1 Introduction: Human Rights Past, Present, and Future

Stephen Hopgood, Jack Snyder, and Leslie Vinjamuri

International human rights NGOs and institutions have been at the vanguard of multiple advocacy campaigns designed to galvanize global support for human rights. The impact of these initiatives has been dramatic. States have adopted human rights conventions, ratified treaties, supported new human rights committees and courts, and extended the mandate of existing international and regional organizations to include human rights. The sheer growth of human rights NGOs and the increased reference to human rights by states, international organizations, and other actors shows that human rights are now a major focal point for transnational mobilization. The global middle class, widely seen as a mainstay of human rights observance, is projected to increase from 1.8 billion in 2012 to 3.2 billion by 2020.[1]

Human rights research has also found cause for optimism. Some scholars argue we are living through a 'justice cascade' where transnational movements for human rights allied to international law have made accelerating gains in the elimination of human rights violations such as torture.[2] Some have even claimed that cruelty and killing are in decline,

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[1] Homi Kharas and Geoffrey Gertz, "The New Global Middle Class: A Cross-Over from West to East," in Cheng Li (ed.), *China's Emerging Middle Class, Beyond Economic Transformation* (Washington DC: Brookings Institution Press, 2010). Although much of the projected growth is expected to take place in China and India where human rights advocates have so far struggled to make headway, the emergence of a global middle class is likely to narrow the material and cultural divides that slow the emergence of a global set of values. The mass of global polling data collected in the World Values Survey (WVS) provides empirical evidence of how economic development leads to value changes conducive to democracy. European Strategy and Policy Analysis System (ESPAS), *Global Trends 2030 – Citizens in an Interconnected and Polycentric World*, European Union Institute for Security Studies, 2012, p. 29: www.iss.europa.eu/publications/detail/article/espas-report-global-trends-2030-citizens-in-an-interconnected-and-polycentric-world/.

[2] Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton & co, 2011); Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998); Beth A. Simmons, *Mobilizing for Human Rights: International Law*

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due in no small part to the rights revolution.[3] Others suggest that even in
a world where Western powers no longer dominate, international liberal
norms embedded in global institutions will endure.[4] These advocacy and
scholarly claims all sustain a hopeful story in which the future for human
rights mobilization is a positive and enduring one.

But, as many of the chapters that follow will argue, this is not the only
possible future for human rights. Alternative accounts to the mobilization
narrative see a future that is much more one of ambivalence, ineffectiveness,
failure, and even irrelevance. We group these critiques under four headings:
scope conditions, backlash, localization, and utopias and endtimes.

Scope conditions for successful human rights activism include embed-
ding mobilization within a broader social movement for political change
that harnesses actors with varying motivations to the cause, an alliance
with power to realize human rights ends when persuasion is not enough,
and the material capacity of states to make real the legal commitments
they have made. These favorable conditions hold when countries are at
peace and when they already enjoy some institutional, economic, and
social facilitating conditions for democracy. But the countries where
rights abuses are worst are what we will call "hard cases," which lack
these favorable conditions. Outside the scope conditions for the success
of conventional mainstream approaches to rights advocacy, pragmatic
innovations may be necessary.

Human rights mobilization not only fails because of its lack of ancho-
rage in social coalitions, its inadequate alliance with state power, or a lack
of state capacity, it also faces resistance. *Backlash* is driven by those
threatened by human rights and powerful enough to resist. They some-
times exploit the opportunity to reframe or even demonize global rights to
mobilize the many against the rights message, while at other times more
subtle methods of non-engagement and resistance are employed.
Backlash encompasses a wide variety of strategies, in other words, ranging

