

HUMAN RIGHTS  INTERVENTIONS

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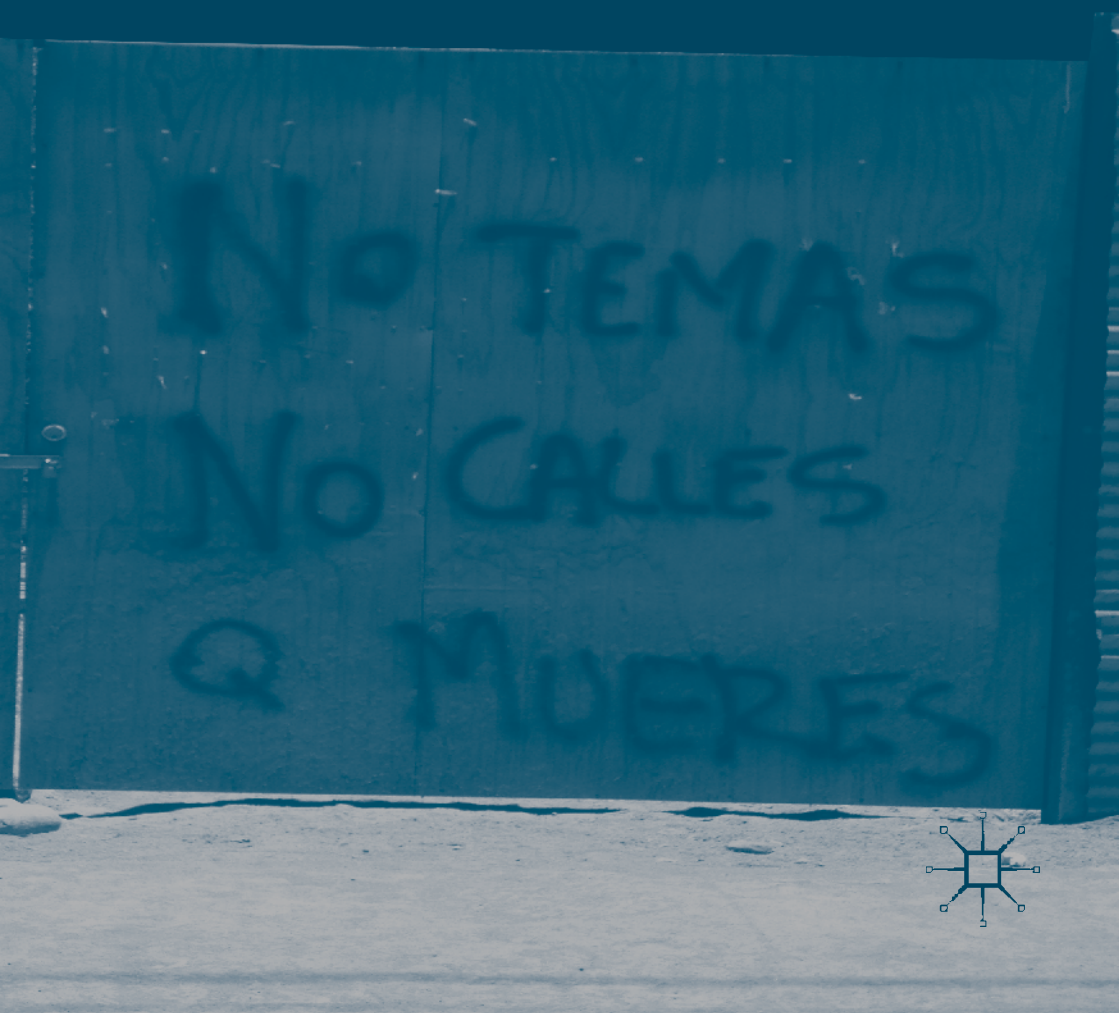
GABRIEL BLOUIN-GENEST,

MARIE-CHRISTINE DORAN,

AND SYLVIE PAQUEROT

**HUMAN RIGHTS
AS BATTLEFIELDS**

Changing Practices
and Contestations



Human Rights Interventions

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The traditional human rights frame creates a paradigm by which the duty bearer's (state) and rights holder's (civil society organizations) interests collide over the limits of enjoyment and enforcement. The series departs from the paradigm by centering peripheral yet powerful actors that agitate for intervention and influence in the (re)shaping of rights discourse in the midst of grave insecurities. The series privileges a call and response between theoretical inquiry and empirical investigation as contributors critically assess human rights interventions mediated by spatial, temporal, geopolitical and other dimensions. An interdisciplinary dialogue is key as the editors encourage multiple approaches such as law and society, political economy, historiography, legal ethnography, feminist security studies, and multi-media.

