

## Introduction

### *A Well-Tempered Human Rights*

**A**T THE END of his typically penetrating essay on the relationship between human rights and poverty, John Gledhill issues a version of what has become in recent years the standard anthropological expression of theoretical modesty. After a series of interventions that, among other things, reconfigure our understanding of the role of nongovernmental organizations in promoting rights in the developing world, suggest a dialectical framework for explaining the way hegemonic and counterhegemonic forces structure rights practices within emerging transnational legal and ethical regimes, and, finally, show how Anthony Giddens's apparently progressive vision of modern subjectivity is actually a "regime of truth" that denies agency to precisely those social actors whose lived experiences seem to most demand the protections of *some* effective framework, Gledhill goes on to explain that "anthropologists are not social and political philosophers, and our role is largely one of *observing* how . . . developments manifest themselves in practice" (2003:225; emphasis added).

Likewise, John Bowen, at the beginning of his study of the intersections of law, religion, and the constitution of political discourse in Indonesia, explains—after asserting the irrelevance to Indonesia of much leading political and social theory—that his "intention is not to offer a competing version of political theory, a reconstruction of society from first principles. Rather, I offer an anthropological account of such reasoning, the ways in which citizens take account of their own pluralism of values as they carry out their affairs" (2003:12). Yet despite developing a series of arguments that amount to an innovative theory of contemporary political and legal identity—one that makes

value-pluralism the foundation for political community—he reminds us that his study should not be confused with an attempt to “formulate a systematic, principled account of how (some) societies ought to organized”; rather, his is merely an “account of the issues, institutions, and stakes for actors in a particular social setting” (267). He then goes on to conclude that his book is also “an anthropological account of the *reasonableness* of the ways in which citizens can take account of their own pluralism of values in carrying out their affairs—an account which might, in its turn, inform new versions of political theory” (268; emphasis in original).

In other words, his study of normative pluralism and citizenship in Indonesia both highlights the supposedly stark differences between “liberal political theory and comparative social scientific inquiry”—the former quixotically directed toward envisioning social and political life from first principles, the latter modestly and quietly documenting social and political life in all of its comparative diversity—and manages to “inform new versions of political theory” at the same time. Yet Bowen’s anthropology of public reasoning *does* articulate a set of general theoretical principles that explain similar processes in other plural societies. Are we to believe that it is only in Indonesia where the four dominant “general features of public reasoning”—which Bowen insightfully describes as “precedent, principle, pragmatism, and metanormative reasoning”—are to be found? (258).<sup>1</sup>

Gledhill and Bowen are not to be faulted for their theoretical reticence. Since at least the mid-1980s, two trends have emerged within especially British social and American cultural anthropology: the first—which has been on the wane since the early 1990s—reflects an enthusiastic embrace of a series of (mostly) Continental social and critical theoretical influences, in which social theory is not necessarily derived from the application of scientific methods calculated to uncover the cause of things, but rather exists in a much more tenuous, even intentionally problematized, relationship with the practices of everyday life. The other trend, which Gledhill’s and Bowen’s work evokes, expresses a re-entrenchment, or perhaps rediscovery, of the advantages of anthropology’s unique version of science, in which the anthropologist fulfills her purpose *only* to the extent that she gives an “adequate account of the issues, institutions, and stakes for actors.” By “adequate account” what is meant at the very least is accurate observation and documentation; an even better “account” would, like Bowen’s does, frame observed events and social interactions in relation to a series of meaningful cultural and historical contexts. Yet an account

goes too far, becomes unanthropological, when it generalizes beyond even the richest study of a particular time and place and either aspires to a “regime of truth” (Gledhill) or evolves into a search for “first principles” (Bowen).