   in Domestic Politics (Cambridge: Cambridge University Press, 2009); Christopher J. Fariss,
   "Respect for Human Rights Has Improved over Time: Modeling the Changing Standard of
   Accountability," *American Political Science Review* 108, no. 2 (2014): 297–318; Ann
   Marie Clark and Kathryn Sikkink, "Information Effects and Human Rights Data: Is the
   Good News about Increased Human Rights Information Bad News for Human Rights
   Measures?" *Human Rights Quarterly* 35, no. 3 (August 2013): 539–68; Jo Becker,
   Campaigning for Justice: Human Rights Advocacy in Practice (Stanford: Stanford University
   Press, 2012); Alison Brysk, *Speaking Rights to Power: Constructing Political Will* (New York:
   Oxford University Press, 2013).
[3] Steven Pinker, *The Better Angels of Our Nature: A History of Violence and Humanity*
   (London: Penguin, 2012); Joshua S. Goldstein, *Winning the War on War: The Decline of
   Armed Conflict Worldwide* (New York: Plume Books, 2012).
[4] G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis and Transformation of American
   World Order* (Princeton: Princeton University Press, 2011).

from confrontation (openly resisting the obligations rights impose), to evasion (ignoring rights demands) or instrumentalization (e.g., using rights language to justify repressing individual speech or due process to protect the "rights of the community"). Democracies as well as autocracies can engage in behavior along this spectrum.

In an era that is marked by increasing political upheaval not only in many parts of the Global South, but also in the United States and Europe, we ask the question of whether backlash is increasing and what this means for human rights going forward. The recent assault on human rights in the United States provides a laboratory for evaluating the role of domestic institutions, civil society, and norms in securing human rights. Protests in support of rights in the weeks following the election of Donald Trump also remind us that backlash can be deployed in favor of, and not only against, human rights. Like previous critiques, backlash theorists underscore the need to trim unbending principles in the face of political reality. Pursuing some rights, such as religious freedom, may at times be counterproductive. Similarly, backlash in support of rights faces the challenge of tailoring principle to politics.

Human rights as they are understood in Western capitals have often been poorly integrated in struggles for freedom and equality in the South. To be effective, a greater awareness of local needs, actors, and strategies – manifest in different forms of advocacy, and in alternative campaign priorities – may be essential to achieve positive results. We label this *localization*. The most influential account of this process, where global principles are translated into local struggles, has been termed 'vernacularization' and we examine it in depth. We also acknowledge the agency that local human rights actors often display by examining how they use human rights in their own customized ways to achieve their priorities. This is all 'human rights activism,' but it may not look much like the human rights with which we are familiar.

Finally, in *utopias and endtimes*, some scholars ask whether there is really any future at all for human rights. They suggest that human rights may represent a mistaken path taken on the road to delivering more genuine freedom and equality, an illusion of a post-ideological world of liberal freedoms that actually serves to deflect us from real progress toward social and economic justice. Others claim that human rights may be an artifact of a postcolonial world dominated by Western states that are declining in the face of newly emerging non-liberal global powers, revitalized nationalism, resurgent religion, and the refusal of the middle classes to part with any of their privilege.

Although normative discussions are in evidence throughout the volume, we do not deal explicitly with the moral and philosophical basis

of human rights. Questions about the foundations and justification of rights, about what a right is, what kinds of rights there are, about universality, about the conception of the person underlying rights, whether that person must necessarily be conceived in 'liberal' terms, the justifiability of natural rights claims, whether political rights have priority, deontology vs. utilitarianism, and the role of dignity as a moral foundation for rights are not explicitly addressed for three reasons.

First, other recent works have considered these normative issues in forensic detail.[5] Second, normative arguments can be made for or against both human rights as such, and against certain rights in particular. Such moral claims as these admit of no empirical resolution. However, for some participants in these normative debates, it makes a difference whether and how rights can be instantiated in specific real world conditions: *ought* implies *can*. In this spirit, we focus on what makes the difference in everyday success for human rights – the alignment of social and political forces, globally, nationally, and locally, and the interests they pursue, including but not limited to those in greater equality or freedom.

