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International Human Rights Law and Social Movements: States' Resistance and Civil Society's Insistence

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Abstract

This review examines recent scholarship on the rise of international human rights law and proposes that social movements have played critical roles both in elevating the standards of human rights in international law and in leveraging these standards into better local practices. Institutionalization of universal human rights principles began in the immediate post-World War II period, in which civil society actors worked with powerful states to establish human rights as a key guiding principle of the international community and to ensure the actors' continuing participation in international human rights institutions. The subsequent decades saw various hurdles arise in international politics, but civil society actors skillfully used the small openings that they had gained to continue to advance the cause of human rights. They held powerful governments accountable to their lofty promises about human rights and worked with sympathetic governments in the UN system to continuously upgrade the standards of international human rights. They also leveraged human rights laws toward better local practices, taking advantage of new political opportunities created by human rights laws, using expanding international channels to increase flows of human and material resources, embracing globally legitimated vocabularies of human rights to frame their movements, and integrating the broad cultural effects of human rights laws to construct new social movement identity and actorhood. The review then points out some potential pitfalls of international human rights laws: professionalization of movement actors, which can undermine the impact of social movements and lead to less ambitious and transformative goals; privileging of some causes over others, which can lead to demobilization around certain issues; and overextending movement goals, which can give rise to strong backlash against human rights principles.

INTRODUCTION

Much recent scholarship has examined the rise of global human rights and its impact on global and local politics in the post–World War II world. This line of research has documented a dramatic increase in international human rights activities in governmental arenas (Cole 2005, Elliott & Boli 2008, Moravcsik 2000, Vreeland 2008, Wotipka & Tsutsui 2008), in global civil society (Clark 2001, Smith et al. 1997, Smith & Wiest 2005, Tsutsui & Wotipka 2004, Wiseberg 1992), and in the marketplace (Bartley 2007, Lim & Tsutsui 2012, Seidman 2007, Soule 2009). It has also demonstrated that these increasing human rights activities have catalyzed seismic social changes such as the end of the Cold War (Snyder 2011, Thomas 2001) and the Civil Rights Movement (Anderson 2003; Layton 2000; McAdam 1999; Skrentny 1998, 2002), not to mention many other local-level changes in human rights practices (Brysk 2000, 2002; Merry 2006a; Risse et al. 1999; Ron 2000; Yashar 2005). At the core of these developments are international legal agreements that codify and diffuse human rights principles. These international agreements inherently undermine states' sovereign rights and do not provide any obvious tangible benefits for state parties. Yet, an increasing number of states have committed to a growing number of international human rights laws. Even binding treaties, however, have limited capacity for enforcement. Correspondingly, cross-national statistical analyses have shown that the association between a country's ratification of human rights treaties and its actual human rights practice is low or even negative (Hafner-Burton & Tsutsui 2005, Hathaway 2002). States clearly make empty promises in committing to international human rights law.

Nonetheless, empirical studies on the history of the international human rights regime report a surprising number of success stories both in raising the standards of global human rights principles and in making substantial positive changes in local practices. Why did human

rights principles, which by design undermine state sovereignty, successfully become international laws when states have had the final authority to reject them? Why do the resulting international human rights laws lack strong enforcement mechanisms when states agreed to the principles codified in them? And why, despite the weak enforcement mechanisms and much resistance by states, have human rights principles continued to gain ground in international and local politics? This article seeks to answer these questions, drawing on empirical studies that have documented the evolution of international human rights law.

We focus, in particular, on the tension between civil society actors and state actors that drove much of the development of human rights. Based on the empirical evidence gathered by scholars in various disciplines, we argue that social movements, defined simply as sustained collective mobilizations for social change by civil society actors who use extrainstitutional routes (see, e.g., Snow & Soule 2010), are the key to understanding the puzzles of international human rights law—its widespread diffusion despite the potential to undermine state sovereignty and its remarkable successes despite weak enforcement mechanisms. Social movements have played critical roles in lobbying state actors for various international human rights instruments and in overcoming the weak enforcement capacity of many of these international instruments. International human rights laws emerged as settlements between civil society actors, who mobilize collectively to establish human rights as a guiding principle of the international community, and state actors, most of whom resist the pressure from civil society to reform. The settlement initially favored state actors, but it nevertheless created enough of an opening for social movements to push for more international efforts to advance human rights principles. Because of the tireless efforts by civil society actors and cooperation from sympathetic state actors, the balance gradually shifted in favor of civil society. Consequently, international human rights instruments have gained greater authority

over states' domestic affairs and have become increasingly more effective in improving human rights practices on the ground. Granted, states still hold more power than social movements, and severe human rights violations continue to baffle international society. Nevertheless, the advances that international human rights law has achieved are quite impressive, and the critical role that social movements have played in this process is undeniable. At the same time, the process of this institution building reveals various constraints that are built into the contemporary human rights regime and continue to limit the capacity of the regime to address human rights violations (Hajjar 2004, Somers & Roberts 2008). Below, we provide an overview of this history and highlight the coconstitutive relationship between international human rights law and social movements.

INTERNATIONAL HUMAN RIGHTS LAW AND SOCIAL MOVEMENTS

We begin by delimiting the scope of our inquiry. First, as Goodale & Merry (2008) point out, human rights can be defined as (a) a moral value system subject to continuous conceptual discussion of what it entails or (b) a positive law system with well-established international legal texts as the source of legitimacy. Our focus in this article is on the latter, the international human rights regime that is undergirded by a growing number of international human rights laws. And we focus primarily on multilateral human rights agreements sponsored by the United Nations, although we are cognizant of the importance of regional and bilateral human rights agreements (see Hafner-Burton 2009 on trade agreements; van Dijk et al. 2006 on the European regime; and Cerna 2004, Frost 1992, Medina 1990 on the Inter-American regime). These multilateral agreements come in different forms, ranging from nonbinding declarations, or soft law [e.g., Universal Declaration of Human Rights (UDHR), Declaration on the Rights of Indigenous Peoples], to

binding treaties, or hard law [e.g., International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)].

Despite our focus on the positive law aspects of human rights, we recognize that human rights as a value system provides a backbone to human rights as international law and motivates human rights activism. Driven by their commitment to human rights principles, civil society actors from across the globe led the social movements to translate those principles into human rights laws. As Buergenthal et al. (2009, p. 321) state, "many contemporary human rights instruments can be traced to proposals and/or drafts prepared by NGOs." We trace this history of activism for human rights in the post-World War II world starting with the foundational moment.

THE FOUNDATIONAL MOMENT OF INTERNATIONAL HUMAN RIGHTS LAW

Following most scholars of human rights, we view the immediate post-World War II period as the foundational moment of the contemporary international human rights regime.¹ Although there were some pioneering international human rights activities (e.g., antislavery movements, women's rights activism) and international human rights agreements (e.g., minority rights treaties in the League of Nations, Geneva Conventions), international laws that apply universally to protect the human rights of every individual emerged only after the 1940s.

Civil society actors contributed to human rights institution building from the very beginning (Buergenthal et al. 2009, Ishay 2004, James

¹See Moyon (2010) and Hoffman (2011) for a different view that locates the advent of human rights in the 1970s. These revisionist scholars simply have a different definition of human rights, limiting it to a contemporary Western notion of individual rights, and their approach has been criticized for overemphasizing the newness of human rights (e.g., Bass 2010).

