
Law From Below: Women's Human Rights and Social Movements in New York City

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Despite the ambivalent history of the domestic application of human rights in the United States, human rights increasingly offer important resources for American grassroots activists. Within the constraints of U.S. policy toward human rights, they provide social movements a kind of global law “from below”: a form of cosmopolitan law that subalterns can use to challenge their subordinate position. Using a case study from New York City, we argue that in certain contexts, human rights can provide important political resources to U.S. social movements. However, they do so in a diffuse way far from the formal system of human rights law. Instead, activists adopt some of the broader social justice ideas and strategies embedded within human rights practice.

Human rights promise to provide social movements a kind of global law “from below,” in the terms that Santos and Rodriguez-Garavito (2005) have developed in their work on law and globalization from below. Yet it is widely recognized that mobilizing the human rights legal system requires extensive legal expertise as well as networks that reach into the transnational system (see Kennedy 2002; Merry 2006; Riles 2001). However, as a discourse and set of practices for asserting claims, the human rights system is surprisingly open to relatively powerless groups. Using a case study of two organizations in New York City that used a human rights framework to promote women's rights, we show that human rights

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offer a variety of discursive, political, and strategic benefits to social movements even when they do not mobilize them as law. The process is quite similar to the way domestic law was appropriated as a symbolic resource in the pay equity movement in the United States (McCann 1994). For social movements, human rights are simultaneously a system of law, a set of values, and a vision of good governance. Each of these dimensions of human rights offers resources for grassroots social movements, but in quite different ways. Distinguishing them allows a clearer understanding of the way human rights work as law from below. The case study also demonstrates the importance of legal and cultural contexts to human rights mobilization, particularly the relationship to national law and the historic role that human rights have played in a society.

Protecting the vulnerable and powerless is clearly fundamental to the aspirations of human rights. The system of human rights law seeks to protect the dignity and well-being of all humans, regardless of their citizenship, race, gender, or class. It is the universality of this aspiration, its unwillingness to restrict its gaze to the "deserving," the "meritorious," or the "civilized" that accounts for much of the moral appeal of human rights. Human rights law promises the weakest and most excluded people protections equal to those of the wealthy and privileged. However, it is not easy or cheap to use the human rights legal system. It requires legal and political skills to lodge complaints, document human rights violations, or produce a report that challenges a government's representations about its human rights situation. These actions rely on techniques of reporting and analysis, knowledge of the law, and access to venues in which human rights violations are discussed. The undocumented worker in Texas or the low-caste village woman in India cannot readily access this system. These people depend on non-governmental organizations (NGOs) that represent victims. Much of the work of human rights investigation and pressure is done by human rights NGOs, organizations that typically have access to legal expertise and cosmopolitan knowledge. As Merry (2006) shows in her analysis of women's human rights, those with more experience in the human rights system are better at using it: They know how to present cases, which conventions to use, and how to speak in a way such that grievances can be heard. Clearly, cosmopolitan legal elites are critical to participation in the human rights system (Kennedy 2002). However, our research suggests that it is possible for less powerful and knowledgeable people to access human rights through coalitions with elites and by using human rights as an ideology of justice and a practice of claims-making rather than as a system of law.

Santos and Rodriguez-Garavito (2005:5) refer to the bottom-up approach to law and globalization as "subaltern cosmopolitan

legality,” which they describe as a mode of sociolegal theory and practice as well as a perspective. Their approach illuminates how law is used by organizations engaged in counterhegemonic activism to contest existing legal hegemonies, emphasizing the inextricable linkage between law and politics (2005:9–15). Santos and Rodriguez-Garavito point out that while researchers recognize that grassroots social movements often deploy legal strategies drawn from international and national resources, there are significant limitations in sociolegal accounts of this process in the current moment of globalization, which the “bottom-up” perspective they propose seeks to address. One defining feature of subaltern cosmopolitan legality is that it “operates . . . across scales” of movement networks, political orders, and jurisdictions (2005:16–7).

Our case study captures this process as it examines how global human rights become resources for political activism in New York City. Although there is a rich literature on how domestic social movements engage U.S. law (e.g., McCann 1994; Scheingold 1974; Silverstein 1996) and of how transnational human rights advocacy works in places other than the United States (e.g., Goodale & Merry 2007; Keck & Sikkink 1998), the study of how international human rights are mobilized in the U.S. context is less developed (but see Soohoo et al. 2008). The conditions for mobilizing human rights in the United States are shaped by the dominance of civil rights as a focus of rights-based strategies and long-standing barriers to human rights incorporation into domestic law. Interrogating the process of human rights mobilization in the United States reveals a diverse and differentiated use of legal resources and promotes a nuanced understanding of legality.

This article examines how human rights work as the basis of social movement mobilization in New York City, specifically describing an effort to mobilize human rights to deal with systemic race and gender discrimination. This specific case does not necessarily represent a more general pattern, nor can it be generalized to the entire United States—indeed, patterns of human rights deployment in other parts of the country are different—but it does provide one example of how human rights law operates from below in a cosmopolitan American city. It describes a relatively new phenomenon in the United States: the mobilization of human rights law by the kinds of social justice movements that have long relied on civil rights law.

Within the United States, social movement mobilization of human rights presents a particular challenge. Historically, human rights were meant for export, not for domestic consumption (Lauren 2008). A significant exception is the extent to which African American activists, including Malcolm X and Martin Luther King, raised human rights issues in the 1940s, 1950s, and

1960s (Anderson 2003; Malcolm X & Haley 1964). In recent years, galvanized by such domestic failures as Hurricane Katrina, Abu Ghraib, and Guantanamo Bay, U.S. activists have adopted a human rights framework more extensively (Davis 2007; Soohoo et al. 2008). For these activists, the U.S. government's resistance to human rights radicalizes this framework and makes it more effective as a resource for resistance. At the same time, domestic women's social movements have increasingly built connections with the global feminist movement, which defined women's rights as human rights during the 1990s and 2000s (Merry 2006, 2009). In the area of violence against women, for example, human rights are increasingly important as a framework for activism focused on violence against women of color (Smith et al. 2006).