Third, following on from this, we see many of the sharpest debates about human rights at the present juncture as about the feasibility of making rights a reality and what tactics to use in pursuing that goal. So, while we do have chapters that stake out opposing normative positions in the debate, and while almost all the chapters discuss norms and normative beliefs as empirical facts, we focus in the main on the politics of making rights real rather than the strength of the moral argument behind them.

In Section 1, we give due attention to what are, on the face of it, the remarkable achievements of generations of human rights advocates. Following this, in Section 2, we take an audit of scholarship into human rights. In Section 3 we outline the four critiques introduced above in more depth. Section 4 is a brief conclusion.

1   Globalizing Human Rights

The emergence of human rights as a global discourse was the culmination of a long historical process. There is no consensus on the social and

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[5] See, for example, Rowan Cruft, S. Matthew Liao, and Massimo Renzo (eds.), *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015); Cindy Holder and David Reidy (eds.) *Human Rights: The Hard Questions* (Cambridge: Cambridge University Press, 2013); Costas Douzinas and Conor Gearty (eds.), *The Meanings of Rights: The Philosophy and Social Theory of Human Rights* (Cambridge: Cambridge University Press, 2014).

political origins of human rights.[6] Rights-like ideas and practices have been dated to antiquity, Roman law, late medieval European politics, Calvinism, the middle ages, and the evolution of humanist sensibilities in the eighteenth and nineteenth centuries.[7] The most influential narrative sees post-Enlightenment European revulsion with torture and slavery at the heart of a linear account of liberal progress, this "revolution in moral sentiment" then globalized in the name of civilization through the vector of empire.[8] Its culmination came in the period immediately following World War II and the Holocaust, when human rights were embedded through a series of bold institutional developments such as the Nuremberg trials, the Charter of the United Nations, the Universal Declaration of Human Rights, the Genocide Convention, and the revised Geneva Conventions.

Searching recent reassessments of this account have stressed the disjuncture between the 1940s and the 1970s. Rather than seeing human rights progress as a linear development, more attention is given to the lesser role that responses to the Holocaust actually played in stimulating human rights institutions in the immediate postwar period, and the ways rights displaced alternative organizing principles for justice and freedom (e.g., socialism, national self-determination). The role of non-Western actors in stimulating rights developments in the 1960s, particularly at the UN, also fits within this critical revisionism.[9]

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[6] For recent historical scholarship see: Stefan-Ludwig Hoffmann, ed., *Human Rights in the Twentieth Century* (New York: Cambridge University Press, 2011); Akira Iriye, Petra Goedde, and William I Hitchcock (eds.) *The Human Rights Revolution: An International History* (New York: Oxford University Press, 2012); Samuel Moyn. *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap/Harvard University Press, 2010); Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, MA: Belknap/Harvard University Press, 2005).

[7] Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Oakland: University of California Press, 2008); Christian Reus-Smit, *Individual Rights and the Making of the International System* (Cambridge: Cambridge University Press, 2013); Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Co, 2007); Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*, 2nd edn. (Philadelphia: Penn Press, 2003); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001); Aryeh Neier, *The International Human Rights Movement: A History* (Princeton: Princeton University Press, 2012); Roger Normand and Sarah Zaidi. *Human Rights at the UN: The Political History of Universal Justice* (Bloomington: Indiana University Press, 2008); Moyn, *The Last Utopia*.

[8] Hunt, *Inventing Human Rights*, but also Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca: Cornell University Press, 2013).

[9] The most influential account is Moyn, *The Last Utopia*. See also Steven L. B. Jensen, *The Making of International Human Rights; The 1960s, Decolonization, and the Reconstruction of Global Values* (New York: Cambridge University Press, 2016).