2007, Korey 2001, Lauren 2003, Morsink 1999, Rajagopal 2009). At the UN Conference on International Organization in San Francisco in 1945, roughly 1,200 NGOs, such as the International League for Human Rights and the American Jewish Committee, urged the delegations from powerful states, especially the US delegation, to accord human rights a central role in the United Nations and NGOs a formal role in UN proceedings (Buergenthal et al. 2009, Ishay 2004, Korey 2001, Wiseberg & Scoble 1977). The architects of the United Nations—state representatives of the United States, Britain, France, and the USSR—conceded to NGO pressure and included human rights language and NGO participation mechanisms in the UN Charter. Especially important was a meeting between then-US Secretary of State Edward Stettinius, Jr. and 42 US-based NGOs—including the Joint Committee for Religious Liberty, the NAACP, and the American Association for the United Nations—in which the NGO leaders persuaded the Secretary to include human rights provisions in the UN Charter, create a commission on human rights at the United Nations, and support human rights as the United Nations' guiding principle (Borgwardt 2012, Glendon 2001). As a result, the preamble of the UN Charter states the United Nations' commitment to "reaffirm faith in fundamental human rights," and Article 1 stipulates that one of the four main purposes of the United Nations is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." NGOs' participation in the United Nations was also formally stipulated in Article 71 of the UN Charter.²

The momentum for human rights carried over from the UN Charter to the Convention on the Prevention and Punishment of the

Crime of Genocide (the Genocide Convention) and the UDHR, both adopted in the United Nations in 1948. The impact of civil society actors in this process is well documented. For instance, Power (2002) recounts Raphael Remkin's heroic efforts in campaigning for the Genocide Convention. Quataert (2009) attributes part of the success of the UDHR to incorporation of various different voices from civil society. Nurser (2003) describes how the ecumenical movement of American Protestant churches was influential in the drafting of the UDHR, especially on articles pertaining to the freedom of religion and belief. And Fraser (1999) highlights the role of women's NGOs, such as the YWCA, in lobbying for the adoption of the UDHR and inclusion of gender-neutral language in the text.

In this foundational moment for international human rights law, civil society actors were able to exert significant influence on global lawmaking. Historians note that "Allied governments actually appeared to be enthusiastic in leading the crusade for human rights" (Lauren 2003, p. 155), and the norm-building efforts seemed to be "an attempt to institutionalize a New Deal orientation, more specifically, FDR's so-called 'Four Freedoms' in the sphere of international relations" (Borgwardt 2008, pp. 689–90). They also point out the impact of the Holocaust in highlighting "the significance of the work of the human rights commission members" and in shaping "new international humanitarian law for decades to come" [Ishay (2004), pp. 218, 241; but see also Waltz (2002) and Cohen (2012) for a careful assessment of the impact of the Holocaust]. Whatever the motivation, state actors seemed responsive to civil society actors' push for human rights principles (Borgwardt 2005, Buergenthal 1997, Ishay 2004, James 2007, Lauren 2003, Simpson 2001).

However, the seemingly collaborative relationship between civil society actors and powerful states masks fundamental disagreements about the extent to which human rights concerns override the sanctity of state

²We note that there was also some opposition to the UDHR by civil society actors, most notably by the American Bar Association and the American Anthropological Association (Engle 2001, Glendon 2001, Somers & Roberts 2008).

sovereignty. State actors were careful not to risk eroding their sovereign rights, while at the same time presenting themselves as sympathetic to the concerns of civil society actors.³ This Janus-faced approach is evident in the resulting documents. For instance, despite the commitment to human rights in Article 1, the UN Charter quickly adds in Article 2 that “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” State actors clearly sought to protect their sovereign rights in this article. Similarly, the Genocide Convention, in its final version, struck out “political groups” as one of the categories along with “national, ethnic, racial or religious groups” to be protected from genocidal destruction, so that major powers could preserve their capacity to act against “political enemies” (Hajjar 2001, Kuper 1994). Inclusion of political groups would have made “too many governments...vulnerable to the charges of genocide” (Orentlicher 1999, p. 154).

Thus, a deeper examination of the process of human rights lawmaking reveals that human rights agreements that emerged in this period were largely a settlement between civil society’s push for human rights and state actors’ adherence to their sovereign rights (Hajjar 2004). Because the power of civil society was still limited, the settlement favored state actors. Consequently, the resulting human rights documents conceded only modestly to social movements for human rights.

Soon, however, even this small opening for civil society actors became enough of a concern for state actors to mount a defensive strategy. Many governments sought to marginalize civil society actors in the United Nations in the following decades, thus limiting civil society input in international human rights law

(Otto 1996). For example, the Commission on Human Rights and the Economic and Social Council, in 1947 and 1952, respectively, restricted NGOs’ ability to comment critically on human rights situations in specific countries (Ishay 2004). As the Cold War intensified, powerful actors in the United Nations became more hostile toward NGOs, further limiting their impact on human rights law and policy (Ishay 2004). In addition, newly independent Third World countries, which enthusiastically supported human rights in their struggle toward independence, quickly turned around and objected to human rights claims as they became repressive regimes that prioritized domestic political order (Burke 2010).

In sum, the political environment for further consolidation of human rights in international law did not seem favorable. Yet, civil society actors made the best of the small opening afforded to them in international political forums and promoted the cause of human rights with skillful diplomacy and unwavering commitment. They cleverly used existing human rights instruments and state actors’ rhetorical commitments to human rights to upgrade global human rights standards and leverage these standards for better local practices. We examine these two processes in turn.

UPGRADING INTERNATIONAL HUMAN RIGHTS LAW

After the UDHR, the main task of the UN Commission on Human Rights was to draft an International Covenant on Human Rights that would make the principles of the UDHR binding international law. However, due to Cold War bickering between the two superpowers, the drafting process meandered through the UN system for 18 years, and the resulting documents, adopted in 1966, were divided into two parts: the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Buergenthal 1997, Lauren 2003; but see Donnelly & Whelan 2007 for

³Smaller states were relatively more sympathetic to human rights and made important contributions to the emergence of the international human rights regime (Glendon 2001; Rajagopal 2003; Waltz 2001, 2002, 2004).

a different view). NGOs were “influential in drafting the two human rights covenants” (Charnovitz 1997, p. 259; see also McGoldrick 1991).⁴ Soon, however, as the issue of rights to racial equality and self-determination loomed larger and larger with the rise of anticolonialism movements, the United States retreated from the negotiations, and the disputes among state actors complicated efforts to draft the Covenants. Yet, the same issue also brought an early breakthrough in human rights politics. In this section, we examine the evolution of specific human rights issues into international treaties, starting from racial equality and moving to torture, women’s rights, and indigenous rights, to trace the footprints of social movements in the efforts to institutionalize human rights principles into international law.

Apartheid in South Africa was arguably the first ongoing human rights violation that the United Nations confronted. The issue first surfaced in the United Nations as India raised concerns about the treatment of Indians in South Africa at the very first session of the United Nations in 1946 (Klotz 1995, Klug 2005, Mazower 2009, Sohn 1994). Reminiscent of the interwar minority rights regime, the debate was between state representatives about treatment of their nationals in a foreign country. Soon, however, the debate became more about racial discrimination versus racial equality, colonial domination versus self-determination, and state sovereignty versus human rights. Because of their discursive commitment to racial equality, rights to self-determination, and human rights, powerful state actors took this issue seriously and often sided with antiapartheid governments, such as India and Pakistan, and civil society actors who mobilized against apartheid (Bissell 1977, Klotz

1995, Nesbitt 2004). Throughout the 1950s, as the South African government continued to codify racially exclusionary policies such as the Prohibition of Mixed Marriages Act (1949), the Population Registration Act (1950), and the Group Areas Act (1950), India shifted its tactical approach from focusing on the treatment of its nationals to challenging apartheid in terms of human rights. In 1952, India put forth the first motion specifically concerning the practice of apartheid (Klotz 1995). Several years later, in 1960, the UN General Assembly passed Resolution 1598 rejecting apartheid as “reprehensible and repugnant to human dignity,” and finally, in 1977, the UN Security Council passed a Chapter VII resolution that enforced a trade embargo against the apartheid regime in South Africa (Schweigman 2001).

