

# Between Utopia and Affirmation of the Status Quo

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For someone who has been working in the field of so-called strategic litigation against multinational corporations in international (criminal) law and other fields of national law for more than a decade, it is obvious that law often enough benefits the interests of the economically and politically powerful. Still, legal interventions can very well serve as a tool of resistance for communities affected by corporate abuse. Beyond resistance, there is a revolutionary potential in human rights claims.

A clear example of the bias of our current legal system is international trade and investment law – giving rights to corporations and disabling states' realization of social or environmental protections. Law also reveals itself as a tool to advance business interests when we look at how corporate structures are legally designed, or how the law defines the make-up of global supply-chains. It has exchanged employer labour obligations with chains of contractual business relationships. Thereby, responsibility is outsourced from headquarters, where the largest share of profits ends up, to the bottom of supply chains. Lawyers should use Baars' and other criticisms to evaluate their work, and take it as an opportunity to reflect on their privileges and the power-imbalances between themselves and their clients, as well as potential or actual discrepancies between the proclaimed goals of their advocacy and its real effects.

## **Spaces of legal resistance**

Baars calls on their readers to turn their resistance “against law: away from legal emancipation towards human emancipation” (p. 379) and to “work on the world we actually want to live in,” rather than on creating avenues for corporate accountability (p. 380). While Baars asks the international corporate accountability community the right questions, their judgement is too dogmatic and one-dimensional. They acknowledge the aspect of resistance through legal struggles, but insufficiently value the connection between legal resistance, political struggles, and fundamental change.

## **Law is not always the immediate arm of those in power**

In my experience, affected people and activists that engage in legal struggles are very much aware of the fact that the legal system is not designed in their favour. They still engage in it because they believe litigation can be one of many ways to further their struggle for justice, reparation, and in the longer-term, social change. Despite the fact that many of these legal battles are lost in court, they can contribute – in combination with other practices of resistance – to emancipation outside the courtroom.

This is because law is not simply the immediate arm of the capitalist class. Rather, as [Sonja Buckel](#) has argued, legal systems have their own dynamics not immediately influenced by power, which creates spaces for dissent and resistance. Legal language allows for dissent as there is never only one reading of the law. Law itself is the result of struggles for hegemony and is therefore subject to constant change. If societal constellations were different, law would be different. And even under contemporary conditions, procedural as well as substantive aspects of our current legal system create protection and opportunities for those oppressed by the economic system. This is why four Pakistani workers can bring a civil lawsuit before a district court in Dortmund, alleging that the German retailer KiK bears a duty of care for Pakistani supply factory workers. The argument is brought within the logic of Pakistani civil tort law and German civil procedural law; at the same time, claimants argue that a buyer bears responsibility towards its supplier, which early 20<sup>th</sup>-century law did not foresee. Bringing legal arguments, within the juridical system, that aim to expand responsibility, argues for a potentially different reading of the law, which would also translate in different economic realities.

### **The revolutionary potential of human rights**

The language of rights, in particular human rights, allows utopian claims to be negotiated in legal forums that are usually subject to current legal systems designed to preserve the status quo of those in power. It is possible to invoke the law as it is, and at the same time, present claims that go beyond the status quo. This turns legal practice aimed at resistance, for example defending prisoners' human rights, into a practice aimed at emancipation reaching for a utopian future. In the example of Pakistani workers suing KiK for damages, the utopian claim lies in the fact that our current economic system would not exist if textile workers and the international company were truly equal before the law. If textile companies could not externalize the social costs of production, the current economic system would not exist. The fact that Pakistani workers use the current legal system and its fiction of equality before the law challenges the status quo. It shows that the world economy and legal system that would support their claim would be completely different than the one we have today. Menke and Raimondi/[Möller and Raimondi](#) have called this the [revolutionary potential of human rights](#).

Of course, corporations and their corporate social responsibility advisers try to frame the debate around business and human rights in their interests. Also, scholars have argued that [human rights and neoliberalism](#) are co-dependent phenomena. These authors forget that there can be different readings of human rights. And they pretend that economic, social and cultural human rights are not rights of the same value as civil and political rights, which they indeed are. Imagine what the global economy would look like if the right to social protection, health, food and adequate housing as enshrined in the International Covenant on Economic, Social and Cultural Rights were realized – our current capitalist economic system would not exist. While the full realization of these rights may always remain in the utopian future, with a revolutionary reading of human rights, it is possible to engage with the current legal system without legitimizing it. This way of lawyering understands legal discourses as struggles for hegemony and as one way to open up space for emancipation.

This way of lawyering also understands itself as only one part of broader political struggles aimed at changing our societies in an emancipatory way.

### **Using privilege for social struggles**

Especially for lawyers working and living in the Global North, it is important to reflect on their privileges and the post-colonial context of their work. Still, there is a way to engage with individuals and groups affected by corporate exploitation [collaboratively](#) and in [solidarity](#), using our privilege to challenge the current system in ways that are driven by affected communities and through legal means. This legal practice will not end global capitalism at once (the question is what will?), but it can be one way of engaging with social struggles that imagine a different reality than the one we are currently living in.

Grietje Baars, [The Corporation, Law and Capitalism: A Radical Perspective on the Role of Law in the Global Political Economy](#) (Brill 2019 & Haymarket 2020).

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