What is less contested in most of these histories is the importance of the 1970s as the moment of take-off for the modern human rights revolution, and of the 1990s as the decade in which human rights achieved truly global stature.[10] President Jimmy Carter made human rights a centerpiece of US foreign policy in 1977, the same year Amnesty International won the Nobel Peace Prize and a year before Helsinki Watch, the forerunner of Human Rights Watch, was formed. Building on international covenants on civil and political, and economic, social, and cultural rights ratified in the mid-1970s, conventions were established on discrimination against women (1981), against torture (1987), and on children's rights (1989). The UN secretary-general Boutros Ghali's *Agenda for Peace* of 1992 even announced a new era where human rights would increasingly impose conditions on legitimate sovereignty.[11]

As the Cold War ended, the era of *institutionalized* human rights familiar to us today gathered pace with 1993's UN Conference on Human Rights in Vienna, which established the UN Office of the High Commissioner of Human Rights. This was followed by ad hoc tribunals for Yugoslavia (1993) and Rwanda (1994), the Rome Statute (1998) and the International Criminal Court (2002), the Responsibility to Protect (2001/2005), the new Human Rights Council (2006), and the Universal Periodic Review (2008). These were all significant developments in the law and compliance regime of human rights. Many other agreements and institutions were set up or revitalized, at the regional and national levels, and soon almost all advocates who sought progress on norms and their implementation – from migrants to indigenous people to the disabled to those fighting against female genital mutilation – expressed their demands in the language of human rights. Even humanitarian organizations such as the ICRC and Oxfam followed suit.

Human rights are also now central to international condemnations of atrocity crimes by states. The UN's detailed report on the appalling conditions in which people live in North Korea, released in February 2014, uses human rights and their most far-reaching legalized expression – crimes against humanity – as the framework for demanding both referral to the ICC (now backed by the UN General Assembly) and even the use of coercive pressure under the label of R2P.[12] High-profile human rights

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[10] Barbara J. Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Cambridge, MA: Harvard University Press, 2014).

[11] UN Security Council, *An Agenda for Peace: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 Jan 1992*. June 17, 1992.

[12] Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, February 2014, available at:

campaigns – over Israeli shelling of Gaza, ISIS in Iraq, or civil war in Syria – now get publicity on a global scale. Within the UN system, there has been a major institutional shift with the implementation of a 'Rights Up Front' policy following what was seen as the UN's failure to protect human rights during the end of the Sri Lankan civil war in 2009. It is intended to embed human rights in every aspect of the UN's operational work.[13]

As for the future, various initiatives are currently being proposed whose aim is to fully globalize the reach of human rights law. For example, a convention on crimes against humanity is being discussed within the International Law Commission (as the Rome Statute was initially).[14] This convention will, advocates hope, be a powerful tool for condemning the worst state excesses, applying in peacetime as well as in war and filling in several gaps that the current network of treaties leaves open. Advocates for the convention even hope it might give impetus to prosecuting the crime of aggression, the fourth major international crime under the Rome Statute. As crimes against humanity are considered to be customary international law, this would open up almost all state behavior to binding legal accountability.

Second, the most ambitious proposal of all is perhaps a Swiss-led initiative for a World Human Rights Court. This court, while treaty-based, would apply to non-state actors as well as states, and would allow complaints to be heard against non-parties to the statute provided they were supported by the UN High Commissioner for Human Rights (in which case, they would constitute opinions, not legally binding judgments). The court would also be able to rule on the permissibility of reservations entered by states to human rights treaties.[15] The ICC's focus on individual criminal responsibility would be augmented by the WCHR's focus on state and non-state actor responsibility. The court might even, its advocates suggest, exercise judicial review of Security Council decisions.[16]

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www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInqu iryDPRK.aspx.

[13] www.un.org/sg/en/content/ban-ki-moon/human-rights-front-initiative.

[14] See the Crimes Against Humanity Initiative, *Fulfilling the Dictates of Public Conscience: Moving Forward with a Convention on Crimes Against Humanity*, Washington St Louis School of Law (2014): http://law.wustl.edu/harris/documents/Final-CAHGenevaReport -071714.pdf, and Leila Nadya Sadat (ed.), *Forging a Convention for Crimes Against Humanity* (Cambridge: Cambridge University Press, 2014).