But here’s the rub: just because many anthropologists have rejected the formal study and formulation of social theory does not mean that it is not being studied and formulated, often, as Bowen rightly argues, in a “skeletonized” way, through systems of ideas that are grounded in an entirely abstracted account of legal, social, and political practices. There is actually nothing logically inconsistent about pursuing social theory in this way, even if the goal is to pass particular systems of ideas about social life through the crucible of lived experience. That is to say, the anthropological critique of liberal political and legal theory on the grounds that it claims to describe “first principles” is not really a critique of the *manner* through which theorists like Will Kymlicka and Joseph Raz and John Rawls crafted systems that purport to explain the relationship between the subject and social values. What this critique is really pointing to is the fact that this particular constellation of theories was never intended to be embedded in, let alone derived from, the different types of experience that matter—legal, religious, political, economic. So we are left with either a philosophically rich but phenomenologically thin set of explanations for social life on the one hand or, on the other, a set of general ideas of real importance that are nevertheless kept frustratingly incipient—the social theory that dare not speak its name.

This dichotomy is of course a false one. There is no reason why anthropologists or others interested in making sense of contemporary social practice in a way that resonates beyond the mere case study, the mere collection of disconnected human exotica, should be forced to *either* observe and faithfully record *or* drown in a sea of theoretical foundationalism. The costs of this false choice are never simply, or even primarily, academic. It is perhaps too obvious to emphasize that ideas, and systems of ideas, have a tremendous impact across any number of social and regional planes. Ideas become quickly politicized, especially ideas that claim to affect basic economic or legal or cultural realities. Systems of ideas are products of intellectual histories, and their influence on people and institutions can be tracked within broader historical trajectories. Some ways of finding order in—or ordering—the legal, social, and political are more powerful than others. And systems of ideas, like other systems, both express and constitute broader alignments within which knowledge, money, political capital, and other resources are unequally distributed within any given assemblage, global or otherwise (Ong and Collier 2005).

For example, the entire bundle of liberal political and legal theory to which Bowen either refers or alludes expresses, despite obvious internal nuances, a set of unifying assumptions about both the nature of things—including social things—and the types of knowledge of them that are legitimate.<sup>2</sup> And this bundle, this system of ideas, is one that establishes the only permissible framework within which a whole set of current political and social processes can unfold, from European Union expansion and consolidation, to the establishment of transitional justice operations in post-conflict settings, to the proliferation of international human rights instruments and models of rights-based normative practice. But if Bowen is right, and this system of ideas is structurally deficient and thus inapplicable to contemporary Indonesia, not in this or that legal or political context, or in light of this or that set of historical circumstances, but *per se*, then its presence in Indonesia—through international and transnational political institutions, networks of economic relations of production, or even within academic or expert analysis of the country—reflects much more than simply the poverty of this particular theoretical bundle; it is the expression of power *through* ideas.

Yet the alternative—the development of compelling ideas about certain times and places that are formally contextual but that actually speak to more widely observable patterns of legal, political, and social practice—is the expression of a different kind of power, the ability to restrict the scope of ideas, to force them into prefigured modes of acceptable discourse, even though they are potentially much more transformative. If Bowen has demonstrated the social fact that in Indonesia value-pluralism is itself a value that is both the empirical and the normative basis for a sustainable political community, this fact turns the history of dominant political theory as it has evolved over the last three hundred years on its head. And although Bowen does not allude to it, his analysis of Indonesia also challenges several popular—and, in certain political and academic circles, influential—antitheses of foundationalist social and political theory, most obviously work indebted to pragmatism and neo-pragmatism.

I am thinking here of the line of critique of foundationalist liberal political and legal theory—including human rights—represented most clearly by the work of Richard Rorty and his European interpreters (e.g., Zygmunt Bauman). In his essay “Human Rights, Rationality, and Sentimentality” (1993), Rorty argues that no foundationalist theory of values can ever be the best framework for ethical and political practice; rather, the main objective for intellectuals or

politicians, or anyone else in a position to influence others, should be to foster solidarity across cultural, national, and historical boundaries.

Now Rorty could very well be correct; it could very well be true that “nothing relevant to moral choice separates human beings from animals,” or (I would add) one group of human beings from another. But this fact (if true) would unfortunately tell us nothing of importance about value-pluralism in Indonesia, in particular the way it appears to be foundational in a very traditional (though not metaphysical) sense and, even more, the way its foundationalism is the basis for its legitimacy—or, as Rorty might say, its effectiveness.