In this process, international social movements against the South African government played a critical role. They formed a loosely connected international antiapartheid alliance across several Western countries, including Sweden, Britain, the United States, Canada, Holland, Australia, and New Zealand, “focused on raising public awareness and changing international policies toward South Africa” (Seidman 2000, p. 349). According to Gassama (1996, p. 1528), human rights NGOs played a vital role in “resolving the stalemate between the Security Council and the General Assembly over imposing economic sanctions to end apartheid” by obtaining “the support of diverse governments and intergovernmental structures.” This movement was also a main driver in establishing the first United Nations–sponsored human rights treaty with a monitoring body—the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted in 1965, one year before ICCPR and ICESCR. In 1973, the United Nations also adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid. Thus, civil society actors contributed to the development of international human rights law by leveraging governments’ discursive commitments to the cause of racial equality and using alliances with

⁴For instance, Lauren (2003) and Waltz (2004) describe how groups such as the American Civil Liberties Union promoted unconditional freedom of speech in the drafting process. However, relative to research on other issues, scholarship on NGO contributions to the ICCPR and ICESCR is rather limited.

sympathetic governments as entry points.⁵ These strategies would be adopted by many social movements for human rights after this period, and activists have become increasingly proficient and resourceful in deploying them.

Torture and forced disappearances are other issues that attracted much attention fairly early. The movement to stop torture by the Greek junta in the late 1960s was an early case that gave the issue much prominence and cast a spotlight on the relatively unknown Amnesty International (AI).⁶ Thanks largely to AI's campaign for the abolition of torture, the United Nations started addressing the issue in 1973 (Clark 2001, Tolley 1989). Many NGOs, including AI, the International Commission of Jurists, and the World Council of Churches, participated in the drafting process of UN documents on torture, working with supportive governments such as the Netherlands and Sweden (Rodley 1983, Tolley 1989). Even these governments were apprehensive about a convention against torture, but AI mobilized local public support in these countries to pressure governments to support it (Schmitz 2000). In addition, reports about forced disappearances in Latin American countries highlighted the importance of these physical integrity rights and compelled some governments to take action. Sikink (2004) documents changing US foreign policies on these issues and NGOs' contributions across different Latin American countries. Brody & González (1997) examine how the United Nations and Organization of American States (OAS), in response to early pressure from social movements led by relatives of disappeared

individuals, adopted resolutions on the issue in the 1980s that characterized disappearances as "crimes against humanity." During this time, these family-led movements and other NGOs also developed their own international standards that went beyond UN and OAS resolutions, preparing draft declarations and conventions on forced disappearances. Brysk (1994), for example, shows how organizations in Argentina worked collaboratively to raise international awareness about disappearances by developing an informal, if not unconscious, division of labor (Bonner 2005, Brysk 1994). She explains that while family-based groups (most notably Las Madres de Plaza de Mayo) captured international attention through political theater, civil libertarian groups such as the Center for Legal Studies (CELS) took on quite different tasks. The organization prepared documents on the disappearances, which were ultimately incorporated into the OAS report on human rights violations in Argentina, and worked with allies in the international arena to promote awareness and pressure the Argentinean government. Despite opposition by some state members, social movements lobbied intensively through working groups and succeeded in establishing international law on this issue that included their language in the provisions, most notably the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the 1992 Inter-American Convention on the Forced Disappearance of Persons.⁷

Women's rights also emerged early in international human rights politics. Drawing on existing women's rights activist networks, women's rights groups teamed up with sympathetic, often female, UN delegates to successfully lobby for gender-neutral terms in the UN Charter and the UDHR and to establish the

⁵In reality, however, the issue of self-determination lost to Cold War politics more often, as evident in the case of Indonesia's brutal occupation of East Timor since 1975, in which even the human-rights-friendly Carter administration prioritized the alliance with Indonesia over East Timor's right to self-determination (Simpson 2012; see also Jetschke 1999).

⁶Interestingly, the International Committee of the Red Cross was not supportive of AI's public shaming tactic against the Greek junta, and its report (which did not find strong evidence of torture) was used selectively by critics of AI to undermine the validity of torture reports (Keys 2012).

⁷Mutua (2007) also shows that NGOs successfully targeted states that were friendly to their issues in order to persuade other states in the adoption of standards such as the Draft Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Commission on the Status of Women in the United Nations as early as in 1946 (Fraser 1999, Keck & Sikkink 1998, Morsink 1999).⁸ In 1979, they “drafted and successfully lobbied” for the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Fraser 1999, p. 857). Although CEDAW had established women’s equality with men in the public domain, many human rights violations persisted in private domains. To address this, women’s rights movements advocated for UN attention to violence against women and women’s reproductive rights and health, framing these issues as human rights (Black 2012, Johnstone 2006). More concretely, women’s organizations framed reproductive rights and women’s health in line with technical population programs and advocated treating domestic violence like any other crime, resulting in calls for international guidelines for the intervention of criminal justice systems in domestic spheres (Joachim 2003). Through these framing strategies and entrepreneurship in seizing political opportunities, women’s rights activists were able to influence sympathetic UN members and contributed to the subsequent adoption of the Declaration on the Elimination of All Forms of Violence Against Women in 1993 and the negotiation for a Programme of Action on population and development.

Indigenous peoples’ rights have also been on the rise in the United Nations since the 1970s. Early activism by indigenous peoples emerged in New Zealand, Canada, and the United States as well as Latin American and Scandinavian countries in the 1970s and 1980s (Anaya 2004, Cooper 2003, Niezen 2000, Yashar 1998). Their growing networks and collaborations led to collective mobilization to establish indigenous peoples’ rights as an international norm. These indigenous movements went to the

United Nations and other intergovernmental organizations to lobby for international law on indigenous rights. In response, the United Nations authorized a special rapporteur’s investigation on indigenous peoples’ issues in 1971 and then formed the Working Group on Indigenous Populations (WGIP) in 1982. The WGIP became a forum for indigenous peoples from across the globe to share their experiences of marginalization and to organize against exploitation and oppression. With active participation and strong leadership by indigenous activists, the WGIP spawned various instruments to promote indigenous rights: the International Year of the World’s Indigenous People (1993), the Working Group on the Draft Declaration on Indigenous Rights (1995), the International Decade of the World’s Indigenous People (1995–2004), the Second International Decade of the World’s Indigenous People (2005–2014), and the Permanent Forum on Indigenous Issues (2002). In many of these forums, the United Nations enabled indigenous activists to participate directly even without an official consultative status at the United Nations (Barsh 1996). With the support of sympathetic governments, especially those in Scandinavian countries, it even established a voluntary fund to facilitate the participation of resource-strapped indigenous groups in the UN discussions (Corntassel & Primeau 1995, Williams 1990). In 2007, these efforts by indigenous rights movements culminated in the adoption of the UN Declaration on the Rights of Indigenous Peoples. Indigenous activists’ input in the Working Group on the Draft Declaration on Indigenous Rights was critical to integrating indigenous peoples’ understandings and concerns around indigenous rights into the final Declaration (Barelli 2010).