[15] Martin Scheinin, "Towards a World Court for Human Rights," advanced copy, European University Institute, June 2009, p. 8 (available at: www.eui.eu/Documents/ DepartmentsCentres/AcademyofEuropeanLaw/CourseMaterialsHR/HR2009/Scheini n/ScheininClassReading1.pdf).

[16] Ibid., 26. In a withering critique, Philip Alston finds the idea of the court thoroughly misconceived, a distraction from the difficult business of improving human rights by

This overview of significant institutional achievements gives us a sense of the aspirational character of the global human rights regime.[17] All of these developments in theory move us closer to the advocacy ideal of a *global constitution*, a set of binding laws about appropriate behavior by states, non-state actors, and individuals alike. In fact, though, each of these institutions has embedded protections for states, and exceptions or even exemptions for especially powerful ones. The ultimate prize – a law without boundaries, with universal jurisdiction, beyond explicit state consent that would move us "from consent to constitution," from "a state-centred world order to a new global order with [a] focus on the individual endowed with rights" – has been heavily compromised.[18] Institutional design rarely reflects the aspiration of advocates who seek a world where due process and the rule of law hold superior authority to state practice.

2   An Audit of Human Rights Scholarship

Empirical research on human rights has flourished over the past two decades, moving from a productive early phase of empirical theory development into a more recent phase of sophisticated, multi-method research and debate among different theoretical approaches and inference strategies. This research has been explanatory as well as descriptive, quantitative as well as qualitative, experimental as well as observational, and aimed at the development as well as the testing of theory.[19] Over time, claims for a difference in results based on method have been inconclusive.[20] Rather, different methods have complementary strengths that can compensate for corresponding weaknesses, with quantitative methods best at assessing general patterns and qualitative methods stronger at verifying

non-judicial as well as judicial means, which requires giving more attention to certain political realities; see "Against a World Court for Human Rights," *Ethics and International Affairs*, no. 2 (2014): 197–212.

17 See Ruti Teitel, *Humanity's Law* (Oxford and New York: Oxford University Press, 2011).

18 Scheinin, *Towards a World Court*, 9. Also Stephen Gardbaum, "Human Rights and International Constitutionalism," in *Ruling the World: Constitutionalism, International Law, and Global Governance*, edited by Jeffrey L. Dunoff and Joel P. Trachtman (Cambridge: Cambridge University Press, 2009), 233–57.

19 Emilie Hafner-Burton and James Ron, "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes," *World Politics* 61, no. 2 (April 2009): 360–401. For a randomized experiment on women's empowerment in Afghan villages, see Andrew Beath, Fotini Christia, and Ruben Enikolopov, "Empowering Women through Development Aid: Evidence from a Field Experiment in Afghanistan," *American Political Science Review* 107, no. 3 (August 2013): 540–57.

20 Although compare, for e.g., Simmons' and Clark's largely confirmatory studies with Moyn's and Hopgood's largely skeptical historical and ethnographic studies.

causal mechanisms. As a result, researchers have converged on a substantial core of consensual findings on the conditions that facilitate good human rights outcomes.

Consensus About Facilitating Conditions for Rights

Broad consensus exists across all kinds of empirical researchers, including quantitative and qualitative, as well as critics and defenders of mainstream practices, about the conditions that promote and hinder positive rights outcomes. Quantitative studies report that two factors are the most important predictors of the quality of rights outcomes in a country: whether the country is at peace or at war, and how democratic the country is. Some might see the democracy finding as bordering on the circular, since most measures of democracy assume the existence of the civil liberties and legal apparatus that makes democracy possible. And so it is. But many of the other strong findings about the correlates of good rights outcomes are either causes, attributes, or consequences of democracy, which suggests that the link between democracy and rights is not just a tautology, but is based on a complex of mutually supporting causal factors that sustain rights outcomes. These include a reasonably high per capita income, which is the single strongest predictor of democracy; a fairly strong institutional capacity of the state, including an effective, impartial bureaucracy as well as strong representative and legal institutions, sometimes measured by the rough proxy of being a former British colony; and a progressive, socially inclusive ruling coalition that is "on the left."[21]