If value-pluralism in Indonesia has indeed developed into a metavalue, a normative framework that urges, or demands, or facilitates the coexistence of multiple values or systems of values—legal, political, and, in this case in particular, religious—then there is, in a very important sense, at least one “first principle” in terms of which contemporary Indonesia must be understood. And what is even more critical to recognize is the fact that a researcher and analyst like Bowen does not create this first principle by describing the ethnographic or historical data that reveal it, or by formally articulating it in a way that gives it a certain amount of structure by contextualizing it in relation to other similar—or dissimilar—first principles, or by making claims about its cross-cultural relevance.

Rather, the “first principle,” and the social theory that it implies, is simply a fact of ethical, legal, and religious life in Indonesia. To say this is not to claim that this particular first principle is either objectively universal (explanatory and present in all places at all times) or ontologically foundational (immanent to a particular place or group of people, in Indonesia or elsewhere). But it is to leave open the possibility that this first principle—value-pluralism—either is, or might someday become, “locally universal,” that its *subjective* transcendence is precisely what makes it such a compelling ordering principle for social actors and institutions and political parties and religious leaders. In other words, *foundationalism* and *universalism* are themselves ideas that can become particularly meaningful in social practice, and the anthropologist (or other researcher or cultural critic) does a valuable service by making their importance and power topics for close engagement and critical scrutiny.

AT THE MOST GENERAL LEVEL, this book is a sustained argument for a type of engagement with human rights that combines the empirical with the conceptual

in a way that avoids the strained opposition between intentionally ungrounded and deductive political and social theory on the one hand and intentionally grounded and carefully circumscribed case studies on the other. This approach can be understood as an “anthropology of human rights,” but I must underscore the fact that although I will draw from particular intellectual histories in order to develop the book’s propositions, I do not intend this to be an argument for disciplinary prerogative. Indeed, it will strike some as immediately odd that anthropology would form part of the foundation for an alternative approach to human rights, particularly in light of anthropology’s marginalization from most of the dominant developments in human rights since the late 1940s. This story of marginalization, which will be explored in chapter 2, provides a window into the underlying political and intellectual currents that have shaped the emergence of both the international and the transnational human rights regimes. This history is also one that reveals a reservoir of potential, one that I will draw from throughout this book as I suggest ways in which an anthropology of human rights opens up several new spaces for research, analysis, and political action.

There are two broad developments that make the argument for an anthropology of human rights both timely and justified. First, the last twenty years have revealed something essential about contemporary human rights. Despite the end of the Cold War (a key event for my purposes) and a set of economic and political developments that have both accelerated preexisting forces (the consolidation of a multinational corporate capitalist mode of production) and initiated new ones (the emergence of midsize transnational political actors), human rights theory and practice remain static.

The constellation of Western liberal legal and political theories that formed the foundation for the 1948 Universal Declaration of Human Rights—and most of the follow-on instruments—remains the dominant intellectual resource within the international human rights system, even if this fact has led to a series of fissures or points of tension, particularly with the emergence of what I will describe in chapter 6 as neoliberal human rights. Even if one can make an argument on simple political grounds that the United Nations committee working on the Universal Declaration was, despite the rhetoric of inclusiveness, compelled to choose between competing philosophical worldviews, it is less obvious why liberal (or neoliberal) legal and political theory should continue to prove so foundational when this political choice is no longer necessary.

This is a particularly charged dilemma, especially since the “global community” that ratified the Universal Declaration was a much more constricted,

colonial, and provincial place, a time when the diversity of the ethical, the political, and the legal was either unknown or known only to a small group of relatively obscure scholars or colonial officials, whose interests compelled them to deny, suppress, or work to destroy it. What this means is that contemporary human rights theory—if not “practice,” which has a unified meaning only in certain broad international frames of reference—is vestigial, a tangled set of ideas and philosophical assumptions about human nature, the ontological status of the individual, and the possibilities for ordering collectivities through reason, which remains entrenched even though the contexts of its emergence—though not, perhaps, its purposes—have disintegrated.