In many other areas of rights, scholars have documented contributions by social movements to the establishment of international human rights law. For instance, the International Commission of Jurists, the International Association of Democratic Lawyers, and the Polish Association of Jurists sponsored a conference on children’s rights in Warsaw

⁸Eleanor Roosevelt is often seen as not supportive of women’s rights because she opposed the establishment of the Commission the Status of Women and accepted some male-centered terms in the UDHR in the drafting process. But Black (2012) offers a more complex argument that Eleanor Roosevelt worked hard to advance women’s rights in different ways.

that led to the Polish government's submissions of a Draft Convention on the Rights of the Child, which later became the Convention on the Rights of the Child in 1989 (Tolley 1989). Breen (2003) shows that NGO coalitions such as the Coalition to Stop the Use of Child Soldiers were instrumental in highlighting the issue of child soldiers in developing countries, resulting directly in the drafting of the Optional Protocol on Children in Armed Conflict in 2000. Clark (1999, p. 339) discusses the efforts within the United Nations by NGOs such as the International Committee of the Red Cross and the International Commission of Jurists at "updating the laws of war," which resulted in two protocols to the Geneva Conventions in 1977 (see also Allen et al. 1996).⁹ De Albuquerque (2010) describes how NGOs formed the International NGO Coalition for an Optional Protocol to the ICESCR and provided advice and legal clarification to state actors, ultimately contributing to the adoption of the Optional Protocol in 2008. Nanda (1998) has shown that NGOs were crucial in the negotiation process toward the establishment of the International Criminal Court (ICC). And Douglas et al. (2004) discuss how labor activists in Mexico, Canada, and the United States have pushed for greater labor protections to be codified in the North American Free Trade Agreement (NAFTA), resulting in a labor clause that obligates US representatives of multilateral lending institutions to ensure respect for labor rights as a condition for loans.¹⁰

Throughout these processes, social movements directly participated in conferences and working groups, lobbied state delegates at meetings and in hallways, and at times used more indirect strategies such as media blitzes

and letter writing campaigns when institutional obstacles prevented direct participation (Otto 1996). These strategies clearly bore fruit, and social movements have contributed to raising global human rights standards significantly since 1945.

LEVERAGING INTERNATIONAL HUMAN RIGHTS LAW FOR BETTER LOCAL PRACTICE

In this section, we turn to the impact of international human rights law on social movements. The rapid growth of international human rights instruments is impressive, but the next question is whether these instruments have had any impact on local practices. Many scholars have used quantitative data on state participation in international human rights instruments and state practice on human rights to investigate the impact of international human rights law. Most of these studies found that human rights treaties do not improve local practices directly (Hafner-Burton & Tsutsui 2005, Hathaway 2002, Keith 1999, Simmons 2009; but see Cole 2012a for evidence that governments that make stronger commitments to human rights do improve their practices). This is understandable given that many violating governments were the first to ratify human rights treaties and that countries with strong rule of law are more cautious about ratifying these treaties for fear that local practices may not be consistent with treaty provisions (Hafner-Burton & Tsutsui 2007, Hafner-Burton et al. 2008). Studies have also found that, despite the lack of direct effects of treaty ratification, ratifications by many governments raised the status of human rights principles and that civil society actors were able to leverage human rights language and pressure governments to address their human rights violations (Goodman & Jinks 2004, Hafner-Burton & Tsutsui 2005, Murdie 2009, Risse et al. 1999). In essence, social movements served as de facto enforcement mechanisms to improve local practices. Here again, we see that international human rights law has altered political dynamics, as states unwittingly

⁹The Red Cross in particular played the leading role in the development of laws of war and helped link laws of war with human rights laws by extending protection from combatants to civilians and by prioritizing individuals' rights over state sovereignty (Hitchcock 2012).

¹⁰For a history of the relationship between broader human rights politics and labor rights activities in the International Labour Organization, see Maul (2011).

presented openings for civil society actors and civil society actors in turn adroitly used these opportunities to advance human rights goals.

We examine how these processes evolved, drawing on two subfields in social movement research that have seen an enormous growth in the past decade. The first is the literature on the impact of globalization on social movements, which has established that globalization opens new political opportunities, enhances flows of resources for mobilization, provides vocabularies for effective framing, and facilitates formation of social movement identity and actorhood (Brysk 2002, della Porta et al. 1999, della Porta & Tarrow 2004, Guidry et al. 2000, Kay 2005, Keck & Sikkink 1998, Khagram et al. 2002, Koenig & Dierkes 2011, Smith & Johnston 2002, Tarrow 2005, Tsutsui 2006, Tsutsui & Shin 2008). The second is the literature on the impact of law on social movements. This line of research has shown that, although law might generally work to sustain the status quo, it also has the potential to spark political changes when used by activists effectively. More concretely, scholars have revealed the law's potential to provide new political opportunities, encourage the formation/activities of social movement organizations, facilitate the framing of movement goals in politically and socially salient terms, and consolidate or forge new identities (Armstrong 2002; Edelman et al. 2010; Engel & Munger 2003; McCann 1994, 2006). Following these insights, we organize our discussion of the impact of international human rights law on social movements around the four key dimensions identified by these literatures: political opportunities, resource mobilization, framing, and culture and identity.

Political Opportunities

We follow the standard definition of political opportunities that McAdam (1996) summarized in four dimensions—the relative openness or closure of the institutionalized political system, the stability or instability of elite alignments, the presence or absence of elite allies, and the state's capacity and propensity

for repression—and apply these dimensions at the global level. First, in terms of access to the institutionalized political system at the global level, international human rights law has given social movements access to many new venues for contestation. Major human rights treaties, such as the ICCPR and the ICESCR and the conventions on torture, women's rights, children's rights, and racial discrimination, provide for monitoring bodies that examine periodic reports by state parties, and many of these treaties also set forth procedures to receive complaints from individuals. For instance, ICCPR established the UN Human Rights Committee, which reviews required periodic reports from state parties and issues recommendations. It has an Optional Protocol, which enables citizens of the countries that ratified it to file individual complaints. Outside of the treaty system, the UN Human Rights Council (formerly the UN Commission on Human Rights) also has a similar mechanism for individual complaints (called the 1503 procedure from 1970 to 2007 and known today as the Human Rights Council Complaint Procedure) that is open to citizens of any country. Additionally, the Council has initiated a new procedure called the Universal Periodic Review, which is similar to periodic reviews of treaty mechanisms but applies to all UN member states, not just states party to certain treaties. For activists, these institutions provide transnational political opportunities for contestation. Both transnational activists working to help victims of human rights violations and local activists advocating for human rights in their own communities can utilize these institutions to make claims about rights violations and urge international legal institutions to address them. The list of cases examined at these forums is extensive, and scholars have analyzed these cases systematically (see Lebovic & Voeten 2006 for cases in the UN Commission on Human Rights, Nader 2007 for cases on the Human Rights Council, and Cole 2011 for the Human Rights Committee cases). Similar systems exist at the regional level as well, most notably in the European human rights regime

(Boyle & Thompson 2001, Cichowski 2001, Hoskyns 1996, Tarrow 2005).

Even though these periodic reviews and examination of individual complaints rarely lead to any formal sanction, the naming and shaming mechanism can produce enough pressure on violating states to make some positive changes, verifying the utility of these new political opportunities (Cole 2012b; Hafner-Burton 2008). For instance, when comparing international reactions to torture in Uruguay and Paraguay throughout the 1970s, Lutz & Sikink (2002) note that Uruguay, having signed the Optional Protocol to the ICCPR, received more international pressure to address torture and arbitrary detention. After the Optional Protocol went into force in 1976, Uruguayan political prisoners shifted their efforts from domestic channels to the UN Human Rights Committee. The Committee responded to these petitions and called for the Uruguayan government to release political prisoners and provide compensation. Following this, the nascent human rights movement began to put even more pressure on the Uruguayan government, which ultimately ceased to practice torture systematically. Similarly, Schmitz (1999) finds that Uganda was compelled toward better behavior following a UN investigation pursued under the 1503 procedure. Not long after the investigation, then-President Museveni established a Human Rights Desk in the Ministry of Justice and fortified the country's human rights infrastructure by signing the ICCPR, reforming Uganda's national Bill of Rights, and establishing the Uganda Human Rights Commission. Douglas et al. (2004) document many cases in which human rights NGOs used International Labour Organization instruments to put pressure on governments—in Swaziland, El Salvador, Guatemala, and the Dominican Republic, among others—to improve their labor practice. These mechanisms can be effective in developed countries as well, as in the case of Korean minorities in Japan, who also used the 1503 procedure and the UN Human Rights Committee review process to put pressure on

the previously unresponsive Japanese government and succeeded in improving their rights situation (Iwasawa 1998, Tsutsui & Shin 2008).