A human rights approach offers U.S. social movements several advantages over a civil rights approach. In domestic violence cases, for example, a human rights approach joins the right to be free from violence with the right to health care, housing, education, and employment (Thomas 2000:1122). In the field of gender discrimination, human rights approaches focus on gathering and reporting systemic data and exposing areas of discriminatory practice rather than litigating cases of discrimination. Human rights strategies are based on monitoring and preventing future violations rather than litigation on the basis of past violations. Human rights approaches are more open to an intersectional analysis that combines gender discrimination with discrimination based on race, class, language, religion, national origin, and other factors in ways not possible through existing U.S. legal remedies.

We examined human rights mobilization in New York City in two different sites. The first site was the New York City Human Rights Initiative (NYC HRI), a citywide coalition led by the Urban Justice Center Human Rights Project (HRP). The NYC HRI is part of a nationwide movement to implement the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in local communities in the face of federal resistance to ratification of the treaty. The NYC HRI drafted and proposed for adoption a New York City ordinance called the Human Rights in Government Operations Audit Law (HR GOAL), implementing CEDAW and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The ordinance required all city agencies to perform audits to discover discriminatory practices, and based on the findings, to design and implement remedies. The NYC HRI also hoped to use the ordinance campaign as a springboard to build a human rights movement in New York City in conjunction with a national movement.

The second site of our research was the Voices of Women Organizing Project (VOW) of the Battered Women's Resource Center.

This organization belongs to the coalition supporting the NYC HRI (<http://www.vowbwrc.org>, last accessed 18 Oct. 2009). VOW members are survivors of domestic violence who advocate for battered women in New York City family courts, housing, criminal justice, and child welfare systems. They also use human rights documentation techniques to describe violations and urge the courts to improve their treatment of battered women.

Coauthors Șerban Rosen and Yoon conducted field research over a period of 10 months in 2005 and 2006 while they were graduate students at New York University. They attended public events and meetings related to the NYC HRI, including press conferences, panels and forums, and human rights training sessions. They conducted more than 40 semi-structured interviews, lasting on average two hours, with individuals involved in the core working group of the NYC HRI during its various stages, members and leaders of New York City organizations who belonged to the coalition supporting the NYC HRI, and funders concerned about human rights work in the United States. Author Merry participated in several of the interviews. The interviews focused on the work of the organizations, the New York City human rights bill, and more broadly the understanding and deployment of human rights in the work of the organizations. Together with Merry, Yoon and Șerban Rosen also reconstructed the evolution of the NYC HRI by examining documents provided by the coordinators of the NYC HRI, including records of meetings, announcements, correspondence, internal reports, human rights training materials, and drafts of the legislation. Analyzing the narratives from interviews alongside documents generated in the course of the NYC HRI enabled us to assess how the process of mobilizing human rights was shaped by issues arising in the collaboration between individuals and organizations holding different levels of power and resources. We also considered how interviewees responded to the challenges of doing human rights work at the local and national levels.

Yoon focused on VOW. She observed everyday operations of the organization, including orientations for new members, planning sessions devoted to various areas of the organization's advocacy agenda, and public events hosted by VOW. Observations of strategy sessions, decision-making processes, and collaborations with coordinators of the NYC HRI formed the basis of our assessment of how, and to what extent, human rights were significant in VOW's organizational practices. Interviews with the staff and members explored the path that took individuals from activism against violence against women to international human rights law. We examined how they thought about human rights in relation to violence against women and the role of more expansive visions of social justice.

Our location in New York City enabled us to observe hearings and panel discussions taking place in coordination with United

Nations (UN) committee meetings. Our assessment of contemporary human rights movements beyond our ethnographic sites was informed by attending numerous public events addressing human rights work in local, national, and global contexts and speaking with participants, many of whom were based outside of New York. These observations, as well as the ethnography of the work of these two organizations, suggested that we needed to unpack the ways that organizations think about and use human rights in their everyday work. Three quite different uses of human rights in social movement activism emerged.

Three Dimensions of Human Rights

Human rights are both a system of international law and a set of values (Goodale 2007). In recent years, as human rights have become fundamental to “transition to democracy” projects, they have also become critical to what is called “good governance.” These are three rather different ideas about what human rights are and when and how they can be used. They require different forms of expertise. Disentangling these three quite different dimensions of human rights helps analyze when and how these two New York City organizations turned to human rights.

Law

Human rights law is made up of multilateral conventions or treaties binding on those countries that ratify them. The conventions are monitored by committees that receive periodic reports from ratifying countries concerning their compliance (Merry 2006; Steiner et al. 2008). Individuals can bring complaints of human rights violations to several UN commissions in New York, Vienna, and Geneva. Specially appointed representatives or rapporteurs serve as information-gathering and reporting agents for the system. Enforcement depends on the pressures of nation-states as well as the committees of experts who receive periodic reports from ratifying countries and monitor compliance, called treaty bodies. Regional human rights bodies such as the Inter-American Commission for Human Rights or the European Court of Human Rights hear complaint cases and render decisions (Steiner et al. 2008: 938–44). The recently created International Criminal Court handles a small number of serious violations (Clarke 2009). Lawyers occupy central roles in this process by investigating violations, preparing documentation and presenting cases. These individuals depend on NGOs or social movements to uncover and frame the violations they suffer and to help them redress them. The core strategies available for enforcement are exposure and shaming.

Values

Human rights are also a philosophical and moral system of values that claims universality and asserts the worth of all humans by virtue of their humanity. The claim to universality is critical to its appeal (Niezen 2004). Its core ideas are human dignity, equality, nondiscrimination, protection of bodily integrity from state violence as well as other forms of violence, and freedom, however that is defined. Although these values are widespread, a central aspect of the human rights system is the way its legal apparatus legitimates its core principles by claiming that they represent the consensus of the “international community.” This value system grows out of a long history of human rights advocacy dating from the European Enlightenment and the articulation of its values in the French Revolution, the American Revolution, the anti-slavery movement, the women’s suffrage movement, labor organizing and anti-poverty movements, the American civil rights movement, and many others (see Hunt 1996; Lauren 2008; Steiner et al. 2008). These ideas resonate with the principal values of modernity in its various manifestations and with the fundamental tenets of many religious systems.

