening the universal applicability of international law itself. They have called for a new international economic order and the establishment of the UN Conference on Trade and Development.<sup>21</sup> They believe that colonial history has already enabled an exchange between the West and the colonized nations over the value of humanity, rights, and indeed universalism. Some human rights law scholars propose that human rights reform entails both an excavation of hidden sources of positive value in the occidental universal value system — a kind of appeal to Kantian peace<sup>22</sup> — and an injection of *multiple universalisms* drawn from different world traditions and epistemological systems into international law itself.<sup>23</sup> Both strategies involve only a partial repudiation of the universalism of international law because they maintain that the universal applicability of international law is essential for the human rights system as a whole. But more importantly, such approaches contend that subaltern cultures in emergent modernities are equally entitled to inform universal values, and even more interestingly, that the process by

which cultures were subalternized already involved a colonial exchange that had historically shaped what we now take to be universal values.<sup>24</sup>

What results from our discussion thus far is that human rights and international law together form a political representation of modernities-in-struggle. The articulation between a continuous analysis of the colonial origins of rights and the global applicability of international law ensures that no one modernity will forever dominate the rights discourse. At the heart of human rights and international law, there is thus a sense of a productive ontological instability. Among other things, this ontological instability means that we shall continue to have to struggle with universalism and its paradoxes in human rights.

### *Human Rights as Transnational Social Movements*

Human rights constitutes an axis in a transnational range of social movements. The mass organizations today are more likely than their predecessors in the Cold War era to form an intricate collectivity capable of transforming the traditional fixed positions, whether it is the position of the peasant, the unionist, the woman, the black, or even the intellectual. With “horizontal networking” as its *modus operandi*, this collectivity strives to link up various scales of social movements from different locales and regions, generating both planned and impromptu events to lend support to people and groups that have been unjustly treated by the state, raise popular consciousness, oppose repressive policies, and stage direct actions.

In the horizontal networks of social movements, human rights occupy a productively ambivalent position. It is true that some social movements are organized to precisely oppose the liberal logic and a perceived vertical power structure that underpin human rights organizations. Indeed, we must not forget that tension often exists between the broad civil society sector and human rights groups over where to put the appropriate focus of their efforts (for instance, humanitarian, welfare-based, or treaty-based),<sup>25</sup> and what kind of relationship they should maintain with the state organs (that is, whether it is more or less desirable to acquire legal recognition by the state). Moreover, for a long time, a vast part of Latin America saw no organic connection whatsoever between their struggles and human rights, seeing the complicity of, or at least an unfortunate connection between, human rights bureaucracies and state-based power.<sup>26</sup>

Yet, despite the ambivalence, social movements have never strayed far away from the political ethos of rights. The interconnection of rights as a fundamental principle can provide an important political strategy for articulating social movements as a differentiated but interrelated field. International human rights law provides a sufficiently decentered conception of the political sphere to imagine not only individual rights, but increasingly also collective rights. For instance, when rights are viewed as always already “inter-rights,” a notion that demands a rigorous juxtaposition and balance among various forms of justice claims, they can become a productive locus for moving beyond individual rights to analyze how best to strategize collective claim-making. In the 1990s, a conception of inter-rights protection was in fact a basis for promulgating in international law a new principle of “legal intersectionality,” which began to demand innovative combinations and realignments of rights claim-making in order to redress the blind spots inherent in any singular human rights instrument. Originally conceived on the basis of individual rights, the principle of intersectionality can nonetheless be conceived to refigure violence as violence against differentiated but connected groups. In other words, it is a principle that can be expanded to cover both *intrinsic intersectionality* (for example, in the case of a multiply positioned individual seeking rights) and *extrinsic intersectionality* (as in the case of a whole group seeking a multitude of interrelated rights).<sup>27</sup>

There is an important realization behind the articulation of a technical legal intersectionalism and global social movements, which is the fact that human rights create interpretive communities. A majority of social movements — especially from the global South — emerged largely as a response to the new, harsh forms of global economy. Yet the same social movements are never contented with a mere economic analysis of their miseries. Social movement actors scrutinize the role that human rights play in people’s everyday struggles and, in turn, the impact of those struggles on rights-based politics and law. A scrutiny of rights can indeed open up an analysis of the dynamics between institutional forms of power and “extra-institutional” aspects of resistance at the global and national levels.<sup>28</sup> Collective mobilization occurs at one level based on a reading of interconnected forms of everyday struggle and dissent to form what Rajagopal calls “texts of resistance.”<sup>29</sup> Interpretive acts by individuals and groups in social movements can help to clarify issues of rights; they can also enact contestation to the legal language and practice of rights. To configure social movements as interpretive communities is, first, to repudiate

any conception of unitary agency in movement struggles, given the plurality of subject positions and pragmatic motivations behind social movements and, second, to identify actors in non-state and extra-judicial spaces who are either the perpetrator or the recipient of all forms of violence. This radically contextual understanding of social movements has the potential to forge a new conception of human rights discourse that takes into account the complex relations between its institutional, legalistic, and even ostensibly elitist tendencies on the one hand, and its lived effects as an outcome of non-universalizing and even anti-rationalist consideration of everyday struggles on the other.