Second, instability of elite alignments has been a characteristic of the United Nations, especially during the Cold War. Social movements for human rights benefited from competition between the two superpowers over which side had the more legitimate social system. As the Soviet Union and the United States fought this ideological battle, they accused each other of human rights violations—the Soviets criticized the United States for its racism and economic and social rights violations, and the United States accused the Soviet Union of civil and political rights violations. Although this discursive battle hamstrung the progress of UN human rights activities, its unexpected and unintended outcome was the elevation of the status of human rights in international politics; human rights violations in other countries were no longer off-limits in international political debates (Wotipka & Tsutsui 2008). The Civil Rights Movement in the United States took careful advantage of this situation to advance its goals (Anderson 2003, Dudziak 2002, Layton 2000, McAdam 1999, Skrentny 1998), as did activists in the Eastern Bloc, who after the signing of the Helsinki Final Act in 1975, made human rights central to East-West diplomacy (Snyder 2011, Thomas 2001). Even after the end of the Cold War, international politics continues to have fault lines, such as one between the United States and China on civil and political rights issues today or one between European nations and Muslim countries about religious freedom, creating opportunities for social movements.

Third, elite allies at the United Nations or in powerful foreign governments have helped social movements for human rights. Officials at UN human rights agencies, such as the Office of High Commissioner for Human Rights (formerly the Human Rights Center) and the UN Human Rights Committee, have been particularly attentive to civil society actors' concerns and have served as facilitators for their participation in the UN debate. For instance, Quataert (2009) highlights the importance of

the close ties between Las Madres de Plaza de Mayo and Theo van Boven, the director of the UN Division of Human Rights, in the movement's ability to gain access to the UN human rights system, which enhanced the international prominence of the movement. Tsutsui (2009) documents how officials at the UN Human Rights Center assisted minority rights activists in Japan in filing complaints and making statements at international forums, which eventually pushed the Japanese government to grant them more rights. Likewise, in his study of the Peace Brigades International (PBI) in Sri Lanka, a transnational social movement organization specializing in protective accompaniment of human rights activists, Coy (1997) finds that PBI achieved "insider status" at the United Nations by cultivating relationships with elite allies, allowing the organization to increase the safety of local activists in Sri Lanka. Hertel (2006) also documents how a Bangladeshi activist against child labor found allies in the US government, who proposed a bill against child labor in the US Congress, which pressured Bangladeshi corporations into releasing many children from their factories.¹¹

Finally, although the United Nations does not have the kind of capacity for repression that the state has, the United Nations' operations have the potential to discourage some types of movements and encourage others. We will revisit this point in the section on mobilization and demobilization below.

Resource Mobilization

Research that draws on resource mobilization theory has demonstrated that the amount of material resources (most notably money) that social movements have is a powerful predictor

of the likelihood of the emergence and success of social movements (Zald & McCarthy 1987). It has also shown that human networks play a critical role in the mobilization and eventual success of social movements (Gould 1991, McAdam & Paulsen 1993, Snow et al. 1980). International human rights law establishes formal mechanisms for human rights politics that often serve as conduits for flows of material and human resources for human rights advocacy work.¹² Thus, with the expansion of international human rights law, the flows of mobilizational resources have also increased.

One of the more visible impacts of international human rights law is a growing number of international forums in which activists and social movement organizations interact with each other and develop individual and organizational networks through which material resources, movement strategies, and useful information spread. These forums include monitoring bodies of international human rights treaties, international conferences that the United Nations sponsors (often around International Years and Decades), and other regional intergovernmental organizations and NGO-sponsored meetings. These conferences bring together diverse stakeholders invested in a particular issue, allowing social movement representatives to interface with representatives from governments, intergovernmental organizations, and other NGOs. There, they exchange ideas and strategies for their activism and build relationships with activists from elsewhere in the world, enabling a relational mechanism known as brokerage (McAdam et al. 2001). In his study of the first International Decade on Indigenous People, Cornstassel (2007) observes that the UN hallways quite literally create the space for members of

¹¹We note that there is always a danger of backlash when local activists leverage elite allies' power, as in the Bangladeshi case, in which the activist was isolated in Bangladesh and the campaign against child labor was met with much suspicion among most Bangladeshi, particularly because many children released from factory work ended up in a more hazardous working environment, including prostitution (Hertel 2006).

¹²Some sociolegal scholars might see international human rights law as a symbolic and legal resource. Our view, however, is that the provisions of the law serve as vocabularies for framing that help activists in mobilizing social movements, which we discuss in the next section on framing, and that the legal procedures that become available with international human rights law are political opportunities, as discussed above.

indigenous communities to informally share stories of struggle and resistance as well as converse with UN and state officials in a more relaxed setting. Such face-to-face encounters, according to Keck & Sikkink (1998, p. 169), “generate the trust, information sharing, and discovery of common concerns that gives impetus to network formation” and can ultimately have a significant effect on possibilities for social change (Brysk 2000, Purkayastha & Subramaniam 2004). For example, Merry et al. (2010) describe how New York and San Francisco-based social movements’ participation in the 2001 World Conference Against Racism in Durban, South Africa led to the idea to develop a New York City ordinance based on CEDAW and CERD. Similarly, Iida (2004) notes that Japanese NGOs targeting the sex industry were able to build domestic and international coalitions as a result of participation in the Stockholm Conference on the Commercial Sexual Exploitation of Children, resulting in a law banning the sexual exploitation of children.

Such human networks have become increasingly important as technical expertise in human rights law has become critical for social movements to document human rights abuses, draft legal documents, and issue formal complaints (Hagan 2003, Kennedy 2002, Merry 2006a, Riles 2001). The legal expertise necessary for human rights work is transmitted through the human and organizational networks created by international human rights activities, and access to these networks has greatly facilitated social movements seeking to incorporate international human rights law on the domestic or local level (Meili 2001). Recognizing this need, international human rights institutions have begun to host legal training workshops and other capacity-building programs, which intensify the diffusion of movement-related strategies and tactics among connected activists (Merry 2006b). UNIFEM (the UN Development Fund for Women), for example, sponsored such workshops during the 1990s and 2000s for women activists of South Asia and the Pacific to provide them with information about CEDAW ratification and report writing.

Similarly, the UN Permanent Forum on Indigenous Issues has routinely featured workshops on capacity building for local activists. Major NGOs such as the International Commission of Jurists also organize seminars and workshops (Eide 1986).