Governance

The third meaning of human rights as good governance is more recent. It is the product of a merger of human rights with development and democracy projects, an approach beginning in the 1980s. Human rights principles emphasize participatory decision-making, transparency, and accountability. These “process principles” are an important dimension of the way human rights are understood to have an effect in the world. Guillhot argues that the merger of human rights and governance dates to the neoconservative turn during the Reagan era when human rights were defined as a dimension of democracy promotion (2008:510). Instead of human rights being viewed as a politically neutral form of international law, they became a particular kind of politics, a mode of governance that upholds human rights. Thus, promoting human rights meant institutionalizing these democratic modes of governance, and human rights became the concrete expression of good governance (Guillhot 2008:512). The process principles of participation, transparency, and accountability also come from development discourse, with its emphasis on human capacity (Sen 1999). The current emphasis on promoting the “rule of law” as a dimension of development reflects this understanding of human rights (Carothers 2006a, 2006b). Since the 1980s and 1990s, international development organizations such as the World Bank and the International Monetary Fund have increasingly

made their loans conditional on “good governance” reforms, some of which invoke human rights (Babb & Carruthers 2008).

Of these three dimensions of human rights, the first two are in many ways complementary. The legal side of human rights depends on the work of NGOs mobilized by human rights values. These organizations provide information and publicize violations, help victims of human rights violations complain to human rights bodies, and provide information to UN special rapporteurs and representatives. It is the moral appeals and outrage of NGOs that persuaded the public to attend to these violations and to support the human rights framework (Engelke 1999).¹ The work of social justice organizations to promote human rights consciousness is an essential support for human rights law. Conversely, the existence of a legal system is important to human rights advocates. Human rights law lends credibility and legitimacy to social movements' promotion of human rights values. Human rights values are more influential because they are codified in a law-like system of multilateral conventions that has the legitimacy of ratification by governments around the world. The possibility of recourse to law provides moral force to norms incorporated into the system.

Yet there are also contradictions between the legal and the moral dimensions of human rights. The pragmatic, instrumental aspects of law violate the moral commitments of those who see human rights as a system of values. The dependence on civil society organizations means that inequalities of funding affect the implementation of human rights. These inequalities fly in the face of ideologies of equality. Even when human rights violations are articulated as moral wrongs to a sympathetic public, if the public sphere is too fragmented or weak to generate shame (see Katzenstein & Snyder 2009), human rights law is unable to coerce compliance. Thus, human rights are a multifaceted phenomenon, open to multiple meanings and uses. They can be laws, values, or strategies of governance.

Human rights NGOs and social movements work within this diverse and contradictory terrain. When social movements appropriate human rights, they adapt them to existing normative structures and specific socio-historical situations in a process the authors call vernacularization. They expand upon ideas already present as “value added” expansions of existing organizational and cultural frameworks rather than as replacements (Levitt & Merry 2009).

¹ As Engelke (1999:305–7) notes in his study of the invocation of human rights for sexual minorities in Zimbabwe, the law alone has little effect in the absence of moral support for human rights. Human rights activists need to build a moral discourse about rights and cruelty if human rights claims are to receive support. Engelke found that in Zimbabwe, in the absence of this moral support, the state's hostility to homosexuality and human rights undermined the power of the claim of sexual minorities' rights.

Our study of the NYC HRI and VOW suggests that the values side of human rights is more open to mobilization by grassroots social movements than the law side, but that using either dimension depends on collaboration among social movement leaders, grassroots activists, and legal experts. This collaboration enables relatively powerless actors to mobilize human rights law and dis-course from below. However, emphasizing human rights as good governance can derail attention from human rights values.

The New York City Human Rights Initiative

What happens when activists in the United States use human rights frameworks to address social justice issues? Our case studies of women's groups in New York offer a window on the way human rights work as law, as values, and as governance. The NYC HRI has mobilized all three dimensions of human rights. It seeks to pass a combined version of CEDAW and CERD, the conventions on gender discrimination and race discrimination, as a municipal ordinance in New York City.² Thus, it draws explicitly on human rights law. The ordinance would require all city agencies to perform audits to uncover discriminatory practices and to design and implement remedies in response. In this sense, it seeks to use human rights good governance techniques of participation and transparency. Finally, the NYC HRI also hopes to use the ordinance campaign as a springboard to build a human rights movement in New York City that would form part of an emerging national movement. The leaders put together a coalition of groups working on gender and racial discrimination, both locally and nationally based and oriented to both social action and legal defense. The resulting network of between 108 and 120 member organizations has worked on housing, education reform, labor, domestic violence, and legal aid. They have all shared some commitment to a human rights framework. Thus, it also seeks to develop human rights values.

The immediate inspiration for the ordinance grew out of a meeting at the World Conference against Racism in Durban, South Africa in 2001 between activists from New York City working on race and those working on gender as well as activists from the Women's Institute for Leadership Development for Human Rights (WILD for Human Rights) in San Francisco. In 1998, WILD for Human Rights passed a version of CEDAW as a city ordinance in

² There are similar projects to pass the Convention on the Rights of the Child (CRC) as state and city ordinances, in implicit protest to the U.S. government's failure to ratify the convention. In February 2009, for example, Chicago joined nine other cities and two states that have passed resolutions in support of the CRC (Northwestern University News Media Advisory, 12 February 2009).

San Francisco (Lozner 2004; Women's Institute for Leadership Development for Human Rights and Shaler Adams Foundation 1999). In 1999, at an important conference in Mill Valley, California, WILD for Human Rights brought together international and U.S. women's activists and fueled interest in a domestic women's human rights movement. Some of these leaders subsequently convened a major international conference on violence against women of color in 2000, called the Color of Violence Conference, which promoted a human rights framework for the issue.

With this background, and committed to an intersectional approach that emphasized the connection between gender and racial discrimination, a group of scholars, lawyers, and activists sought to replicate the successful San Francisco experience in New York City. They formed the NYC HRI with the motto: "Affirming and Advancing Rights for All." The NYC HRI was also committed to tackling issues such as hunger, homelessness, extreme poverty, inadequate health care, and violence against women and children as human rights violations. Thus, the group sought to take a broad set of social reform agendas and convert them into a law. The members also hoped that the process of drafting the law and getting it passed by the City Council would form the basis for a wider social movement and advance human rights consciousness.

