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ABSTRACT

Human rights appear to be in a state of existential crisis, with academics proclaiming the "endtimes" or "twilight" of the field and a growing sense of human rights pessimism among many commentators. As an adaptation to the challenging contemporary climate for human rights, some critics have asserted that the field needs to become more pragmatic and flexible, and less legalistic. Unfortunately, these calls for reform are rarely accompanied by details, and the literature on the nature of human rights pragmatism is fairly thin. This article will explore what such a pivot might entail. My central contention is that while more flexible and less law-centered approaches can play a useful role in advocacy, they also come with risks and tradeoffs that need to be assessed. The concept of human rights is fundamentally multidimensional, oscillating between moral, legal, and political domains, drawing power from each one of them. A truly pragmatic turn in human rights will not involve categorical sensibilities about the value of law-centered approaches in all times and places, but will instead emphasize the opportunities and advocacy hooks available in a particular context, whether moral, legal, political, or otherwise.

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I. INTRODUCTION

Recalling the ancient if apocryphal Chinese curse, these are truly "interesting times" for human rights. Only several short decades ago, there was general faith that the global spread of liberal democracy and human rights was inevitable. It was not a question of "if," but "how" and "when."[1] Today, democracy is in retreat in numerous countries around the world, and trust in democratic institutions is eroding, even in some consolidated liberal democracies.[2] Alongside this assault on democratic norms, we bear collective witness to wavering commitments to the rule of law and human rights. Whether it is death squads in the Philippines, US drone strikes around the world, or the carnage in Syria, powers small and large appear to act with total impunity when it comes to established international human rights law and the laws of war.[3] Meanwhile, books are published predicting the "end-times" or "twilight" of human rights,[4] and there seems to be a more general anxiety about the ability of what Louis Henkin once called "the idea of our time"—human rights—to shape a better world.[5]

For human rights advocates and institutions, the contemporary global climate for human rights and the attendant sense of human rights pessimism raise hard questions about how to respond. How do we account for flagrant flouting of established norms, even in countries that have at times championed human rights?[6] Does the human rights "idea" need fundamental reconfiguration?[7] Should advocates keep the faith and double down on existing strategies for change-making, honed in the euphoric post-Cold War world, or are more radical adaptations required to address the landscape of the twenty-first century? While the bigger empirical picture may not be dismal,[8] neither have the last few years been a happy time for human rights and international justice advocates—to say nothing of the victims of

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1. *See, e.g.*, Francis Fukuyama, The End of History and the Last Man (1992).
2. *See* Arch Puddington & Tyler Roylance, Freedom House, Freedom in the World 2016: Anxious Dictators, Wavering Democracies: Global Freedom under Pressure 2–3 (2016), *available at* https://freedomhouse.org/report/freedom-world/freedom-world-2016.
3. *See generally* Human Rights Watch, World Report 2017: Events of 2016 (2017).
4. *See* Stephen Hopgood, The Endtimes of Human Rights (2013); Eric A. Posner, The Twilight of Human Rights Law (2014).
5. Louis Henkin, The Age of Rights xvii (1990); Kenneth Roth, *We Are on the Verge of Darkness*, Foreign Pol'y 12 Jan. 2017, *available at* http://foreignpolicy.com/2017/01/12/we-are-on-the-verge-of-darkness-populism-human-rights-democracy; Sebastian Strangio, *Welcome to the Post-Human Rights World,* Foreign Pol'y 7 Mar. 2017, *available at* http://foreignpolicy.com/2017/03/07/welcome-to-the-post-human-rights-world.
6. *See, e.g.*, Sarah Margon, *Trump's Damning Global Retreat on Human Rights*, Foreign Pol'y 6 Apr. 2017, *available at* http://foreignpolicy.com/2017/04/06/trumps-damning-global-retreat-on-human-rights.
7. Henkin, *supra* note 5, at ix.
8. *See generally* Christopher J. Fariss, *Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability*, 108 Am. Pol. Sci. Rev. (2014).

abuses—and the recent backsliding provides a critical opportunity for taking stock and looking forward.