In addition to legal leverage, activist networks help social movements gain access to international media, which increases publicity of relevant human rights violations and pressures perpetrators to offer redress (Ron et al. 2005). Without access to this international circuit, it is difficult for social movement organizations to gain either supporters (Lahusen 1999) or material resources (Lansner 2006, Inclan 2009). Ropp & Sikkink (1999) describe how the Vicariate of Solidarity in Chile, a church-based NGO, used its international contacts—including AI, with which it was “on the phone every day” (p. 176)—to disseminate information about government repression and contributed to annual resolutions in the UN General Assembly condemning human rights violations in Chile. In his comparative study of social movement organizations in Nigeria and Mexico, Bob (2001, 2005) finds that only those movements able to secure media attention were ultimately successful in mobilizing support. He notes how representatives of the Ogoni people networked at the WGIP in Geneva in 1992, which resulted in a documentary on their cause, leading NGOs that had not previously supported the Ogoni to become allies. In other cases, external actors initiated the contact and publicized an issue, as was the case when Human Rights Watch launched a campaign against pregnancy-related labor discrimination in Mexico (Hertel 2006). In the case of the U’wa people’s movement against oil drilling in their territory in Colombia, US-based NGOs such as the Amazon Coalition, Rain Forest Action Network, and Amazon Watch coordinated media campaigns, inviting U’wa leaders for events in US cities and targeting major outlets such as the *New York Times* for direct negative publicity campaigns (Rodríguez-Garavito & Arenas 2005). In the long struggle between the Kenyan government and human rights NGOs

since the mid-1980s, it was the civil society actors from Norway that first reported on a massacre of ethnic Somalis in Kenya and then publicized the ongoing human rights violations and attracted attention from the Norwegian and other governments (Schmitz 2000).

Finally, financial resources are a crucial component of movement success. Grants flowing from major foundations, such as the Ford Foundation and the Open Society Foundation, have facilitated or even launched human rights movements in local communities (Bird 1998, Dezalay & Garth 2001, Keck & Sikkink 1998).¹³ For example, case studies have identified the significant impact of foundation funding to human rights organizations in Argentina (Keck & Sikkink 1998), Nigeria (Okafor 2006), and Kenya (Mutua 2009). Similarly, Carmichael (2001) finds that Ford Foundation funding has been a particularly crucial factor in the growth of human rights-related NGOs in Africa, Asia, and Latin America and, in the past decade, in Russia and Central Europe. In addition, without financial support, many social movements would be unable to participate in global forums to reap the benefit of networking with other activists. Recognizing this constraint, international human rights institutions have provided funding for less resourceful groups to participate in international conferences and meetings. Examples of these funds include the UN Voluntary Fund for Indigenous Populations (Corntassel 2007), the United Nations' International Fund for Agricultural Development (Brysk 2000), and the UN Development Fund for Women (Boyle 2002).¹⁴ To be sure, global civil society is a competitive arena in which domestic organizations compete for scarce international resources (Bob 2005, Cooley & Ron 2002) in the same way social movements compete for limited resources in the domestic arena (Minkoff 1999, Soule &

King 2008). Few studies have examined this competitive dynamic, but Bob (2001) finds that when the focus of a domestic movement corresponds with internationally recognized categories ("issue matching"), the movement is more likely to receive international resources.

Framing

Framing in social movements research refers to the process through which activists, in their efforts to mobilize many people for their goals, present their cause in a way that most effectively identifies the problem/injustice and proposes solutions (Benford & Snow 2000, Snow et al. 1986). Global framing, according to Tarrow (2005, p. 60), involves "the use of external symbols to orient local or national claims." International human rights law provides such external symbols and lends legitimacy to local social movements, making their claims more cogent to their potential constituents, broader audiences, and targets. In their study of female inheritance law in Hong Kong, Merry & Stern (2005) observe that indigenous women began to frame their exclusion from houses and land as a human rights issue and not a kinship issue. This framing enabled indigenous women in Hong Kong to mobilize in a way that was ultimately compelling to the public and the country's Legislative Council. Along these lines, Basok & Carasco (2010) underscore how the Union of Food and Commercial Workers (UFCW) in Canada framed their advocacy on behalf of seasonal workers by quoting articles in the UDHR and the ICESCR. Hajjar (2001) chronicles the history of activism for the rights of Palestinians in the Occupied Territories and argues that human rights framing adopted by activists (cause lawyers) helped unite Palestinians to mobilize for universal rights, though this approach was eventually derailed by the salience of territorial disputes. Likewise, Korean residents in Japan used frames that invoke the UDHR and the ICCPR to transform their social movements from divided alien residents seeking citizenship rights to a united minority group that deserved universal human rights and to gain more comprehensive

¹³On the growth of US foundation funding for human rights activities, see Sikkink (1993, pp. 420–21).

¹⁴For an extended list of UN funding and support programs for INGOs and NGOs, see Reimann (2006, pp. 50–51).

rights (Shin & Tsutsui 2007, Tsutsui & Shin 2008). Luna (2010) examines how in the process of coalition building among women's rights activists toward the 2004 March for Women's Lives, the dominant framing shifted from a more established reproductive rights frame to a more inclusive reproductive justice frame. The latter frame incorporates global rights discourses and appeals to more diverse constituents, enabling the March to be one of the largest and most diverse protests in US women's rights activism. Finally, Boyle (2002) argues that the Convention on the Rights of the Child provided the necessary legal language for activists to pressure states into reforming their female genital mutilation policies.

Although not immediately evident from the examples above, human rights frameworks are rarely adopted wholesale. Anthropologists have been particularly attuned to how global human rights are localized (Cowan et al. 2001, Goodale 2009, Goodale & Merry 2007). Levitt & Merry (2009, p. 441) describe this process as vernacularization, "the process of appropriation and local adoption of globally generated ideas and strategies."¹⁵ Human rights laws and norms, therefore, take on some ideological and social attributes of the place where they are being appropriated. Vernacularizers mediate the global and the local and enable a creative interpretation and articulation of human rights norms on a local level. Moreover, Merry (2006b) argues that vernacularization occurs on a continuum spanning the various extents to which local practices merge with a global model. On one side of the continuum, vernacularization as "replication" refers to instances in which an "imported institution remains largely unchanged from its transnational prototype" (p. 44). For example, programs for battered women in Hong Kong replicate North American and European prototypes. Although the content of the programs refers to Chinese cultural understandings of gender, the form remains unchanged (see Chan

2000). Like its predecessors, the Hong Kong program "is still a group-therapy program with two-hour weekly meetings where people talk about feelings" (Merry 2006b, p. 45). Vernacularization as "hybridity," on the other side of the continuum, describes "a process that merges imported institutions and symbols with local ones" (p. 44). Women's courts in India (*nari adalats*) constitute one example. These courts appropriated a familiar political structure—the *panchayat*, a village court—but focused on women's rather than village issues, thus altering the structure of the courts.

Whether and when local social movements frame their cause in terms of human rights and how successful this effort might be depend on a number of factors. For instance, in their study of the female inheritance movement in Hong Kong in the 1990s, Merry & Stern (2005) find that the NGO community was more responsive to violations of civil and political rights in the wake of the Tiananmen Square incident in 1989. Additionally, based on his study of the Narmada Valley Dam, Rajagopal (2005) argues that international norms are not uniformly and linearly accepted on the local level. Activists drew on different levels of law (local, national, and international) throughout the two-decade struggle, and, ultimately, domestic law was most significant in this case. Likewise, Liu (2006) finds that despite similar national policy goals, Chinese and Indian women's movements' responses to the Beijing Platform for Action were shaped by national rules (democracy in India and authoritarianism in China) and movement-government interaction during the mobilization process. Rosen & Yoon (2009) argue that the perception of the United States as a leader in human rights (Ignatieff 2005), as well as the historical dominance of a civil rights frame, made human rights appear redundant in the US case (see also Thomas 2000).¹⁶ Although these case studies highlight

¹⁵Others have used different terms, such as glocalization, hybridization, and translation, to refer to similar processes.

¹⁶This is no longer the case. A growing body of literature on this topic demonstrates a renewed interest in human rights framing among domestic social movements in the United States (see Soohoo et al. 2008).

just two factors mediating the appropriation of international human rights law on the local level—timing and national context—further comparative studies would help substantiate these claims and identify additional factors that structure the process of vernacularization.

