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## REIMAGINING HUMAN RIGHTS

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One of the most humbling moments of my career as a human rights scholar-practitioner took place in Kibera, the largest shantytown in Nairobi, and one of the largest in the world. I was there along with a group of nearly fifty activists who were participating in a global conference about economic and social rights. During the visit, the religious and social leaders who had invited us explained the hard reality that was evident before our eyes: children suffered from chronic malnutrition; there was no drinking water; there were no public roads; and the inhabitants of Kibera eked out a living in the precarious cardboard and zinc huts that reminded me of those of the Afro-Latin-American communities with whom I have worked on the other side of the Atlantic Ocean.

The moment that I have never forgotten happened when community leaders brought us together in the church, which also served as a classroom. They encouraged us, then, to say a few words to the dozens of local folks who had followed us there, curious to know who were those peculiar visitors. Suddenly, an American activist stood up and spoke to the audience:

“We are here to tell you that you have a right to housing. You have a right to healthy nutrition,” she said, with a clear voice and an air of certainty. “Children have a right to a primary and secondary education. Your government, the State of Kenya, is not fulfilling its obligations under international treaties that it has signed, regarding social, economic, and cultural rights. You have a right to report the State and to demand that it fulfill its obligations.”

I, along with several members of the international delegation, was as perplexed as the locals, who listened without really understanding a word of what was said. The local community members may not have understood because of the language barrier, as they spoke Swahili more fluently than English, but also, and perhaps mainly, because of the wall that the technical juridical language created (treaties, rights claims, State, treaty obligations). We, the members of the delegation, who use the same language as our fellow activist, were baffled for a different reason. We could not understand how

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our colleague could be so unaware of the chasm between her words and her audience, between her worldview and the reality in Kibera, between our situation (be it class, race, national origin, etc.) and the situation of those in the audience. The use of “rights talk”— well-intentioned but insensitive—increased the distance between them and us, until the room filled with an uncomfortable silence that left me with the kind of sadness that one feels when faced with a moral vacuum, the sadness one feels when faced with evidence of the profound disconnect between human beings whose destinies follow, unfairly, very different paths.

I have witnessed too many times this gap, both as a human rights practitioner and as a scholar. That is why I believe that the lecture by Michael Ignatieff, and the book project to which it refers are very welcome and timely contributions. They will have a healthy impact in the growing debate about how to reinvigorate and reinvent human rights in order to learn from the successes and failures of the last 70 years, and to face the complex challenges that arise from the anti-democratic and populist wave that is expanding across the world. I have tried, elsewhere, to contribute to this reconstructive task.<sup>1</sup> Here, I discuss only the aspects of that task that Ignatieff focuses on. I begin by highlighting his central contributions and I end these brief comments by mentioning the blind spots that, from my point of view, exist in his analysis. Since my comments are based only on the text of the lecture, it is possible that the manuscript of Ignatieff’s book already develops the former and anticipates the latter.

### RESTORING VALUES, EMOTIONS AND IMPACT IN HUMAN RIGHTS DEBATES

One of Ignatieff’s refreshing contributions is that he returns the discussion about human rights to the place where it emerged and where it must be located: the space of moral reasoning. The over-legalization of the language and tactics of human rights has resulted in losing sight of the fact that, more than a set of treaties and constitutional norms, human rights are moral claims about the intrinsic value of every human being. As Amartya Sen has written against that “legally parasitic view of human rights,” human rights must be seen as an approach to ethics, which stand in contrast, for instance, to utilitarianism.<sup>2</sup>

But Ignatieff goes further than Sen. His concern is not only whether human rights are a robust ethical theory, but also (and above all) whether it is an ethics that affects the daily conduct and the “ordinary virtues” of persons in different parts of the world. With this, he takes us, rightfully, toward a space

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<sup>1</sup> César Rodríguez-Garavito, “The Future of Human Rights: From Gatekeeping to Symbiosis,” *SUR: International Journal of Human Rights* 11 (20): 499-510 (2014)

<sup>2</sup> Amartya Sen, “Human Rights and the Limits of Law,” *Cardozo Law Review* 27 (6): 2913-27 (2006).

that has not received as much attention as the creation of legal standards: the impact and the implementation of human rights.

This logically takes him toward a third concern: if human rights are universal ethical claims and if their impact must be measured in our everyday life, what type of message can augment their efficacy, their emotional resonance among citizens? Again, we are talking about a question that has received insufficient attention and which Ignatieff helps to highlight in a timely way. Considering the growing efficacy of populist-nationalist messages against human rights, the question is how to build counter-narratives that influence effectively public opinion and citizen perceptions about rights and about those who defend them.

### HUMAN RIGHTS AND IMAGINED COMMUNITIES

That is where the good news ends. For in his response to the last question, Ignatieff offers an answer that, in his view, is necessarily problematic for human rights: the most effective moral discourses are local, not universal. And he extracts with clarity the practical advice that can be distilled from his conclusion: “don’t talk about trust in general, talk about trust for this individual in this circumstance or under these conditions. That is as much moral community as we can create, that is the only thing that we can imagine.”