Constructive prescriptions for change depend in large part on an accurate diagnosis of the underlying problems. For the most strident pessimists, the human rights idea is fading in part because its positivist legal dimensions have been overemphasized, and have ultimately failed to constrain power when it counts the most.[9] In this telling, human rights are now entering a twilight phase because their proponents have exhibited excessive inflexibility and absolutism, seemingly incapable of adapting themselves to the complexity, variability and diversity found in the world.[10] Advocates have been too apt to dogmatically assert and reassert the law, and too little inclined to seek to persuade the unpersuaded and to engage with the hard business of governance involved in creating a world where the realization of human rights principles is realistically possible.[11]

If this is the correct diagnosis, it might seem reasonable to say that the remedy should involve some kind of pivot to more flexible and less rigidly legalistic approaches under the banner of "pragmatism," or perhaps to abandon human rights law altogether in favor of something radically different.[12] But what does it really mean to be "pragmatic" in human rights advocacy, and is it really true that the law-centricity of human rights thinking and practice has been so much a "part of the problem"?[13] Rather un-pragmatically, the authors of recent human rights jeremiads calling for change and pragmatism have been rather long on critique and short on details as to what such new approaches might entail, and the literature in this area is fairly thin.[14]

In this article, I will argue that we should be cautious both in assuming that human rights advocates have not been pragmatic, and that the failures of human rights can be attributed to blinkered legalism. Even if more flexible and less law-centric approaches to human rights can play a useful role going forward, a heavy shift in emphasis to such approaches would come with costs and tradeoffs that are also important to assess. The concept of

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9. *See, e.g.*, Posner, *supra* note 4, at 7; Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. Peace Res. 407 (2007).
10. *See, e.g.*, Hopgood, *supra* note 4, at ix-x.
11. Philip Alston, *The Populist Challenge to Human Rights*, 9 J. Hum. Rts. Prac. 1, 11 (2017).
12. *See, e.g.*, Posner, *supra* note 4, at 142–46 (arguing for flexible approaches to the promotion of wellbeing drawn from development rather from human rights and international law).
13. David Kennedy, *The International Human Rights Movement: Part of the Problem?,* 15 Harv. Hum. Rts. J. 101 (2002).
14. One notable exception to the dearth of literature exploring "pragmatism" and human rights is Geoff Dancy, *Human Rights Pragmatism: Belief, Inquiry, and Action*, 22 Eur. J. Int'l Relations 512 (2015). While Dancy explores potential meanings of human rights pragmatism through philosophical, methodological, and political lenses, this article uses the concepts of the moral, the legal and the political to do the same.

human rights is fundamentally multidimensional, oscillating between moral, legal, and political domains from which it draws its collective power. Each dimension offers possibilities for advocacy and action. De-emphasizing the legal dimensions of human rights to place greater weight on political or moral dimensions might make sense in some contexts, but not in others. The essence of human rights pragmatism involves weighing the costs and benefits of a particular vocabulary and set of strategies against alternatives in a particular context. For this reason, a truly pragmatic turn in human rights will not involve categorical sensibilities about the value (or lack of value) of law-centered approaches in all times and places, but will instead emphasize the specific opportunities and advocacy hooks available in a particular context, whether moral, legal, political, or otherwise.

This article will continue with five additional sections. In section two, I outline the recent wave of human rights pessimism and associated calls to shift the focus of human rights thinking and practice. In section three, I explore the multidimensionality of human rights—outlining the moral, legal, and political dimensions of human rights as a heuristic aide to facilitate discussion of potentially shifting emphasis and strategies. In section four, I explore what a pivot away from stricter, law-centered approaches might look like, sketching out ten illustrations. In section five, I analyze the potential costs associated with both over and under-emphasis of the various dimensions of human rights, including possible tradeoffs associated with a pivot away from the legal dimensions of human rights. Section six concludes the article.