But there is a second reason why a book like this is appropriate at this time. Since about the late 1980s, anthropologists have re-engaged with human rights on a number of different levels: first political, then ethnographic, and now—but only incipiently—conceptual. The arguments in this book are grounded in this recent period in anthropology’s relationship with human rights. The growing body of ethnographic research on human rights constitutes, among other things, an expanding database on how human rights are actually becoming transnational and increasingly hegemonic, which makes it an excellent resource to draw from in developing a set of critical tools for understanding the relationship between human rights and local ethical practice. I will examine the reasons why anthropologists reoriented themselves toward human rights in the next chapter; suffice it to say here that the narrative is a complicated one, in which the process of engagement on the political level was initiated without any real theoretical guidance from within mainstream anthropology itself, while the later transformation of human rights practice into a topic for ethnographic and reflective inquiry was in part a response to the rapid expansion of human rights discourse after the end of the Cold War.

### Essays and Interventions

In order to give the reader a firm sense of what to expect in this book, it would be more accurate to describe the chapters that follow as a series of interconnected critical essays. This is a signal that in building toward a broader anthropological account of human rights, I do so through a number of pointed, bounded, and admittedly idiosyncratic interventions that are not meant to serve as comprehensive surveys of, or definitive introductions to, the different topics that form the grist for the book’s mill (think Montaigne rather than, say, Sir James Frazer). These *essays* also do not add up to a grand theory of human

rights. Indeed, as we will see, an argument that threads throughout the book is that our understanding of human rights theory and practice in the postwar period has been impoverished by the dominance of just such theories, and the epistemology that they reflect.

Instead, the book's chapters are meant to bind together a series of arguments that, taken together, constitute an anthropological orientation to human rights, one that is anchored in, though not restricted to, the recent ethnography of human rights practices that was made possible by the rapid expansion of human rights after the end of the Cold War. Even here, my treatment of this body of research and analysis is illustrative and instrumental; as elsewhere in the book, in order to make my own interventions as direct as possible I do not burden the reader with extended intertextual debate, leaden lists of citations, or lengthy intellectual genealogies. A full accounting of the ethnographic and theoretical background to the chapters can be found in the extended bibliography. This is not to say that I do not make every effort to position these interventions in relation to points of similarity and difference within contemporary human rights studies. But this positioning is narrowly tailored within what is one expression of a wider project to rethink both the grounds and the potential of human rights through anthropology.

## **A Well-Tempered Human Rights**

If the chapters that follow, taken together, point toward an anthropological orientation to human rights, one that both coheres with and in places radically diverges from different existing theoretical, political, and ethical approaches, then it would be helpful to give a concise overview to the book's major arguments. This overview is not meant to stand in for a full development of the arguments themselves; rather, it is a fingerpost to the book's main claims.

First, an anthropology of human rights is both an argument for an essentially and thoroughly synthetic approach to human rights and, in a sense, an example of such an approach (however emergent). As we will see, contemporary human rights theory and practice have been consequentially structured by the opposite of a synthetic approach, what might be understood as the paradigmatic. Distinct categories—of meaning, of knowledge, of experience—have worked to obscure or elide the different dilemmas that remain at the heart of the postwar human rights project. Even so, a synthetic, anthropological orientation to human rights does not yield new and definitive solutions to these dilemmas. Indeed, the recent ethnography of human rights practices



has demonstrated, among other things, that the problems that continue to bedevil human rights are, to greater or lesser degrees, existential, the inevitable consequence of the most profound and earnest contemporary effort to forge something straight from what the intellectual historian Isaiah Berlin (Invoking Kant) called the “crooked timber of humanity” (1990).

Second, like much of contemporary anthropology itself, an anthropology of human rights reveals the potential in engaging in a critical intellectual history of different human rights genealogies, in this case the one in which anthropology as a discipline was for different reasons marginalized from the major developments in postwar human rights theory and practice. This kind of backward-looking interrogation, which Foucault (1972) described as an “archaeology of knowledge,” is not so much an effort to reestablish the past on more solid, or more truthful, grounds, regardless of the importance of acknowledging just what did happen at *this* place at *this* time (a kind of historiography that is especially important in the area of human rights).