Culture and Identity

As McCann (1994) demonstrated in his groundbreaking book, *Rights at Work*, law influences how individuals perceive themselves—a key element in constructing movement actorhood. Rights become legal symbols that generate solidarity and identity, which, in turn, help to sustain long-term commitments to social movements (Gamson 1991). This dynamic applies to international human rights law as well. International human rights law diffuses ideas about the rights many in the world did not know they are entitled to and constructs their movement actorhood toward human rights activism (cf. Gordan & Berkovitch 2007, Koenig 2008, Meyer 2012, Meyer et al. 2007, Tsutsui 2004). For example, based on interviews with battered women in Hawaii, Merry (2006a) finds that women take on new subject positions when invoking international law. They do not abandon previously held subjectivities, such as wife or mother, but in Merry's words, an individual who has come to recognize her abuse as a human rights violation "takes on a new subject position, defined in the discourses and social practices of law" (p. 185). Likewise, Tsutsui (2009) documents how an indigenous people in Japan who were focused more on assimilation launched social movements to claim indigenous rights after they were exposed to emergent international indigenous rights norms. In the United States, where organizations involved in human rights work have historically focused their efforts abroad, the role of international human rights law in generating social movement identities has become salient only in the last decade. Rosen & Yoon (2009) note that the contradiction of promoting human rights abroad, but not at home, has presented

opportunities for movement building in the United States around which new movement identity has coalesced. Based on observations at two ethnographic sites in New York City—The New York City Human Rights Initiative and the Voices of Women Organizing Project—Rosen & Yoon find that human rights values have become "a shared property [for] actors with quite different objectives, strategies and institutional positions" and gave rise to new social movement actorhood (p. 519).

In closing, we note that these four dimensions of social movements—political opportunities, resource mobilization, framing, and culture and identity—are interconnected. International human rights law generates international political opportunities, which contribute to the mobilization of transnational resources; access to transnational resources, in turn, fosters additional political opportunities; transnational resources, in many cases, enable social movements to adopt human rights frameworks; human rights framing fosters new subjectivities and cultures of rights; and finally, new subjectivities as rights bearers within a global community facilitate social movement efforts to demand further international legal protections. Along all these dimensions, social movements have used international human rights law creatively and adaptively to mobilize for more rights, with varying degrees of success.

THE LIMITS AND PITFALLS OF INTERNATIONAL HUMAN RIGHTS LAW AND SOCIAL MOVEMENTS

Our foregoing discussion has documented largely positive feedback effects between international human rights law and social movements (see Halliday & Osinsky 2006 and Halliday 2009 for similar processes in different issue areas). However, this coconstitutive relationship has its limits and potential drawbacks. We identify three issues here: professionalization, selective mobilization, and overextension.

Professionalization

The institutional context of international human rights circumscribes civil society actors' engagement with international laws and can direct social movements in more professionalized and institutionalized directions. Because international human rights instruments have preexisting rules and forms of participation, social movements are more likely to internalize these norms as they deepen their participation (Zald & McCarthy 1987). Therefore, social movement organizations that participate in international forums "tend to engage in institutionalized tactics and typically do not initiate disruptive direct-action tactics," because those institutionalized tactics "are more compatible with a formalized structure and the schedules of professionals" (Kriesi 1996, p. 158). In a survey of 295 human rights NGOs, Smith et al. (1998) find that, compared with domestic organizations, "the international human rights movement relies heavily on what are called 'insider' tactics, or activities that demand some formal access to political institutions and that typically require more resources (e.g., skills, money) than do 'outsider' tactics, such as public demonstrations and boycotts" (p. 394). Thus, engagement with international human rights law may have made social movements across the globe toe more rationalized and professionalized lines (cf. Keck & Sikkink 1998, Meyer & Tarrow 1998).

Among many concrete examples, Clark (2001) notes how AI began professionalizing its representation at the United Nations in order to widen its focus on human rights issues in the mid-1970s. This professionalization process began with AI establishing its own legal department within the International Secretariat as well as hiring its first legal advisers and liaisons (Clark 2001). Martens's (2004) study examines how AI initially refrained from direct involvement in drafting processes of human rights treaties during the Cold War era to maintain its independence from government negotiations, but as the United Nations became more open to NGO participation, AI began to participate openly and directly in the processes and has

become a central actor in providing expertise and knowledge (Martens 2004). Dezalay & Garth (2006) review the evolution of the international human rights regime by comparing three generations of international human rights NGOs—the International Commission of Jurists, AI, and Human Rights Watch—and find increasing levels of professionalization in them. Through these changes, human rights NGOs have increased their influence in the United Nations and enhanced their impact on human rights practices, but possibly at the expense of more ambitious goals and revolutionary agendas (Clark et al. 1998, Corntassel 2007, Kaldor 2003, Munck 2006, Utting 2005).

The danger of co-optation has been one of the major criticisms of the professionalization of social movement activity regarding international human rights law. Direct collaboration with international organizations runs the risk of co-optation whereby norm making proceeds along channels and issues determined by preexisting interests. Social movement scholars have long debated the issue of co-optation: whether activists should continue to employ disruptive tactics or seek access to institutionalized politics to be more effective (Piven & Cloward 1978). The evidence, mostly from studies on national-level dynamics, is mixed (Levitsky 2006, Mack 2005, Sarat & Scheingold 2006, Tushnet 1994). Although empirical evidence seems to support the latter strategy, advocates of the former approach point out that much evidence comes from countries with highly rationalized political systems, such as the United States, and that the findings do not apply universally (Fisher & Green 2004, Williams & Ford 1999). This issue is salient in considering cross-national comparisons of the impact of international human rights law. As international instruments develop and create many points of access for activists, do social movements lose their edge and become co-opted in international political institutions? Brown-Nagin (2005, p. 1436), for instance, points out that "social movements that define themselves through law risk undermining their insurgent role in the political

process, and thus losing their agenda-setting ability.” Corntassel (2007) reviews the role of social movements in the United Nations’ First Decade for Indigenous People and found that co-optation of indigenous movements and the “mainstreaming” of indigenous rights issues within the United Nations led to shortcomings within the first decade, most notably failure to adopt a framework that recognized collective rights and self-determination of indigenous peoples. Furthermore, the First Decade yielded few changes in state behavior or accountability measures in indigenous peoples’ issues. Thus, although professionalization has helped move human rights movements forward, overprofessionalization and attendant co-optation need to be noted as potential pitfalls of contemporary global activism.

Selective Mobilization and Demobilization

Both in upgrading international human rights standards and improving local practices, social movement actors that are more influential and resourceful tend to have greater impact on the political outcomes. Consequently, those causes that rank high in priority for powerful social movement organizations are more likely to see mobilization around them while issues that attract support from smaller groups can fall by the wayside. In international human rights politics, civil and political rights concerns have long received much greater attention than economic and social rights issues. Major international NGOs such as AI and Human Rights Watch have historically paid much more attention to civil and political rights than other rights issues, although they have been working to change this in recent years. International human rights law itself tends to favor civil and political rights, if not in treaty provisions, then in the operation of associated legal instruments. The combined result is that advocacy for civil and political rights becomes more successful in mobilizing support and that international human rights activities focus more on those issues, at the expense of other human rights violations (Evans

2000, Cornwall & Nyamu-Musembi 2004, Mutua 2002, Robinson 2003). Furthermore, scholars primarily from the global South have begun to raise concern that human rights has become the only “discourse of emancipation for the third world” (Rajagopal 2003, p. 172; see also Baxi 2002, de Sousa Santos 2002, de Sousa Santos & Rodríguez-Garavito 2005, Mutua 1996), such that forms of violence related to development (i.e., removal of population for development or dam construction) are typically not seen as human rights violations (Rajagopal 2003).¹⁷