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Human Rights as Battlefields

Changing Practices and Contestations

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The photograph on the front cover was taken by Marie-Christine Doran during her recent fieldwork in the Norte Grande of Chile. This wall is a testament to the indigenous and human rights struggles in Chile. It is but one of many that are covered with meaningful words for anyone who is aware of the violence perpetrated upon human rights defenders in Latin America and around the world. Written in Spanish, this declaration to all defenders of human rights from below reads:

*“Do not be afraid
Do not be silent
Or you will die”*

*In solidarity, we stand with you,
The editors and authors of this book*

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Special thanks also to the *Casa de Memoria José Domingo Cañas* (JDC) and Marta Cisterna for giving us the permission to use pictures of the mural paintings and installations of the *Casa de Memoria JDC*, in Santiago de Chile. Even though we weren't able to use these deeply moving pictures for the cover of the book in the end for technical reasons, we want to acknowledge the extraordinary work of the *Casa* in making the public, and especially children, aware of the importance of fighting past and present human rights violations on a day-to-day basis.

And last but not least, thank you to our wonderful undergraduate and graduate students for their enthusiasm in studying the constant reinvention and many expressions of human rights from below, as well as to our loved ones for their support and all the great discussions about a better world.

Gabriel Blouin-Genest, Marie-Christine Doran and Sylvie Paquerot

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CHAPTER 1

Introduction: Becoming Human Rights Subjects Through New Practices

*Gabriel Blouin-Genest, Marie-Christine Doran,
and Sylvie Paquerot*

Since the official formation of the United Nations (UN) in 1945 and the proclamation of the Universal Declaration of Human Rights (UDHR) three years later, human rights have undergone a never-before-seen internationalization—a form of globalization of its own. Having become, according to Bertrand Badie (1999), “humanity’s first common goods,” human rights are now found almost everywhere and invoked at all levels of society—from micro practices to global treaties—by completely different types of actors. This internationalization of human rights fuels the paradox of today’s politics of human rights: they are claimed by Northern and Southern countries alike, and by governments as much as by private stakeholders and NGOs. Sometimes, actors contest the legitimacy of human rights; in other circumstances, the same actors are quick to call on

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these same rights to reinforce their own activities, policies or laws. Human rights are also used to justify the actions and practices of actors on all sides of the political spectrum.

This paradox fuels the reflections investigated here, where human rights—understood as fundamental commitments made by states—represent a reference point for political action and “commonality” regardless of the obvious limits that are exposed on a daily basis to their concrete implementation. Human rights discourses and practices are, in some sense, used as a legitimization tool that helps the oppressed participate vocally in violent societies no matter their accomplishment. This book explores the struggles and new meanings emerging from the use of human rights as a political tool in the context of this conflicting commonality.

As with any shared rules and norms governing what human beings have “in common” (Blouin-Genest and Paquerot 2016), human rights are neither neutral nor objective: they are political, contested and conflictual. They involve what we call political “battlefields” (*idem*), which refers to political spaces that undergo constant changes and in which political conflict—and the struggles for meaning (Laclau and Mouffe 1985)—is expressed by translation and transformation processes. We argue that these processes contribute to the modification of the scope and understanding of human rights, as will be explained in depth in Chap. 2 of this volume where the theoretical and conceptual framework are developed.

Yet, even in cases where stakeholders and social actors have clearly re-appropriated rights discourse, any innovations or breakthroughs are often seen as having been allowed by international laws (Lavaud and Lestage 2006), as though actors were detached from and “objects” of human rights, instead of subjects. This perspective is particularly true when the cases at stake involve oppressed or subaltern actors, which is demonstrated in several chapters in this volume: the intersectional nexus of oppression involving women, children and Indigenous Peoples is revealed through the struggles of “human rights from below” (see the Chaps. 8 by Das, 9 by Carranza Ko and 10 by Doran). It is particularly important to document the dynamics of the re-appropriation, and even the reformulation, of human rights practices by social actors who are directly involved in conflicts and contestations that have been framed by the human rights context, rather than from the exclusive perspective of states and international institutions. That being said, the very important transformation dynamics at play within the institutional context are also revealed through these processes of translation. The role of institutions in the conceptual translation of human rights is very clearly documented in several chapters of this volume,

including those by Bosvieux-Onyekwelu (Chap. 3), Paquerot (Chap. 4), Kamiloglu (Chap. 5) and Blouin-Genest & Erb (Chap. 11).