Instead, the critical intellectual history of at least one small slice of the postwar human rights project is concerned with the ways in which human rights meanings *can*—and, because of the dominance of paradigms, *cannot*—exist, those “conditions of existence” (Foucault 1972:117) that have underpinned the international community’s most profound efforts to come to terms with, and ideally transcend, the consequences of what Kleinman, Das, and Lock (1997) describe as “social suffering.”

If the orientation toward human rights that I develop across the book’s chapters can be described as *anthropological*, this obviously does not mean that the account here reflects anything like a consensus within contemporary anthropology. Indeed, in my treatment of the problems of “culture” within human rights, I argue that anthropologists have played a significant role in both overly complicating the concept of culture and obscuring the prevalence in practice of what might be described as culture-in-the-world, the ways in which collectivities continue to self-identify in a manner that reflects an exclusionary, and not a unifying, social ontology.

To argue for a clear-eyed reckoning with culture-in-the-world, despite the unsavory and essentially anti-cosmopolitan implications, is also to argue for the importance of understanding human rights in what Sally Engle Merry (2006a, 2006b) has described as the “vernacular,” those many sites in which ethical theory and social practice are mutually constitutive. And to prioritize human rights in the vernacular is to make yet another argument: that “human rights”

(understood diffusely) must be both theorized and legitimated *in terms of* the groundedness of social practices, those mundane (yet often transformative) occurrences of what de Certeau (1984) called the “practice of everyday life.”

This is not to deny the importance of legal and political institutions—international or otherwise—for human rights implementation, enforcement, and adjudication. But it is to re-order the hierarchy of significance and acknowledge the fact that *if* an enduring, effective, and legitimate transnational (or, perhaps, postnational—see chapter 5) human rights system is to be established, it will have to somehow be derived from these spaces of vernacularization, which do reveal certain cross-cultural patterns or modes of normative engagement (see, e.g., Cowan, Dembour, and Wilson 2001; Goodale and Merry 2007).

Further, a critical intellectual history of the postwar human rights project leads to a certain amount of skepticism about the utopianism that hangs over both the discursive construction of “human rights” and, more crucially, the political economies of human rights that postcolonial scholars, in particular, have examined with such force and insight (see, e.g., Anghie 2005; Baxi 2002; Mutua 2002; Rajagopal 2003). Nevertheless, an anthropology of human rights provides at least some measure of both theoretical and empirical support for the kind of cosmopolitan optimism that informed the worldview of those visionary elites who took it upon themselves to build a framework for perpetual peace from the ruins of mid-century last.

This is not to say that an anthropology of human rights suggests a *particular* cosmopolitanism—rooted (Appiah 2005), vernacular (Bhabha 2001), minoritarian (Breckenridge et al. 2002), indigenous (Biolsi 2005; Goodale 2006d), or otherwise. But contrary to the caricatures that have portrayed contemporary anthropology as a hotbed of naive relativism, social and ethical constructivism, and a kind of Continental nihilism, in fact, the recent ethnography of human rights practices has documented both the power and the cross-cultural resonance of what might be described as an emergent cosmopolitanism, a rough sense of inclusion within wider and wider categories of identity that can come, in certain instances, to approximate the Hierocletian ideal (see Nussbaum 1997).

Another of the book’s major arguments begins by drawing a distinction between human rights *universality* and human rights *universalism*, a grounded theoretical distinction that likewise emerges from the growing database of information about human rights in practice. Human rights uni-

versality refers to the claims at the core of the modern idea of human rights: that everyone at all times is the same because they share a common humanness (which can be usefully thought of as a biological sameness invested with a moral quality); that this common humanness has normative implications; and that these implications take one specific form among many possibilities—rights. Human rights universalism, by contrast, refers to the complicated discursive presence of these claims as they are acted upon within existing legal, moral, and political practice. When a transnational human rights NGO, for example, introduces the idea of human rights to rural populations in Bolivia, and the transcendent universal claims associated with this idea are later taken up by local leaders and used within ongoing social struggles, this is human rights *universalism* (see Goodale 2009a).