Findings about the risk factors for rights also echo findings for democracy. Economic inequality undermines both rights and democracy.[22] A large population is likewise a risk factor for rights abuse, possibly because of the difficulty of democratically governing culturally diverse peoples in a single state.[23] Some findings also suggest that there is "more murder in the middle": democratizing states endure similar levels of rights abuse to authoritarian states as a result of contentious mass mobilization in a context of weakly developed institutions for regulating mass political participation. These studies find that any benefit from

[21] Steven C. Poe, Neal Tate, and Linda Camp Keith, "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976–1993." *International Studies Quarterly* 43, no. 2 (1999): 291–313.

[22] Todd Landman and Marco Larizza, "Inequality and Human Rights: Who Controls What, When, and How," *International Studies Quarterly* 53, no. 3 (2009), 715–36.

[23] In some studies, though, this apparent finding may stem from a failure to weight results by population.

democratization accrues only after passing a rather high threshold to nearly complete democracy.[24] Another well-established literature, in contrast, finds that treaty-signing and mainstream methods of legal and activist follow-up have their greatest benefit for rights improvement in democratizing states.[25]

These seemingly contradictory findings could be simultaneously true if violations rise mainly at the early phases of transition, when democracy is very poorly institutionalized, and they decline in the more advanced phases of transition. Alternatively, it could be that democratizers "in the middle" are deadly unless they enjoy favorable facilitating conditions, which mainstream rights methods try to encourage by treaty signing, NGO activism, and lobbying for judicial independence.

These statistical results track fairly closely with the list of limiting conditions set out by qualitative scholars for evaluating the spiral model of rights promotion, which is based on the establishment of legal and moral standards and the shaming and coercion of violators. *The Persistent Power of Human Rights* argues that such methods are less effective in authoritarian regimes, in very weak and very strong states, in issue areas where violations are socially decentralized, and where the rights-abusing state enjoys popular support.[26] *Persistent Power*'s summary list of facilitating scope conditions omits peace and per capita income, though these are implied in some of the empirical chapters. One, for example, notes that protecting rights becomes an "almost insurmountable" task in wartime, though some rebels may be restrained by a concern not to gain a reputation for being lawbreakers.[27]

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[24] Bruce Bueno de Mesquita, Feyral Marie Cherif, George Downs, and Alastair Smith, "Thinking Inside the Box: A Closer Look at Democracy and Human Rights," *International Studies Quarterly* 49, no. 3 (2005), 439–58; Helen Fein, "More Murder in the Middle: Life Integrity Violations and Democracy in the World, 1987," *Human Rights Quarterly* 17, no. 1 (1995), 170–91. Simmons, *Mobilizing for Human Rights*, refers to this literature on p. 136, note 84. See also Christian Davenport and David Armstrong, "Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996," *American Journal of Political Science* 48, no. 3 (2004), 538–54. See also Samuel Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968), for relevant theory.

[25] Simmons, *Mobilizing for Human Rights*, 153; Davenport and Armstrong, "Democracy and the Violation of Human Rights," 547; Fein, "More Murder in the Middle," 177, 179, 181, 183. Simmons' graph of the theoretically *expected* value of political mobilization begins to arc upward as soon as autocracy ends, whereas Davenport's and Fein's charts of actual outcomes show rights abuse remaining high and even trending slightly up at that point and declining only in complete democracy.

[26] Risse, Ropp, and Sikkink (eds.), *Persistent Power*; see also Kenneth Roth, "Africa: The Attacks on the International Criminal Court," *New York Review of Books*, February 6, 2014, 32–5.

[27] Hyeran Jo and Katherine Bryant, "Taming of the Warlords," in Risse, Ropp and Sikkink (eds.), *Persistent Power*, 239.