Many of the early leaders were frustrated by the limitations of discrimination law and litigation for achieving social reform. During interviews, they described it as a "culture that is not proactive" about equality and remedying social problems but looks backward to past discrimination. As one participant in the NYC HRI said, "We can do nothing until there is a lawsuit." Grassroots activists said that they find that the civil rights model "no longer moves people." One person said, "We rehashed civil rights left and right," but especially for the new generations, there are no longer overarching movements to unite a broad base. For legal advocates, such as the Legal Momentum (the legal branch of the National Organization of Women [NOW]) lawyer involved in drafting the bill, the move beyond civil rights was shaped by the legal environment, as "the impact litigation that we all dreamed of doing" was not happening, and "the courts were not on our side." Moreover, the past two decades have seen attacks on the Legal Services Corporation, raising obstacles that serve "to keep people out of courts." Perhaps more damagingly, the civil rights language "was co-opted by the right," and civil rights were cast as "special interests." Legal advocates "lost the ability to talk" to the public about civil rights, and the progressive force of the public language of civil rights was undermined.

Human rights law offered a broader range of claims and remedies than litigation. For example, one of the organizations behind the NYC HRI used human rights documentation strategies to show

the arbitrary and discriminatory denial of food stamps to welfare recipients. The group contributed to a petition before the Inter-American Commission on Human Rights that charged the United States with violating economic, social, and cultural rights (Women's Institute for Leadership Development for Human Rights and Shaler Adams Foundation 1999). The turn to human rights law expanded the scope of rights to include social, economic, and cultural rights and mobilized shame as a new source of pressure to achieve them.

The NYC HRI sought a proactive legal approach that could generate systemic data to document abuses and mobilize a broad coalition to redress them. Its members wanted to address human rights violations and the underlying inequality that caused them through preventive measures and more effective citizen participation (New York City Human Rights Initiative to City Council, January 2004). The project of developing a law channeled and focused the social movement. The actual drafting of the ordinance was a collaborative effort among five sponsoring organizations, including some with a human rights focus, some with a gender litigation focus, and some advocating a civil rights approach. Its leaders took their cues primarily from two sources: Legal Momentum, which wanted to implement CEDAW locally, and the Urban Justice Center, which wanted to challenge racism by implementing CERD.

In spring 2002, Legal Momentum issued an open invitation to women's organizations to work on implementing CEDAW in New York City. More than 30 groups sent representatives. At the meeting, they decided to focus not only on implementing CEDAW, but also on implementing CERD. Thus, the initial group adopted an intersectional approach to women's human rights. This first meeting established a coordinating committee for what was to become the NYC HRI, composed of representatives from the NOW Legal Defense and Education Fund (later Legal Momentum), Amnesty International USA (AIUSA) Women's Human Rights Program, the Urban Justice Center's Human Rights Project, the ACLU, and the Women of Color Policy Network at New York University.

Legal Momentum had already done some human rights work prior to the NYC HRI. A lawyer and prominent women's rights activist who was the director of Legal Momentum at the time chaired the initial meeting and was actively involved with the NYC HRI in its early stages. The Urban Justice Center's HRP is an advocacy organization that mobilizes membership-based organizations through leadership development, research, and coalition-building. Its goal is to build a human rights social movement. The HRP has provided the core leadership from the beginning and has maintained its interest to the present. It is primarily concerned with CERD, which it has worked to publicize and implement since

1999, following its ratification by the United States in 1994. The HRP was particularly interested in overcoming the U.S. reservations to CERD that meant that the treaty came into force only after Congress passed new laws to put its principles into effect. The group was also interested in the possibilities opened up by CERD's inclusion of affirmative policies and economic and social rights. The HRP submitted a shadow report³ for CERD committee hearings on the United States and testified on health, education, and employment as they relate to race and poverty.⁴ The HRP continued its focus on CERD in the run-up to the World Conference against Racism in 2001. Locally, the HRP also approached African American City Councilman Bill Perkins, who later became the sponsor of the proposed ordinance (HR GOAL) (10 June 2002 minutes, City Council meeting).

An initial coalition between HRP and Legal Momentum in conjunction with AIUSA Women's Human Rights Program, ACLU, and New York University's Women of Color Policy Network formed the core of the NYC HRI. However, the organizations differed considerably in size, organizational mission, access to resources and visibility, and perspectives on domestic human rights work. As the coalition became larger, these differences grew more acute. Tensions rose over the goals and vision of human rights, personal working styles, and the role of law and lawyers. Differences between the national and local organizations also emerged on a regular basis. The national organizations—the ACLU, Legal Momentum, and AIUSA—differed from the local groups—the Women of Color Policy Network, the Urban Justice Center, and the New York chapter of the ACLU—in media visibility, power, and access to resources and staff. The national organizations were far better funded than the local ones. Nevertheless, local groups did the bulk of the work, even though the national groups received much of the funding and credit. After their initial enthusiasm, the big organizations (AIUSA, ACLU, and to some extent Legal Momentum) came to see the NYC HRI as less central to their respective missions, leaving the leadership largely up to the local groups, especially the Urban Justice Center.

Throughout the drafting period for the bill (2002–2004), the five organizations forming the coalition's coordinating body divided the work between two main committees: one for drafting the bill and the other to create a coalition of organizations to support

³ A shadow report is written by an NGO to the committee monitoring a country's compliance with a human rights treaty that it has ratified. Governments are obligated to present periodic reports on their compliance with the terms of the convention. NGOs have the opportunity to present other views of compliance in these informal reports.

⁴ <http://www.urbanjustice.org/pdf/publications/humanrights/shadowreportHRP.pdf> (accessed 18 Oct. 2009).

their efforts, an outreach committee. The drafting committee was further divided into two subcommittees: one on “principles” and one on “implementation.” The coordinating committee consisted of 10–15 people as well as a number of consultants who contributed during specific stages. The two drafting committees and the entire coalition met monthly and sometimes bimonthly throughout 2002–2004. Thus, the coalition subdivided into those focusing on drafting the law, those on governance mechanisms, and those on political organizing and education. In effect, it created a separate committee to deal with each of the three dimensions of human rights described above.

Grassroots activists participated in the whole coalition but were particularly active in the outreach committee. Since 2002, the coalition has been held together by three women activists, all of whom have considerable expertise and experience in social movement work. They are closely connected to grassroots activists and less privileged communities. They are committed to listening to and representing the perspectives of these communities. One woman was hired by the Urban Justice Center a few months before the coalition began, was present at the first meetings, and has been involved ever since, at first dedicating most of her time to the NYC HRI. The daughter of progressive academics and granddaughter of politically involved grandparents, she grew up in Nigeria, and her childhood and early adulthood were infused with discussions of politics and international affairs. As a result, she became interested in doing international development policy work to address gender inequality in West Africa. She is a woman of color.