This is where I part company with Ignatieff. Although I share his critique against the type of unreflecting universalism that I witnessed in Kibera, I do not think that local contexts are the only “moral community we can create” and much less that it is “the only thing that we can create.” The long tradition of political sociology associated with the work of Benedict Anderson has shown that identities are forged largely through “imagined communities.”<sup>3</sup> That is what occurred and continues to occur in the formation of national identities: they were and continue to be imagined and reimagined through wars, migration and linguistic policies, educational systems, reinterpretations of myths of origin, etc. To mention just one example, in India the fundamentalist government of Narendra Modi has launched a new phase in its political project, openly embracing the idea that Indian identity is equivalent to Hindu identity, which excludes, of course, the Muslim minority that has been part of the country since its independence.

The same thing occurs with the many other community identities whose contours are constantly contested, whether these identities are based on religion or founded on social class, caste, gender, race or ethnicity. In Latin America, for example, a significant portion of indigenous peoples have been “re-ethnicized.” That is, they have reclaimed their roots and abandoned a peasant identity that they had embraced in earlier decades, because

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<sup>3</sup> Benedict Anderson, *Imagined Communities: Reflection on the Origin and Spread of Nationalism* (London, Verso, 1991).

their collective rights have been finally recognized by Constitutions of the past three decades.

The boundaries between the particular and the universal are thus constantly in dispute. Who “we” are, and who “they” are is an open debate. In fact, the nationalist populism that is proliferating across the world and threatening human rights can be understood as an effort to reduce and harden the definition of “us” and to expand the definition of “they.” Moreover, the question of the moral boundaries that Ignatieff points out is not only a problem for human rights. It is also a problem for national rights and identities, which are expressed in Constitutions that are resisted, molded, reinterpreted and renegotiated periodically, often because of the pressure of subnational groups that seek to alter the contours of these rights and identities.

None of this diminishes the importance or the urgency of Ignatieff’s call for human rights actors to pay attention and engage with local identities and frames in order to maximize their resonance and impact. But more than a static opposition between the local and the universal, this is a fluid process. As Sally Merry has shown,<sup>4</sup> International human rights go through a vernacularization process, through which they are translated and adjusted to the cultural local frames, without necessarily losing their essence. This human rights frame also dialogues and builds bridges with other frames.

Ignatieff is right when he says that “human rights are a thought experiment.” However, this experiment was neither carried out once nor provided a single set of results that are to be preserved forever. Instead, human rights are an *ongoing* experiment.

## REFRAMING HUMAN RIGHTS

Fortunately, both the theory and the practice of social movements provide useful elements for the constant task of reframing. In fact, framing theory is one of the richest areas of study in political sociology.<sup>5</sup> Studies in framing theory have shown how social changes depend on whether the activists who defend them manage to construct and reconstruct frames that give their movement an identity (*frame making*), so that they can have an echo with their audience (*frame resonance*) and so that they connect with discourses and agendas from other movements, each one with their own audiences (*frame bridging*).

In the face of the challenges that Ignatieff points out, and in the face of the growing influence of anti-rights political frames, these three tasks must be priorities for the human rights movement. There are promising examples of each one of them. With regard to *frame making*, indigenous peoples in the Americas have expanded the meaning and the impact of their right to be

<sup>4</sup> Sally Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: Chicago University Press, 2009).

<sup>5</sup> Robert Benford and David Snow, “Framing Processes and Social Movements: An Overview and Assessment,” *Annual Review of Sociology* 26: 611–39 (2000).

consulted about projects or laws that affect them. Initially, ILO Convention 169 conceived of consultation in liberal procedural terms, and did not give indigenous peoples the power to veto actions that were harmful to their territories or culture. In practice, however, indigenous organizations and their allies have successfully promoted a more collective and substantive framing of that right. Reinterpreted this way, human rights language and actions have been among the most effective tools to question extractive industries and have had strong resonance among activists battling climate change in places as distant and different from each other as the territories of the Sarayaku nation in the Ecuadorean Amazon, or, recently, in Sioux territories in North Dakota in the United States.

*Frame bridging* is an equally important task. When discussing other frames, Ignatieff focuses on the gift, the concession to others not as a matter of right, but as an expression of generosity from the individual who confers it. I agree with him in that the gift frame differs from human rights—and that, in the current global context, it can be more effective than the latter in winning citizens over causes like refugee protection. But I do not believe that it is necessarily incompatible with human rights. As he argues, putting oneself in the recipient's shoes—thinking that he or she “could be me”—is one of the reasons that motivate the gift giver. Empathy can overlap with—and in fact can be the source of—human rights recognition.

Beyond the specific frame of the gift, what I would like to highlight is the general importance of acknowledging overlaps and creating bridges with other moral frames as a way to expand the resonance and constituency of human rights. For example, the “ordinary virtues” of many people are inspired in religious creeds. In them, it is possible to find versions and interpretations that assert the intrinsic value of the human person in a way that has a strong affinity with the idea of dignity that underlies human rights.

We, human rights scholars and advocates, cannot realistically expect our frame to become the common universal moral sense. If the past of human rights consisted fundamentally in constructing this frame, its future will be more hybrid and will depend on our capacity to create, detect and foster bridges with other frames of justice.