In a sense, to understand human rights in part through the practices that revolve around, or are transformed by, the particular set of universal claims that can make the idea of human rights so consequential is to productively circumvent the set of intractable philosophical problems that have occupied so much of the debate within human rights studies: What are (or can be) the sources of human rights? How are (or can) human rights be legitimated? How do (or can) human rights relate—theoretically, not in practice—to other normativities? What is (or should be) the role of the state in relation to human rights? What is (or should be) the relationship—again, theoretically—between the international human rights system and the regime of transnational human rights actors that has emerged over the last twenty years? And so on.

This is not to deny the importance of these problems—and others—in their own terms. But the ethnography of human rights-in-the-world over the last fifteen years has shown that the claims of human rights are invested with meaning and importance that transcend anything that can be said about them conceptually in the restricted and abstracted terms of several dominant human rights epistemologies.

Finally, as the international legal scholar and anthropologist Annelise Riles has argued (2006b), what is needed by both human rights scholars and human rights practitioners, more than anything else, is a greater sense of humility. This is not the kind of humility that leads to quietism in the face of profound human suffering. Instead, it is a willingness to recognize that the ethical logics, discursive power, and institutional machineries of human rights must exist in a world marked by disjuncture. The unifying and centripetal aspirations of human rights must exist in a kind of permanent tension with the essential

centrifugality of human relations, the essential multiplicity of our troubled species. The “pendulum,” as Marie-Bénédicte Dembour (2001) describes it, between the centripetal claims of human rights and the centrifugal reality that confronts these claims, is one that in different forms and in different ways has swung back and forth for centuries.

But if the intellectual histories of Western Europe have proven so consequential in the development of the modern idea of human rights, we can say, following the Norwegian anthropologist Thomas Hylland Eriksen (himself drawing on the Bulgarian-French intellectual Tzvetan Todorov), that what human rights needs is more humanist restraint and appreciation for particularity and less Enlightenment triumphalism. Eriksen (quoting Todorov) describes this balance as a “well-tempered humanism” (2001:143), a worldview that puts the human—conceived in the multiple, not the universal—at the center even as it recognizes, with Yeats, that this center cannot hold, at least not for long. At its core, this book is an argument for a human rights that is tempered by the same sense of humility, the same kind of appreciation for the disorienting fact of multiplicity, and the same willingness to make the mundaneness of social practice a source of ethical inspiration.

### The Plan of the Book

In the next chapter I establish the historical context for what is to follow by considering the curious history of anthropology’s engagement with—and disengagement from—human rights over the last fifty years. This narrative reveals much more about the development of human rights than about a particular disciplinary legacy, and the telling of this intellectual history is also a way of grounding the alternative approach to human rights that will emerge over subsequent chapters. Chapters 3 and 4 narrow the focus to what have been the two most recognizable contributions to wider human rights debates from within anthropology: the research and theorizing that have explored the problem of relativism and, more recently, the attempts to use research on human rights processes in order to reformulate our understanding of “culture.” A fresh look at the problem of relativism and the contested meanings of culture in relation to human rights demonstrates, among other things, that both of these topics open up into debates that are far from resolved. These chapters make new analyses of these topics important parts of the book’s more general argument about human rights.

Chapters 5 and 6 move from what are considered the more traditional anthropological topics within the broader human rights community to wider

frames of analysis. Chapter 5 suggests that an anthropology of human rights has something innovative to contribute to our understanding of the transnational dimensions of human rights, and, in particular, the way in which human rights have become one disproportionately powerful vector within a normative universe that, while not “global” or even “globalized,” is nevertheless unfolding beyond the nation-state.

In chapter 6 I examine the link between anthropology and the emergence (or reemergence) of what can be understood as “neoliberal” human rights, which include the class of rights that are framed at the collective level (ethnic and linguistic minorities, First Nations, indigenous peoples) and several other candidates for human rights status, including the rights to social and economic development. It is often claimed that anthropology has played an important role in legitimizing neoliberal human rights, and I explore these claims in order to gauge whether or not this area is evidence of anthropology’s potential to transform human rights theory and practice more generally. Finally, the concluding chapter recapitulates the major arguments and implications of the book, not as a substitute for a full engagement with these as they were developed at different points and in different ways but in order to leave the reader with a holistic sense of both the book’s most far-reaching claims and its necessary limitations.