A second key activist is a consultant initially based at Amnesty International who moved to the Urban Justice Center after Amnesty lost its funding for the project. She is a long-time activist in the feminist and lesbian-gay-bisexual-transgender (LGBT) movements, the battered women’s movement, and peace and justice work who is committed to human rights as a “unique vehicle for movement building.” She was initially hired to assess whether implementing CEDAW at the local level could fit with Amnesty International’s mission. She is white.

A third leader, the director at the time of the HRP at the Urban Justice Center, attended the Durban conference and became convinced of the need to use a human rights framework domestically, “to put human rights on the map.” The daughter of participants in the farm workers movement in California who worked on third world feminist movements, immigrant rights, and queer youth education, she said that human rights made immediate sense to her. She is Latina in background. By 2008, only the first activist remained as the director of the project.

All three of these women are educated professionals who are dedicated to social justice work and chose to work for NGOs rather

than in higher-paying positions. None of them is a lawyer. All are primarily interested in working with grassroots groups. They are the only members of the NYC HRI who sat on the drafting committee for HR GOAL and the outreach committee for social movement building. They are a tight-knit group that functioned well as a team from the very beginning, in large part because they agreed on goals and strategies for the NYC HRI. For these activists, and for the leaders of many of the NGOs in the coalition, human rights offer a vision of social justice grounded in human dignity. This message served to forge a coalition among social justice groups throughout New York City based on a commitment to human rights values.

However, as the committee met and sought to draft the ordinance, it gradually shifted away from human rights values to governance as it struggled to develop implementation systems. The new approach was based on audit principles: on gathering information about the raced and gendered performance of city agencies such as the welfare system. It adopted processes of reporting and monitoring used by the treaty body committees that monitor human rights conventions. The focus became the “process principles” of human rights governance: participation, transparency, accountability, and nondiscrimination. When it was finally drafted, the governance principles took center stage while the texts of the human rights laws receded.

The Ordinance: Human Rights GOAL

Known as the New York City Human Rights in Government Operations Audit Law (HR GOAL), the bill had a stated goal to identify, eliminate, and prevent discrimination in governmental operations in New York City. The preamble to the February 2006 version referred explicitly to human rights:

The human rights doctrine recognizes that in order to fulfill the promise of equal opportunity, government must take affirmative measures to prevent discrimination and to promote equality for all, particularly those who have been marginalized and discriminated against based upon their race, color, gender, sexual orientation, age, ethnicity, language, religion, immigration status, political affiliation, national or social origin, birth or other status (HR GOAL 2006:1–2).

The bill sought “full and equal opportunity to participate in the economic, educational, social, cultural, political and civic life of the City” (2006:2). Using the human rights framework as a principle of governance, the bill’s “human rights-based approach institutionalizes proactive measures for identifying inequities and discriminatory policies and practices” (2006:2) through collaboration between government, nonprofits, and community groups. It

advocated negotiated rule-making, alternative dispute resolution, and participatory problem-solving. The drafters of the bill were particularly concerned with community input, stating: "The City shall develop and employ methods for meaningful and informed participation by community members in the formulation and implementation of City policies, programs and services, including participation in identifying problems, obtaining information needed to assess these problems and designing solutions" (2006:3).

In the text of the bill itself, however, CEDAW and CERD received limited coverage. They were mentioned only once and not in terms of their substantive provisions, but in terms of inspiration:

It is the public policy of New York City to enhance good governance by promoting equality and preventing and eliminating discrimination based on the human rights principles articulated in the international human rights framework and, in particular, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1249 U.N.T.S. 13 (2006:Section 8-1102, p. 4).

The majority of the bill was devoted to outlining processes of human rights audits and analysis. The bill required each city entity to eliminate discrimination and promote equality by incorporating human rights principles into its work and submitting a local human rights audit to a human rights task force. This task force, to be appointed by the mayor, would consist of three leaders of non-profits, one of whom would be an expert on anti-discrimination law, one well-versed in city budgets, and five members appointed by the mayor. The head of the Commission on Human Rights would be an ex-officio member. The task force was charged with preparing human rights analyses for each city agency, publicizing them, and holding consultations with appropriate city officials and the public. It would then prepare a human rights action plan for each city agency designed to identify, eliminate, and prevent discrimination in its operations. The task force was to hold bimonthly public hearings to discuss its action plans and elicit public input about how to conduct subsequent local human rights analyses. The bill also provided for training in human rights principles for city agency staff and community members.

Thus, the proposed bill shifted from articulating the principles of CEDAW and CERD, which focus on eliminating gender and race discrimination in a variety of specified situations such as education, political participation, and marriage, to processes of audit, reporting, public discussion, and education in human rights principles. It was more about public participation and good governance than about implementing the provisions of the conventions. The bill

provided for substantial input from the NGO community and articulated a commitment to broad principles of justice and equality along with human rights principles, which were defined to a large extent as good governance and participatory decisionmaking. It sought to identify and expose systematic, intersectional patterns of gender and race discrimination, such as the low number of girls of Puerto Rican ancestry in schools, and to examine how city policies work to disempower and exclude these girls. The human rights audits mandated by HR GOAL would be undertaken by each city agency and would include an assessment of data collection and reporting practices, of measures taken to promote equality and prevent and eliminate discrimination, and of procedures and mechanisms for public input. Thus, the bill gradually shifted from an emphasis on substantive rights to principles of good governance and audit to implement nondiscrimination.

By far the most difficult part of the process of drafting the ordinance concerned implementation. As one of the lawyers deeply involved in the drafting noted, "We don't want something that passes but has no teeth." The decision to leave behind court-based enforcement raised the question of how to make human rights effective, given their limited force in the U.S. context. The approach the ordinance developed contrasted sharply with the litigation approach of civil rights work. Auditing language was a compromise between those focused more on social change and process and those focused more on substantive outcomes. The initial plan was to have two bodies, an advisory committee that would work closely with the city agencies, and a task force to monitor the process. After negotiations with the mayor's office, the advisory committee was replaced by hearings and the mayor was granted the power to appoint task force members. Some of the NYC HRI members feared that these changes weakened the bill substantially, rendering it less powerful than the court-based civil rights model and less flexible and adaptable than the international human rights system.