Notwithstanding their current inscription in international laws, documents and practices, human rights are consistently and dynamically used by actors as political tools to justify their actions, regardless of the dominant meaning of those rights and the “struggles for meaning” that stem from these re-appropriations (Doran 2016). Far from being fixed and imposed, human rights are flexible objects that adapt well to contexts, situations and uses, and thus their meanings or understandings can be modified without necessarily being anchored to new international law documents or practices. We suggest that these malleable meanings allow us to shed new light on the political processes that are at the heart of movements and actions that contest and change human rights through new and often unconventional practices. These practices may even challenge spaces conquered by political forces or legal mechanisms that are presented as being on the side of the oppressed, as some of the chapters in this book reveal particularly in Chap. 6 by Bessant and Watts, as well as in Chap. 12 by Cristiano).

Interestingly, it is the internationalization and flexibility of human rights that have made them contentious political objects: human rights are at the same time everywhere and nowhere, easily claimed and used to support contested practice, only to be repudiated the moment they no longer fit the main narrative of the actor(s) in question. They structure political conflicts, as rights are both the causes of and solutions for such encounters. Some have criticized this situation, arguing that human rights lost their effective power because they are constantly being translated and modified, without ever truly being implemented. Indeed, as indicated by Slaughter (2009), human rights have become “banalized.”

The normalization, generalization and overall banalization of human rights is not, however, a limitation on the human rights research agenda, as we demonstrate in this volume. On the contrary, such a recognition of how human rights are being harnessed by multiple structures and actors represents a unique opportunity to understand what human rights have created, rather than focusing only on their legal interpretation, as framed by international documents, treaties and practices. In short, it opens human rights research to the study of new practices that are changing and redefining the meaning, understanding and use of human rights.

In this context, this edited volume seeks to understand the roles and functions of human rights, both in today’s international society as well as

in diverse national contexts, what is *created* by them instead of what they *consist of*, and how they are defined per se through international law. This approach requires us to look at how new and contemporary human rights practices emerge from social/political struggles and conflicts, and position themselves as standards, rules or values that are used as political tools to defend specific issues, ideas or projects. Understood as such, human rights appear to emerge from below (De Sousa Santos and Rodríguez-Garavito 2005), that is, from local and micro actors, issues or contestation, rather than being exclusively imposed from above, and most notably, by international law documents or practices.

It is this political and conflictual dimension of human rights practices that this book explores, thus adding a layer of complexity to the existing literature and research on human rights. As such, the key questions organizing this edited volume are:

- *What role do human rights play today, beyond their origin and inscription in international law?*
- *What political function can be attributed to the debates surrounding these rights, and the conflicts in which they are situated?*
- *To what extent are human rights active agents of social and political change, particularly when consideration is given beyond their technical implementation and recognition?*

Through recognizing that human rights become a type of “argument for authority” (Arendt and Mattei 1972) as well as a legitimization tool, the research problems that guide this edited volume challenge the idea that they are an obligatory point of passage in the development of new laws, despite their ineffective enforcement. Indeed, new human rights practices, especially conflictual ones, are an inherent part of their own redefinition of role and scope. As demonstrated by the different chapters in this volume, we are particularly interested in the political functions of human rights, the paradoxes that accompany their use as political tools, their (in)effective materialization and implementation, the debates, conflicts and struggles that frame human rights practices, and how human rights are contested, claimed and recognized beyond their liberal and western origin, which, therefore, shapes alternative conceptualizations.

The objective of this edited volume is thus threefold:

1. Generate a conceptual framework to understand human rights and their changing/evolving political dimensions;
2. Document key case studies/contexts in which human rights are expressed in terms of political battlefields, and;
3. Examine the ambivalence and limitations of such theoretical/conceptual apparatus.