II. HUMAN RIGHTS PESSIMISM AND CALLS TO "PRAGMATISM"

The post-9/11 world has provided ample grist for the mill for the human rights pessimists of the world. From the fall of the Twin Towers to the ascendency of Trump Tower, it is easy to feel that the "age of rights" is in decline.[15] Anecdotal evidence is not in short supply. Cases by the International Criminal Court have imploded rather spectacularly in Kenya, have died of neglect in Darfur, and for a time, an African exodus from the Court seemed plausible.[16] The current president of the United States was elected on a platform that included the reinstatement of torture and the rejection of refugees on a religious basis, amongst other things.[17] European countries

15. *See generally* Henkin, *supra* note 5.
16. *See* HRW, *ICC: Kenya Deputy President's Case Ends* 5 Apr. 2016, *available at* https://www.hrw.org/news/2016/04/05/icc-kenya-deputy-presidents-case-ends; David Smith, *ICC Chief Prosecutor Shelves Darfur War Crimes Probe*, Guardian 14 Dec. 2016, *available at* https://www.theguardian.com/world/2014/dec/14/icc-darfur-war-crimes-fatou-bensouda-sudan.
17. Margon, *supra* note 6.

have shown reluctance if not outright refusal to adhere to obligations under the Refugee Convention.[18] Civilians are openly slaughtered in Syria, Yemen, and elsewhere with the full knowledge of all, and the support of great powers.[19] The Arab Spring, which initially seemed to echo the "third-wave" of democratic transitions of the 1980s and 1990s[20] fizzled, save in the lone case of Tunisia.[21] Meanwhile, muscular authoritarianism has been growing in Poland, Turkey, Hungary, Russia, the Philippines, and elsewhere.[22]

To be sure, the plural of anecdote is not data, but the impression of backsliding that the onslaught of news stories seems to convey has certainly contributed to a growing sense of human rights pessimism.[23] In 2017, Foreign Policy published pieces entitled "We Are on the Verge of Darkness" by Kenneth Roth, executive director of Human Rights Watch, and "Welcome to the Post-Human Rights World," by Sebastian Strangio.[24] While some of this might be attributed to the anxiety brought to a head by the 2016 US presidential election, human rights pessimism had been growing prior to the phenomena of Trump, Brexit, and Le Pen. In 2013, Stephen Hopgood published the provocatively-titled book, *The Endtimes of Human Rights*.[25] Not to be outdone, Eric Posner followed with *The Twilight of Human Rights* in 2014.[26] These works were preceded by, and in Posner's case partially inspired by, an emerging body of empirical work suggesting that ratification of human rights treaties too often yields disappointing results.[27]

A common thread that unites many human rights pessimists is a general skepticism about the ability of law to foster positive change for human rights, and an argument that rigid, law-based approaches need to give way to alternatives that are more flexible, pragmatic, or otherwise less law-centered. Eric Posner, for example, concludes that human rights law has failed to improve respect for human rights because the law is weak, vague, and inconsistent, and because people and states ultimately do not care enough about violations to meaningfully address the existing limitations on legal enforcement.[28]

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18. James Kanter, *E.U. Offers New Immigration Plan, Hoping to Sway Reluctant Countries*, N.Y. Times Mag. 13 Jul. 2016, *available at* https://www.nytimes.com/2016/07/14/world/europe/migrants-refugees-immigration-eu-greece.html.
19. *See* HRW, World Report, *supra* note 3 at 571 & 675.
20. *See generally* Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century (1991).
21. *See generally* Bülent Aras & Richard Falk, *Five Years After the Arab Spring: A Critical Evaluation*, 37 Third World Q. 2252 (2016).
22. *See generally* HRW, World Report, *supra* note 3.
23. Dancy and Fariss explore the phenomenon of what they call "anecdata." *See* Geoff Dancy & Christopher J. Fariss, *Rescuing Human Rights Law from International Legalism and its Critics*, 39 Hum. Rts. Q. 1, 24 (2017).
24. Roth, *supra* note 5; Strangio, *supra* note 5.
25. Hopgood, *supra* note 4.
26. Posner, *supra* note 4.
27. *See generally* Hafner-Burton & Tsutsui, *supra* note 9; Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 Yale L.J. 1935 (2002).
28. Posner, *supra* note 4, at 104–05.