After the ordinance was more or less finished, the NYC HRI moved to have the City Council pass it as law. In December 2004, the bill was introduced in the New York City Council, under the chair of the Government Operations Committee. Although the ordinance was favorably received in a 2005 hearing, it had to be reviewed by the City Council Legal Department, which significantly weakened its provisions and eliminated many of the references to intersectionality. The participatory dimension was undermined by requiring community task force members to be appointed by the mayor. The City Council member who sponsored the bill left the Council in December 2005 because he had served the maximum time allowable, forcing the NYC HRI to search for a new sponsor. By early 2006, the future of the ordinance was uncertain. Despite several successful

press conferences, the ordinance stalled in the City Council. The lawyers who had been active in the drafting process drifted away.

However, the group working on the social movement side remained active. This group focused on public education about the human rights vision, coalition-building, and training to use the legislation as an advocacy tool, because even if HR GOAL does not pass in the next five years, from a social movement perspective “this is a short time, this is just the beginning.” However, when it did not receive funding, even this part of the NYC HRI was forced to scale back. By mid-2009, although the legislation was stalled, the NYC HRI was still running training programs and coalition meetings. The social movement that drew on human rights values continued.

In its early stages, the NYC HRI was an ambitious attempt to change the anti-discrimination paradigm in New York City, to merge due process and equal protection, to bring in social and economic rights, and to shift from a focus on gender discrimination to one that stressed the intersectionality of race and gender. In the process of translating CEDAW and CERD into a city ordinance, there were necessary compromises with U.S. law, New York City politics, and the differences between civil and human rights, with ongoing questions about how international language or mechanisms can work in a domestic context. Some wanted to pass a law and others to use the law to develop a human rights consciousness. Although the drafting committee and the political strategy outreach committee worked together, the former focused on producing a legal text while the latter worked on public education and training human rights awareness to foster social transformation. For the latter committee, the law was an opportunity to mobilize support for an intersectional, human rights approach to inequality. This group valued the opportunities for public debate provided by the bill’s monitoring system and sought to develop human rights consciousness.

Although the differences among NYC HRI members were conceptualized by some as a divide between lawyers and nonlawyers, there were substantial differences among the lawyers. Some sought to force state agencies to change their discriminatory practices, while others were more interested in using human rights language to increase public awareness of race and gender discrimination. The lawyers were divided between those used to a litigation and enforcement approach and those familiar with a persuasive and negotiated approach. Lawyers who had worked on gender discrimination fell into the first group, while human rights lawyers and those concerned with policy implementation fell into the second.

There were also tensions among large and small organizations. Although the national organizations were initially more powerful in their funding, visibility, and support, they ultimately dropped out

after the ordinance was completed and left the project to the local organizations. It was these local groups that persevered and ultimately defined the process as promoting human rights values and consciousness. The majority of the work, and the commitment to carry the project forward, was done by the New York-based social justice organization and a New York affiliate of a national NGO (the ACLU).

There were also divisions based on race, social class, education, and professional status as well as the relative status, funding, and national visibility of the partnering NGOs. By and large, those who focused on legal perspectives were more elite, legally skilled, and more national and international in orientation. They were at the center of the NYC HRI during the drafting process. Those concerned with building a social movement came from less elite backgrounds and had experience with building social movements. In a sense, there was a division between those more focused on values and participation versus those more concerned with law and regulation of city agencies.

The movement changed as it intersected the state. The attempt to gain the City Council's support reshaped the project. The more radical idea of a CEDAW/CERD ordinance was domesticated by the City Council Legal Department that rewrote it in more conservative terms that conformed to New York City law. Tailoring the ordinance to fit into the city's political process changed and ultimately weakened it. The bill went from being a statement of human rights focusing on the intersection between race and gender to a document specifying processes for good governance and auditing. Grassroots participation in oversight was eliminated because the mayor was granted the power to appoint task force members. In fact, frustrated NYC HRI members even considered dividing the ordinance in two and seeking to pass the principles it was concerned about while sidelining its efforts to pass the implementation mechanisms. In response to setbacks in its legal agenda, the NYC HRI is currently much more focused on its social justice agenda and political organizing, a move that highlights its broader aspirations and focuses on developing human rights consciousness.

Building a Coalition of Human Rights Groups: Voices of Women Organizing Project

The project of developing and passing an ordinance gave the group a valuable focus for its work. Indeed, for some of the participants, creating a coalition and building human rights awareness were the critical dimensions of the project. Drafting the law and mobilizing support for it was a very effective political tactic in

building a coalition of NGOs in the city with an interest in human rights. Reference to the human rights framework expanded the set of alliances available to these race/gender activists. People with local, national, and international interests worked together. Despite significant differences in power, visibility, and funding among the participating organizations, they were able to link national and international resources with local knowledge and commitment. The vertical networks of the social movement activists connected effectively with the horizontal ones of the legal activists who drafted the legislation. The coalition of NGOs that took the lead in the public education and mobilization aspect of the NYC HRI had strong grassroots connections, as did the two local organizations that helped start the NYC HRI. These groups had already done significant work with poor people of color in the city. They were open to the concerns and opinions of poor and working-class people and translated them to the other actors in the campaign.

VOW is an example of an organization that joined the coalition. Our research on this organization showed that it was influenced by the human rights ideas and techniques offered by the NYC HRI but also retained its grounding in the battered women's movement. VOW did not become a human rights organization in mission or discourse, but it did adopt some of the human rights framework and techniques as an addition to its repertoire. When activists mobilize a human rights framework and define their issues as human rights violations, they add a new dimension or frame, to use the social movement concept, to their work (Boyle 2002; Snow 2004; Snow & Benford 1988; Snow et al. 1986).