The different case studies explored in this edited volume target the reality that contemporary human rights (notably through the UDHR but also in other institutional spaces such as the Interamerican Human Rights System ICHR) have become a highly recognized legal/legitimate landmark that influence many jurisdictions, actors and practices, while at the same time fall short of being minimally realized. As recalled by Doise (2003), this situation underlines the paradox of a “coexistence of a very strong adherence to fundamental principles and an equally strong awareness that they never completely apply to social reality” (p. 1). Yet, we believe that the factors that explain this paradox have to be illustrated and analyzed in specific, concrete cases where the power relations surrounding human rights as highly invested signifiers (Laclau and Mouffe 1985) can be seen at work. The present volume takes on this challenge. Because social reality is ever-changing and affected by meanings in flux, which opens up a space for subjectification and liberty (Doran 2016), the field of human rights has to be examined constantly. Following this introduction, these issues will be tackled throughout the chapters of this book, as detailed below, as well as in Chap. 2 “Human Rights as Battlefields: Power Relations, Translations and Transformations. A theoretical Framework” by Blouin-Genest, Doran and Paquerot.

The first section of this volume, *The changing nature of human rights and their political boundaries: new definitions, longstanding debates* presents Chap. 3 by Charles Bosvieux-Onyekwelu, Chap. 4 by Sylvie Paquerot and Chap. 5 by Ozan Kamiloglu.

The second section, *Overcoming the frontiers of discrimination and structural violence: intersectional struggles of human rights from below and transformations of Political space*, features Chap. 6 by Judith Bessants and Rob Watts, Chap. 7 by Olabanji Akinola, Chap. 8 by Nusta Carranzo Ko and Chap. 9 by Surma Das.

The third section, *Social contestation and the broadening of human rights' meanings* presents Chap. 10 by Marie-Christine Doran, Chap. 11 by Gabriel Blouin-Genest and Mikey Erb and Chap. 12 by Fabio Cristiano.

The final insights of the conclusion in Chap. 13 by Blouin-Genest, Doran and Paquerot tackles the overall meanings of human rights as a battlefield in order to deepen and enlarge democratic space and practice, while challenging the limits of liberal representative democracies, within the field of human rights, as well as outside of it.

A VIVID PICTURE OF HUMAN RIGHTS STRUGGLES AND THEIR POLITICAL EFFECTS TODAY: OVERVIEW OF THE CHAPTERS

The contributions assembled in this volume present us with a rich array of case studies from almost all the continents and a variety of contexts, including the practices of very diverse actors and institutions. These solidly documented studies are articulated in a general effort to analyze and assert the more theoretical dimensions that these cases may contribute to our general understanding of what we could call—inspired by Bourdieu’s notion of *champ* (field)—the *field of Human Rights* as observed today. To a certain extent, these contributions converge to elucidate the new power relations and political spaces that have been created through the endurance of struggles for meaning that stem from the appropriation and transformation of human rights by diverse actors. Even though the various cases analyzed in this volume illustrate important specific considerations, their global effects converge in challenging, and sometimes overcoming, political boundaries (Doran 2016) set around the currently dominant meanings of human rights. Through specific patterns in the appropriation, translation and transformation of human rights, the following chapters help us to identify these effects and to understand new political spaces that have been opened—or have yet to be opened—in the field of human rights.

In a number of cases, we can identify a convergence that reveals deeply entrenched patterns of often intersectional oppression. In these cases, struggles for human rights are always the necessary starting point to reveal the multifaceted aspects of these oppressions, as well as the mechanisms of legitimization that maintain them. These struggles cross through the materiality of discourses, as revealed in Bosvieux-Onyekwelu’s important

contribution in Chap. 3 about the gender presumptions of the initial French conceptions of human rights. His chapter tackles the centrality of gender at the heart of the foundational definitions of human rights and helps to shed light on crucial issues regarding the preassigned place of women in liberal, western societies, from whence human rights were developed. The issue of power and its contestation revealed in “The gender of human rights” furthermore highlight concerns related to the #MeToo movement, which takes on a whole new dimension as we can relate those concerns to very well accepted conceptions of gender that overdetermined the possibilities of current definitions of human rights heritage.

In the same vein, Nusta Carranzo Ko and Surma Das both bring vivid and inspiring case studies of human rights struggles of women in Peru and India who have known the most dispossession and discrimination in their countries. The studies reveal their amazing path to empowerment and their continuing struggle to redress past and present violence. In Chap. 8, “Forcibly sterilized: Peru’s indigenous women and the battle for rights,” Carranza Ko explains with remarkable depth how the dominant paradigm of reconciliation in Peru excluded the terrible case of massive sterilization that was forced on Indigenous women during Fujimori’s authoritarian regime. Only the extraordinary persistence and determination of Indigenous women’s human rights struggles in Peru have been able to elucidate the intersectional nature of these tremendous violations, which were so entrenched in structural racism and the legacy of the recent authoritarian regime that many people in Peru thought of forced sterilization as a beneficial action for poor and underprivileged people. Their success in overthrowing this despicable discourse of legitimization of structural racism, led to the additional success of Indigenous women in Peru who have shown the extent to which Peru’s dual society remains far from justice and equality for Indigenous people, even though they represent roughly 25% of the population.