### *Human Rights as a Global Legal Apparatus*

Social movements politicize and humanize the discourse of rights by paying attention to the life spaces of peoples and their everyday struggles. However, this does not erase the importance of the institutions of law that impact upon those very life spaces, nor does it suggest that social movements are always and everywhere opposed to the tools of law to effect change. Before we consider the specificity of international human rights law, we need to first reconcile common assumptions, especially among left intellectuals, about law as the hegemonic center of modernity. No doubt it is important to keep a critical stance toward all restrictive forms of power that deny recognition of differences and promote an ideology of state neutrality. On this latter item, it is important to recognize that the kind of authority that can impose its own will on how social, economic, and cultural resources are distributed in society while claiming a transcendent position of neutrality is the kind of authority that must be demystified. Commonly, many of us share an understanding that law isn't the same as objectivity, objectivity isn't the same as neutrality, neutrality isn't the same as fairness, and fairness isn't the same as justice. Yet in liberal societies where many of us live, most people, as if in a permanent suspension of belief, accept the law as a more or less coherent process or protocol.<sup>30</sup> Many of us are willing to risk our cultural security so as to trade for the possibility of justice and empowerment. And this applies to people of different ideological orientations. Sufficiently numerous liberals and conservatives, including the left and right intelligentsias, invest in the general idea of a judicial process that will produce "legally correct" results.<sup>31</sup> As to whether this blanket investment in law will lead us to a strengthening of legal competence to effect social change or to a kind of political banality is an open question.

What is important, though, is for us to recognize the over-determined nature of legal reasoning and the legal process itself. This necessitates rethinking three problematics. First, we need to recognize that the question about the site of legal knowledge, or the assumption that the courts, law schools, and law societies as the singular formation or site of legal knowledge, needs to be replaced by a recognition of the multiplicity of legal consciousness and uses of that consciousness by people that form the social origin of law. It is here that the study of law connects strongly with Cultural Studies' commitment to the problem of the politics of "the popular." Second, the problem of doctrinalism — or the assumption that legal principles are the essence of law, or its only source of value — need to be replaced by an understanding of the radically contingent nature of legal interpretations in real litigation situations. This connects with the tradition within critical legal studies of "liberal constitutionalism" in which activist liberal law professors, judges, and public-interest lawyers argue that legal interpretivism is something *already* built into law itself, especially in the provisions guaranteeing rights of various kinds.<sup>32</sup> Third, the question of legal essentialism, or the assumption that there is stable and universal distinction between legal and non-legal practices and relations, needs to be replaced by the recognition that legal relations are always partly discursive or relationally produced. Here, the "non-legal" means at least two things. It means all aspects of life that neither express themselves through law nor embody law. But it also means that which is fundamentally important to human life, and therefore will be incorporated into law and policy. Both meanings of the term render any fixed distinction between law and non-law untenable, thereby returning us to the anti-reductionist ethos of Cultural Studies.

In short, the legal determination of the social totality is not any simpler or monolithic than any other levels of determination — be it economic, political, or cultural. The modernist roots of law do not and cannot negate the fact that law is radically contextual and historically contingent. The power exercised by law, it must therefore be insisted, is a matter of conjunctural struggle, whereby the admittedly absolute constituting power of law enters into an intricate negotiation with the site upon which it is supposed to constitute its own power. It bears reminding that, for instance in Foucault's theory of governmentality, the power of law is never conceived of as a total or totalizing sphere (Foucault's famous phrase about cutting off the king's head), but as a network implying an intricate interweaving of many micro-events of power and counter-power. As Rosemary Coombe reminds us, "If law is central to hegemonic processes, it is also a key resource in counterhegemonic struggles."<sup>33</sup>

The international regime of human rights law exhibits exactly such a field or network of legal entities. Indeed, when we consider human rights law as consisting of a set of actions — fieldwork, consultation, diplomatic negotiation, drafting of covenants, monitoring, responding to violations, exerting pressure, prosecuting — then the whole *system* of human rights presents itself as a critical “apparatus” in the Gramscian sense. It is an apparatus that opens on to a multiplicity of overlapping and contradictory geographies, histories, institutions, and even cultural standards of morality. This global human rights legal apparatus embeds scales (domestic, regional, supranational, international), actors (states, individuals, groups, international civil society), processes (documentation, protocols, making of institutions, debating principles and values), and relations (legal, political, diplomatic, military). To quickly illustrate, take any legal provision in an international human rights treaty — say, Article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women, which reads:

State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Putting aside the liberal bias of the provision (which arguably fails to enshrine any substantive form of resistance available to women), it nonetheless is important to note how the provision encodes an entire apparatus consisting of legal actors (including state parties and ordinary citizens in public and private domains), social institutions (including family and educational institutions), and policy processes (such as legal, educational, technical assistance, even reconciliation protocols) that together act to repudiate the nexus of customs and traditions that subjugate women. More importantly, this encoding of the apparatus sets in motion a whole range of processes for legal redress, processes that are built in through (1) the state parties’ self-ratification procedure, (2) the establishment of a specific treaty body within the United Nations to monitor the condition of women’s rights among the state parties, (3) a complaint mechanism, and (4) an investigative procedure. In other words, international law acts to dis-embed forms of prejudice and violence from the social, and re-embed it with a legal safeguard based on consensual agreement over common moral principles and appropriate forms of legal remedies. Of course,

there is no fixed apparatus prescribed here. Any response from the apparatus would also require a rigorous contextual analysis. Yet one thing is clear from the provision: change is *mandated*.

A theory of apparatus is coextensive of a theory of articulation, both pointing to the complexity of a conjuncture. Larry Grossberg reminds us that a conjuncture is “always a social formation as more than a mere context — but as an articulation, accumulation, or condensation of contradictions.”<sup>34</sup> Seen in this way, the international human rights regime, as epitomized by the UN structure (though it cannot be reduced to it),<sup>35</sup> exhibits precisely a contradiction of different mechanisms, procedures, and jurisdictions, each carrying different aims and a wide range of levels of enforceability of international norms. Nonetheless, a common unifying goal is to produce a shift in the conjuncture. Far from guaranteeing human rights as the achievable result, the UN regime in fact strives to create a contingent space for the multilateral geopolitical struggle for rights in a legal environment. Most importantly, it is an *actionable* space.

## Conclusion

In this chapter, I have suggested that I see law as the aspirational space opened up by the processes of human rights reasoning, legislation, and prosecution, which could be a space for Cultural Studies to theorize the questions of rights, intersubjective claim-making, the performativity of the legal subject in judicial processes, and most importantly to theorize the attainment of justice within a formalized institutional setting. My aim is to strengthen our conception of human rights and international law by making explicit the relations between rights and the questions of modernities, of social movements, and of legal cosmopolitanism. The integrated framework of analysis proposed above, I hope, will not only show us the axes around which human rights and Cultural Studies intersect, but also reinvigorate an engagement with a range of international debates about, and critiques of, human rights from a critical institutional perspective. It is time for us to consider the advantages, limitations, and paradoxes brought about by the theoretical and strategic possibilities of inserting human rights legal discourse into Cultural Studies. Specifically, we may:

- consider how rights can be promoted, and violations monitored and challenged, through an analysis of the institutional arrangements and procedures that give rise to various forms of political identities, actors, events, and outcomes

- theorize the notion of “normative power” and its associated benchmarkable standards of justice, which might be put to pragmatic use for the benefit of the injured
- remap the various institutional sites of power that influence rights, and therefore expanding our scope of analysis to include the police, the courts, constitutions, and comparative law
- consider how we can work with those sites of power to open up a space for a counter-hegemonic challenge, for building up capillary power in Foucault’s sense
- envisage critical work that orients more toward the advancement of cases rather than projects — in other words, how can we bring cases of injustice to somewhere relevant? Can Cultural Studies find its way into institutional spaces where cases can be heard, and not merely critiqued and deconstructed?

It is counter-productive to separate the intellectual political project of Cultural Studies from the institutional infrastructures of human rights. A separation would even be an epistemologically untenable assertion, given their shared political commitment to a critique of statism, nationalism, and colonialism, their iterations of identity-based cultural politics, and their shared vision of achieving some sort of social transformation. The task is not to imagine Cultural Studies and rights philosophy as external to each other, or to position the political project of the former and the legal project of the latter as if they were mutually antagonistic. In short, it is worthwhile to ask: How can cultural critique as a political exercise move us to an intellectual condition for an advancement of *actionable justice*, backed by institutional analysis and participation? Or to put it more pointedly, how can we move from projects of *resistance to* to cases of *resistance for*?

## Acknowledgment

This project has benefited from financial support from the Research and Postgraduate Studies Committee of Lingnan University, Hong Kong Special Administrative Region, China (Project #: DR09B2).