In the case of violence against women, a human rights approach foregrounds the importance of providing battered survivors with housing, job training, and economic support (Schneider 2004). Human rights are attractive to feminist activists confronting an attenuated civil rights paradigm deemed weak and outdated. A human rights perspective also affords feminists a framework more open to the intersections of race, class, and gender and to the economic and social dimensions of gender subordination. When ideas are appropriated in the process of vernacularization, they are layered over other sets of ideas about the position of women, the nature of marriage, women's access to work and education, and women's responsibilities in community and public life. Some of these ideas are rooted in women's movements and others in religious, communal, or nationalist ideologies. The new ideas may push out alternative ones, but they may also join with them in more or less coherent ways. As newly formed assemblages emerge, they are not necessarily enduring, yet there is a basic core that persists over time. In the case of global feminism, the core consists of ideas about women's rights, equality, and freedom from violence, which

generally combine with regionally and locally specific principles that attach themselves in various combinations and with varying degrees of strength. When ideas about women's human rights and strategies for protecting women from violence circulate to grassroots women activists in New York City, as in our case study, they become fused with homegrown approaches to justice.

VOW started in 2000 with the goal of enabling domestic violence survivors to become advocates on policy issues that affect battered women. In its 2008 report on New York City family courts, it describes itself as:

a grassroots advocacy organization of survivors of domestic violence who are working to improve the many systems battered women and their children rely on for safety and justice. VOW members represent the diversity of New York City and include African American, Caribbean, Latina, white, Asian, immigrant, lesbian, disabled and formerly incarcerated women. Since 2000, VOW members have documented system failures and developed recommendations for change, and they have educated policy makers, elected officials, the public and each other through trainings, meetings, testimony, and most recently, with this report (VOW 2008:15).

VOW is heavily influenced by the discourse and strategies of the battered women's movement. Members talk about being survivors. Human rights ideals and principles are not a frequent topic of conversation, but they do provide another system of values that can be used to critique court processes. For example, VOW's report on New York City family courts argues that government accountability is a universal human rights norm and that institutions that provide public services should discharge their duties according to human rights principles such as accountability, transparency, and participation (VOW 2008:15).

At the time of the research, the organization ran with a small staff of three and a modest budget. It relies heavily on its members—survivors of domestic violence who do advocacy work targeting courts, city agencies, and the legislature, as well as public education. They come from various backgrounds, but many are working-class and poor women. It is one of the few organizations in New York with a mission to empower battered women in their transformation from victim to survivor to activist. Working with VOW involves a process of politicization and transformation in consciousness for the members. One member stated during an interview that her involvement with the organization “broadened [her] understanding of domestic violence,” “validated” her experiences and perspective in important ways, and provided a supportive community in which to “turn [her] pain into power.”

The organization's focus on advocacy and activism distinguishes it from the service-delivery model of many other domestic violence organizations. The director has extensive experience in community organizing and leadership development and has worked with survivors of domestic violence for more than 25 years. The associate director came to VOW with expertise in direct services to battered women and advocacy on domestic violence policies. The organization's guiding principles and practices treat survivors' perspectives as an important source of authority and expertise on which to build advocacy strategies. Thus, VOW's basic principles, drawn from the battered women's movement, are quite compatible with human rights values and governance principles committed to the participation of those affected by social problems being addressed. Human rights have not replaced these principles, however, but supplemented them.

Staff and members have attended human rights training sessions and sometimes talk about human rights conventions. They have also incorporated a human rights approach in pursuing VOW's advocacy agenda. In 2003, the organization initiated the Battered Mothers' Justice Campaign in collaboration with the HRP, the organization that promoted the NYC HRI. In an effort to document the experiences of battered women in New York City family courts, VOW staff and the HRP designed a survey project and trained 14 VOW members to conduct interviews with a lengthy questionnaire.⁵ In 2006, these trainees interviewed 75 domestic violence survivors about their experiences in New York City family courts. Women talked about losing custody of children to their batterers despite histories of being the primary caretaker, about inadequate measures for safety in the court building, and about unprofessional conduct of judges and lawyers against women raising claims of domestic violence. The data gathered provided the basis for the 2008 VOW report, *Justice Denied: How Family Courts in New York City Endanger Battered Women and Children* (VOW 2008), which documented these problems, identified the articles of human rights conventions being violated, and offered recommendations for change. The report was presented to city and state government officials and made available to the public on the Web. VOW also planned to organize a tribunal for battered mothers and children to testify about these violations. Thus, the organization turned to human rights techniques of documentation and report writing to expose municipal failures to live up to the standards of human rights treaties as a strategy for social change. They did not use legal complaints directly but drew more extensively on human rights values and techniques.

⁵ This initiative followed the example of a previous study by Cuthbert et al. (2002).

The VOW human rights documentation project was carried out largely by grassroots activists—women who had survived domestic abuse. The report harnessed human rights law to moral claims about discriminatory treatment presented in the form of a human rights report. This activity depended on expert knowledge from human rights activists about how to conduct this documentation and how to present it, provided largely by training from the HRP leaders, one of whom was a key figure in the HR GOAL initiative. But this expertise did not eclipse the organization's commitment to battered women's experiences as a critically important form of knowledge. Rather, the project relied on a resonance between human rights documentation techniques and the insights of members and interviewees based on personal experiences. Documenting this experience in a human rights format for government officials was a form of grassroots activism.

The Battered Mothers' Justice Campaign is just one instance of how human rights are meaningful for VOW. Individual members spoke about human rights as a powerful vision of justice—"Just the fact that you are born human gives you rights"—and described how the universality of human rights promotes understanding and advocacy against violence in all its forms. In the words of the associate director, human rights can "nurture a different possibility for the world." Notably, human rights ideology was prevalent among VOW members while knowledge about international human rights law was uneven, demonstrating that the values component of human rights is more accessible and readily mobilized than its legal instruments.

The deep resonance of human rights values, however, runs beside skepticism about its pragmatic utility in the American context. The director pointed out that human rights violations are typically understood as occurring in places outside the United States, and she questioned the power of human rights language to move domestic audiences: "It doesn't resonate here." One member commented that the CRC has "no bearing whatsoever" when she talks to legislators about the need for better protection of children's rights. VOW is not unique in exhibiting skepticism about the pragmatic value of human rights, as other organizations in the coalition similarly expressed doubt about whether human rights bring something new to what is already on the "civil rights table." For donors and for activists working in fields such as domestic violence, welfare, and housing, the value added of the human rights framework is uncertain. Historically, it is *civil* rights that have delivered social movement claims (see Anderson 2003), and those attracted to human rights tend to be groups that have found the current civil rights regime unsupportive, such as LGBT groups. Indeed, as Lauren (2008:16–25) points out, the emergence of the human

rights movement in recent years follows a long period of retrenchment of civil rights.