In Chap. 9, “Politicization of rights-based development and marginalization of human rights from below: the case of maternal health rights in India” by Surma Das, we are presented with a rich analysis of the consequences for what at first would appear to be progress toward the reduction of preventable maternal deaths in India, where the number of such deaths is the second-highest in the world. The author challenges the generally well-known human-rights framework for development—the rights-based approach—which has succeeded in highlighting the political dimensions

of such deaths and framing them as “maternal” human rights issues. However, this apparent victory triggered new power relations that affected previous human rights advocacy efforts in India, which were focused on “reproductive” health and rights prior to international involvement. The insightful analysis of Das thus clearly shows that the well-intentioned focus on maternal health, largely encouraged by international advocacy networks and institutions, may be detrimental to the much holistic approach of women’s reproductive rights from within India’s domestic tradition of human rights advocacy.

Another main line of argument in this book occurs through the many contributions that converge to show that identifying power relations at work is only possible by carefully looking at the precise definitions and applications of human rights in specific contexts. Through this type of analysis, we are able to explain the slow progress of human rights defense in the world today, as well as some regressive tendencies. As Sylvie Paquerot’s engaging contribution on the world’s most precious resource—water—demonstrates so clearly in Chap. 4, “The right to water: the political function of human rights as an expression of the contradictions in globalization,” the apparent victory of having water recognized internationally as a main issue of global economic governance conceals a major flaw that has always been part of the ambivalent nature of the dominant liberal definition of human rights. As Paquerot argues in her analysis of the last 20 years’ advocacy on the right to water, the possibility of acknowledging access to water as a right in international institutions does not prevent the growing tendency to concurrently privatize water. Thus, years of efforts from human rights and water advocacy networks whose aim was to define water as a common good and secure it from privatization and commodification have been neglected by what would otherwise appear to be a great achievement in the international recognition of the importance of water by the United Nations General Assembly and the Human Rights Council in 2010. Even though the struggles over the meaning of human rights, and in this particular case, the right to water, may still reverse this definition, Paquerot’s discerning analysis is key to understanding the dominant liberal, individualist paradigm that is at work when human rights are translated in the international system.

A similarly enlightening analysis is conducted by Ozan Kamiloglu in Chap. 5, “Politics of neutrality, human rights and armed struggles: The Turkey example.” Kamiloglu tackles the delicate issue of power that is based on the hegemonic definitions and redefinitions of human rights by

major transnational advocacy actors such as Amnesty International. In this truly engaging analysis, the author asserts that the proposed definition of armed opposition groups as oppressors in contexts where armed resistance is seen by many as the only means to overthrow authoritarian regimes or political forces, as it is in Turkey. In this case, these definitions may trigger new processes of ostracization, and the repression of the Kurd movement and the armed resistance group PKK (Kurdistan Workers Party). This chapter thus shows that predominant conceptualizations (or myths) behind the field of human rights, such as neutrality and universality, can also be the sites of new processes of discrimination and must, therefore, be examined carefully from within the context in which they will be applied. This contribution thus brings us to the idea of universality as the main feature of human rights defense.

In a rich case study of Nigeria that converges within this line of argument, Olabanji Akinola courageously and convincingly illustrates in Chap. 7, “Who is a child? the politics of human rights, the Convention on the Right of the Child (CRC), and child marriage in Nigeria,” that the slow progress of human rights for children since the implementation of the CRC in African countries is not due as much to political, social or even cultural obstacles in each African country, as it is largely a result of the way in which human rights for children have been defined in both international institutions and national legislative bodies. The enlightening analysis of the Nigerian case clearly reveals that the very definition of human rights and their translation by legislative systems hold primary importance in providing—or retrieving—access to the most fundamental human rights for the most vulnerable human beings in Africa and around the world, our children.