To be fair, activists have become aware of this problem and have been working to rectify it. They often couch the issues in terms of inequalities between the global North and South. Beckfield (2003) points out that the global North, composed of affluent democratic societies, dominates global civil society and sets the agenda for international politics, whereas the global South often fails to get its concerns on the agenda. Likewise, de Sousa Santos & Rodríguez-Garavito (2005) point out that human rights institutions and doctrines, with their Western roots and liberal bent, have oftentimes been blind to non-Western conceptions of human dignity and collective rights that provide for an expanded cosmopolitan conception of rights. Smith & Wiest’s (2012) study of transnational social movement organizations confirms this North-South inequality in global civil society. In addition, however, they find indications that this is changing as Southern NGOs have become increasingly more autonomous and influential in recent years. Furthermore, as Robinson (2003) notes, influential international NGOs such as AI, which have conventionally focused on civil and political rights, have begun incorporating economic and social rights in

¹⁷Parallel to the real world development, scholars from the South have also become increasingly active, making important contributions to the research on human rights politics from their perspectives “from below” (e.g., de Sousa Santos & Rodríguez-Garavito 2005, De Feyter et al. 2011, Rajagopal 2003; see also many contributions in the journal *Sur: An International Journal on Human Rights*).

their mandates,¹⁸ reflecting a trend since the 1990s in which NGOs such as the Center for Economic and Social Rights, Oxfam International, and the Ford Foundation have emphasized the importance of economic rights in human rights law. Despite these signs of change, it is still highly plausible that rights issues privileged by major NGOs receive much greater play, and this might produce demobilization around less privileged issues. A good example of this is Y. Long's research on AIDS activism (unpublished manuscript entitled *Mobilization or Demobilization? The Dualities of a Transnational AIDS Social Movement in China*), which shows that urban gay activists who cater to Northern conceptions of AIDS issues appeal to Northern funders more effectively and succeed in mobilization, whereas other activists who advocate for sex workers and peasants infected through contaminated blood become demobilized.

Overextension and Loss of Support

As with any social movement, activism for human rights faces the danger of losing public support if demands go beyond what other social actors deem reasonable. Obviously, the boundary between reasonable and unreasonable is always blurry, and it is a function of social movements to move that boundary to accomplish social change. Nonetheless, in promoting rights issues, activists can overreach their limits and face some backlash. In pushing for international human rights law that pursues ambitious goals, social movements could succeed in allying with supportive governments and adopt a new international law, only to see the treaty lag in collecting enough ratification to be effective. Among major UN treaties, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families might be such an example. It is an ambitious treaty that establishes rights

of migrant workers and their families and received support from sending countries of migrant workers but not from many others, including European countries that commit to most UN human rights treaties. It has received the lowest number of ratifications among major UN treaties and, because of lack of support among host countries of migrant workers, has not been efficacious in achieving its goals (Koenig 2008, Cholewinski et al. 2010). Among various administrative and financial obstacles, Pécoud & de Guchteneire (2006) find that political obstacles—for example, the political economy of labor migration, social and political traditions, and security concerns—posed the most significant hurdle to broad acceptance and implementation of the Convention.

Sexual orientation as a human right is another issue that has faced challenges within the UN system (Correa et al. 2008, Kollman & Waites 2009, Swiebel 2009). Documenting efforts to mobilize for sexual orientation as a human right, Saiz (2004) notes that early successes in the movement stagnated until recently. In 1994, the Human Rights Committee in the case of *Toonen v. Australia* found that Tasmanian laws criminalizing all sexual relations between men were in breach of the ICCPR. Ten years later in 2004, a draft resolution regarding rights violations occurring on the grounds of sexual orientation faced considerable resistance by governments that argued sexual orientation is “not a proper subject for consideration by a human rights body” (Saiz 2004, p. 5). Since then, some progress has been made. In 2007, the Yogyakarta Principles, developed in response to patterns of abuse targeting sexual orientation, were adopted by a group of distinguished experts in international law and have since been cited by the United Nations. In 2008, a Statement on Human Rights, Sexual Orientation and Gender Identity was presented in the UN General Assembly and signed by 66 states (Farrior 2009). Despite these developments—and more recently, international outrage around the killing of a prominent gay rights activist in Uganda and Secretary Clinton's speech at the UN Human Rights Council

¹⁸See Petrasek (2011) for this process at AI and Walling & Waltz (2011) for excellent conference proceedings that capture the history of AI and other major international human rights NGOs.

that stated “gay rights are human rights and human rights are gay rights”—right-wing Catholics and fundamentalist Islamic states have formed a coalition systematically trying to block LGBT issues in the United Nations and to drive a wedge in the international human rights community (Swiebel 2009).

The Rome Statute that established the ICC presents a counterexample. It was promoted by many NGOs, but when the Rome Statute was adopted in 1998, there was some concern that it erodes state sovereignty so much that few governments would become parties. Despite the provisions that allow the ICC to issue arrest warrants and try even the heads of states, ratifications accumulated surprisingly quickly, and the ICC started operation in 2002 (Kaul 2005). Thus, it is hard to predict when social movements might have overreached their limits, although there is always a possibility for backlash against those who push a radically new and ambitious human rights agenda. In this regard, some scholars express skepticism about the role of social movements, emphasizing *realpolitik* around economic and political interests as the driving force for global diffusion of human rights (Dezalay & Garth 2006, Guilhot 2005) or highlighting macro cultural forces that take on a life of their own and render social movements and other on-the-ground factors less relevant over time (Frank et al. 2010, Ramirez et al. 1997).

CONCLUSION

We have demonstrated that over the past 60-year period, the built-in contradictions of the post-World War II international human rights regime encouraged mobilization by civil society actors to advance the cause of human rights across the globe. In the global arena, they have used the small openings created for them in the UN system to push for stronger human rights norms, increasing the number of international human rights treaties and other instruments with help from sympathetic states. In local societies, the elevated standards of international human rights laws have provided activists with

political opportunities, material and human resources, vocabularies for framing, and sources of new identity and movement actorhood, facilitating mobilization for better human rights practices. Social movements were thus a driving force in overcoming states’ reluctance to cede domestic sovereignty on human rights issues as well as in overcoming the weak enforcement mechanisms of international human rights instruments.

The intersection between international human rights law and social movements has been a fertile ground for innovative and important research in recent years. Although systematic cross-national data on human rights laws and practices have grown dramatically in the last couple of decades (Hafner-Burton 2012), quantitative cross-national data on social movements are much harder to come by. This makes it difficult to execute systematic cross-national analyses on the relationship between international human rights law and social movements. Consequently, many of the studies we examined are qualitative case studies. Large-N cross-national analyses on the relationship between international human rights law and social movements would make great contributions to the field. Such analyses should examine various outcomes, from the impact of international human rights law on local social movements and local-level policy changes to the impact of local social movements on international laws. They should also sort out different issue areas—civil and political rights, economic and social rights, women’s rights, children’s rights, indigenous rights, and so on—and different local contexts—geographic regions, national political contexts, and levels of economic development, among others. Short of quantitative analyses, scholars can make (and have made) important contributions by designing comparative analyses that examine these factors.

This article provides an initial framework for understanding the relationship between international human rights law and social movements. Our core proposals are to focus on state-civil society relationships in examining the history of international human rights law

and its impact on local social movements, to analyze the impact of international human rights law on local social movements along the four dimensions discussed above—political opportunities, resource mobilization, framing, and culture and identity—and to be mindful of potential pitfalls of social movements’ engagement with international human rights instruments.

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