Law, Values, and Governance

The NYC HRI and its coalition were both a legal campaign and a social movement. Together they tried to implement human rights law and mobilize support for the ideals of human rights. In addition to drafting the ordinance, the NYC HRI held public education and training sessions for city employees and NGOs in its coalition. Local NGOs working on a variety of justice projects concerning education, housing, poverty, welfare, and domestic violence received human rights training. Many added this framework to their previous repertoire of discourses and strategies. Human rights shifted rather than replaced these groups' frames, however, adding new tactics to existing ones. This combination of a legal approach and human rights awareness work served as an effective organizing strategy. Had the group focused only on law, it would have been more vulnerable to defeat in the face of resistance such as that of the New York City Council and the mayor's office. Clearly, developing rights consciousness is an integral part of social movement change through law.

Nevertheless, there were tensions between those working with human rights as law and those who saw it as values. The former wanted to draft a viable piece of legislation, while the latter were more concerned about mobilizing a social movement. The drafters worked with the social movement to "produce a document that would serve clients." The movement people considered this approach too instrumental and technical, preferring to concentrate on public awareness of injustice. Although, as one funder noted, human rights "has the potential to bring all progressive groups and issues together," this initiative demonstrated significant differences in the way human rights are conceived. These differences pervaded the entire initiative.

This was clearly not entirely a movement from below, nor was it exclusively an elite-driven initiative. Instead, it was a collaboration between elite legal experts and grassroots leaders rooted in local political struggles. Relatively wealthy national organizations worked together with underfunded local groups. The leaders of the NYC HRI had close ties to a range of social justice NGOs in New York City. Those interested in the social movement side reached out to grassroots community members and local poverty, welfare and educational organizations. The NYC HRI provided significant opportunities for grassroots leaders to define problems and articulate strategies for addressing them. The collaboration was not free of hierarchies of expertise, connections, and status, but

these diverse individuals and organizations were able to forge common ground in human rights ideals and governance principles, despite their differences in status and power. Indeed, the ideological commitment to equality and participation facilitated efforts to incorporate a variety of perspectives and issues. Here the values of human rights and its principles of governance facilitated collaboration among a highly diverse set of participants, including faculty in elite law schools, community organizers, experienced litigators in powerful national NGOs, and working-class members of community organizations in New York City.

Furthermore, the HR GOAL bill itself emphasized public input and collaborative decisionmaking. The Human Rights Task Force it proposed included community representatives who were responsible for consulting with the public. Holding regular public hearings was also part of its mandate. The thrust of the bill was to open up the activities of city agencies to public scrutiny and investigation. These activities required local community knowledge as well as professional expertise. This is not a story of poor people of color seizing the power of law but one of collaboration and dialogue. A coalition of individuals who brought various forms of expertise worked together to develop a solution framed broadly by the ideals of human rights. Lawyers helped draft the ordinance while being paid by powerful national organizations. Social movement activists also required support, but without backing from powerful national organizations, they had to depend on the more precarious funding of foundation grants for their work.

In this situation, translators communicated and interpreted grassroots interests. While the NYC HRI did not reach directly into poor communities and provide opportunities for participation, it communicated with these communities indirectly through local NGOs and consequently was aware of their interests and concerns. A tiered structure emerged, with large organizations supporting the activities of smaller ones and elites working with non-elites, particularly in the context of training sessions. While these networks and linkages facilitated communication and information transfer, they did not put power directly into the hands of the smaller groups that made up the coalition. They did, however, generate new alliances and offer a human rights framework for local groups. Leaders of some of the grassroots groups in the coalition were skeptical about the practical relevance of human rights to their work but were attracted to the ideals of justice and equality. Thus, the values dimension of human rights articulated most readily with the more grassroots side of the NYC HRI. It was this dimension of human rights, rather than its legal or governance dimensions, that served as the basis for fostering the grassroots dimensions of the coalition.

Conclusions: Law From Below?

This case study suggests that the tripartite shape of human rights facilitates its capacity to respond to the concerns of less powerful people. Its values are accessible to those without legal expertise. Its ideology and governance principles foster collaborative work, which creates new alliances and coalitions. In New York City, it drew together groups working on a wide range of civil liberties and social and economic justice issues. Despite tensions between those with legal expertise and community organizing expertise as well as between members of large, relatively wealthy organizations and those of local ones with fewer resources, it generated ongoing cooperation over several years. The ideology of human rights itself, with its emphasis on equality and inclusion and its international grounding, contributed to this cooperation. Thus, human rights ideology facilitates coalition work that brings different values and political strategies to the work of social movements.

However, human rights law, when confronting the law of the city or the nation, had more limited success. Although social movements are unlikely to abandon law as a path to power, mobilizing law demands pragmatic compromises and accommodations to the state and state law. Using human rights law as a social movement strategy domesticated human rights ideology. As the human rights framework became more firmly integrated into the state political and legal process, it lost some of its idealism and radical vision. The HR GOAL law became a reformist document seeking to reshape existing institutions and increase participation rather than one that fundamentally challenged racial and gender discrimination in the city and state government as a whole. Thus, the capacious nature of human rights as law, values, and governance facilitates their mobilization. Individuals use their varied dimensions to promote social change.

Yet there is also skepticism and suspicion. Not all lawyers are sure that social movements matter or that these movements have understood human rights correctly. As legal reforms are passed, they are domesticated by the state and lose some of their critical capacity. Idealists in social movements find the pragmatic compromises required to implement human rights law discouraging. On the other hand, social movement activists think that passing laws without new forms of rights consciousness and mobilization is likely to be ineffective. They know that individuals will not pursue human rights cases unless they understand themselves to be rights-bearing subjects. The law, value, and governance sides of human rights are uneasy bedfellows, not always companionable but unable to act alone.

Indeed, the nonlaw dimensions of human rights are more accessible to the poor than the law dimensions. These values are central to mobilizing grassroots participation. Through coalitions

and collaboration, relatively powerless groups can appropriate the moral strength and legitimacy of international human rights law. Their efforts to harness human rights in all its complexity constitute mobilization of law “from below.”

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