In Chap. 6, “Child prisoners, human rights and human rights activism: beyond ‘emergency’ and ‘exceptionality’—an Australian case study,” the remarkable contribution of Judith Bessant and Rob Watts provides a political analysis of both the implementation of human rights and the debate about power relations within the field. They convincingly trace the process by which political and legal systems may converge despite their temporary opposition in human rights cases. By means of their analysis of the process by which spaces of exceptionality are used by the legal system to challenge unfair and discriminatory political decisions toward poor and Indigenous child prisoners in Australia, the authors contend that the founding principle of popular sovereignty is excluded from both the legal and political systems when their disputes are resolved in spaces of exceptionality.

The third and final main line of argument emerging from the contributions to this book can be seen in the assessments of the possible transformations—and even counter-hegemonic articulations—that may occur due to new human rights meanings.¹ Emerging from very diverse perspectives—from Indigenous redefinitions of key concepts from international and national legislatures on natural resources, to the genealogy of the human right to health, or even the use of internet as a human right—three contributions to this book shed light on the political effects of human rights from below that go beyond the appropriation, or even the translation, of international legislative tools for human rights.

In Chap. 10, “Indigenous struggles for the redefinition of human rights in natural resources conflicts: beyond the strategic use of international legislation,” Marie-Christine Doran’s contribution, based on field work, examines the precise sites of *struggles for meaning* between national and international legislation around human rights, Indigenous rights and natural resources, and their transformation through political imaginaries that are articulated in the discourse and practice of indigenous rights defenders in Chile. Doran’s extensive material demonstrates that this rich indigenous collective action repertoire in Chile goes far beyond the strategic use of international legislation. In fact, the evidence in this chapter points to a transformation of hegemonic meanings—even those developed in international conventions for the protection of Indigenous rights—which lead to a truly innovative—and sometimes even poetic—dimension of new indigenous meanings for human rights. This contribution sheds light on the recurrent use of violence that is allowed due to the permanence of the legislation of the authoritarian regime that affects Indigenous people from North to South despite the celebrated stability of Chile’s democratic institutions. In doing so, Doran clearly demonstrates how indigenous definitions of rights, justice and democracy challenge this ongoing oppression through the continual creation of positive contributions to democracy and rights perspectives, even under the most adverse conditions. Ultimately, as the Chilean case illustrates, it is the right to full political representation, deliberation and participation that is contained within Indigenous conceptions of human rights.

In Chap. 11, “Improving HIV/AIDS drugs access: a genealogy of the human right to health from below,” Gabriel Blouin-Genest and Mikey Erb tackle one of the most illustrative examples of the transformative effects of human rights from below: the right to health. Through a solid, evidence-based analysis, this chapter underlines how the language and

practice of human rights have been used to produce, translate, modify and/or contest the reality of the human right to health. To do so, Blouin-Genest and Erb use HIV/AIDS, and in particular the question of access to essential drugs and medicines, as their main case study. They show that the human right to health, rather than being imposed from above by international actors, emerged from below, especially through the work of civil society, community groups and activists involved human rights “battlefields.”

Finally, Chap. 12 by Fabio Cristiano, “Internet access as human right: a dystopian critique from the occupied Palestinian territory,” presents us with a cutting-edge contribution, that was analyzed in a very challenging context wherein the collection of data was itself high-risk. In this truly enlightening study, Cristiano shows that internet access is a tool for population control that is used by all the political authorities from both sides whose aim is to control political liberties for the Palestinian population. The claim for internet as a human right remains first and foremost at the heart of the claim for liberty that fuels the desire for transformation in the Palestinian society. The virtual cry for internet as a human right has allowed the Palestinians in the occupied territories to focus on resistance to both the oppression of the Israeli state and to the general repercussions for liberties that followed the Arab spring uprisings in the region. Ultimately, the resistance to all forms of political control that are embodied by the claim for internet as a human right is both a tool of the social re-construction of Palestine as an imagined territory, and a fundamental reminder that humans may dream of liberty even if they have never seen a concrete example of it.

Ultimately, all the cases analyzed in this book demonstrate that beyond all the possible appropriations, translations or re-articulations of human rights lies their truly fascinating nature: their profound and solidly asserted universality stems from the very possibility of finding in human rights the basis for the continued contestation of their own sedimented meanings. This profound critical standpoint arises from the polysemic, yet always renewed, utopian idea of liberty. This extraordinary idea at the core of contemporary human rights will always prevail in shedding light on oppression and in opening new space for imagining emancipation. As the immortal verse by Paul Eluard says “*Sur les armes des guerriers, Sur la couronne des rois, J’écris ton nom: Liberté...*”/On the weapons of warriors, on the crowns of kings, I write your name: Liberty.”