Posner therefore advocates abandoning the "utopian aspirations of human rights law" in favor of the experimentalism and empiricism of developmental economics.[29] (Ironically, development is a field plagued with its own sense of pessimism and crisis).[30] Stephen Hopgood skewers the arrogance of what he calls "Human Rights" (capital H, capital R)—the global system of formal laws, courts, and organizations.[31] At the same time, he appears to hold out some hope for "human rights" (lowercase h, lowercase r)—the struggle of activists everywhere to combat violence and deprivation using a variety of "flexible and negotiable" vocabularies and strategies of emancipation.[32] In the realm of transitional justice, itself beset by a sense of crisis,[33] Jack Snyder and Leslie Vinjamuri, argue that advocacy groups suffer from a "fundamentally flawed understanding of the role of norms and law in establishing a just and stable political order," effectively putting the legal cart before the political horse.[34] Instead, they argue that strategies of justice should be "shaped by pragmatic bargaining rather than by rule following."[35] Even Philip Alston, himself no human rights pessimist, has suggested that we need to relax strident insistence on some legal principles in the international justice arena.[36]

Taken together, these scholars suggest that human rights and international justice need a course correction that would push law and associated international institutions out of the foreground in favor of more open-ended and negotiable approaches thought to be more "pragmatic."[37] And yet if, following David Kennedy, the essence of human rights pragmatism is the weighing of the costs and benefits of the vocabulary and strategies of human rights against alternatives,[38] several problems emerge. First, even with the food for thought they have provided, human rights pessimists have done very little to develop much in the way of concrete alternatives, or to think through the costs and benefits of the alternatives, such as a turn to developmental economics, that have been proffered. Second, it is far from clear that human rights law is as useless and blameworthy as suggested. Posner, for example, reserves a special scorn for what he calls "rule naïveté"—a simplistic faith in a sort of magic legalism.[39] Yet this is more of a straw man

29. *Id.* at 7.
30. *See generally* William Easterly, The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good (2006).
31. Hopgood, *supra* note 4, at viii-ix.
32. *Id.*
33. *See* Vasuki Nesiah, Impunity Watch, Transitional Justice Practice: Looking Back, Moving Forward, Scoping Study 5 (2016).
34. Jack Snyder & Leslie Vinjamuri, *Trials and Errors: Principle and Pragmatism in Strategies of International Justice*, 28 Int'l Sec. 5, 6 (2004).
35. *Id.* at 7.
36. Alston, *supra* note 11, at 12.
37. To be fair, unlike Posner and Snyder/Vinjamuri, Hopgood's suggestions for action are more implicit rather than explicit.
38. Kennedy, *supra* note 13.
39. Posner, *supra* note 4, at 7.

than a depiction of the attitudes of modern-day human rights advocates, many of whom have a far more nuanced understanding of the limitations of the law needed to produce social change than is suggested.[40] Similarly, the question of whether human rights laws and prosecutions have made an empirical difference is highly contested. There are in fact ample grounds for optimism,[41] even if what Philip Alston has called "the populist challenge to human rights" remains startling and sobering, serving to dampen some of that bigger picture optimism.[42] Therefore, before throwing out the baby with the bathwater, true pragmatism requires a fuller weighing of the costs and the benefits of limiting or abandoning law-centered approaches to the realization of human rights, and a more detailed examination of the costs and benefits of potential alternatives. The concept of human rights is fundamentally multidimensional, offering multiple bases on which to ground advocacy efforts in addition to law. In the following section, I will explore this multidimensionality as a prelude to developing and evaluating some possibilities for less law-centric approaches to human rights advocacy.

III. THE MULTIDIMENSIONALITY OF HUMAN RIGHTS

It is easy to furnish one-dimensional caricatures of human rights. To some critics, human rights express a naïve and utopian legalism, a faith unsupported by experience in the power of rules to constrain power and act as the "gentle civilizer of nations."[43] To others, human rights are primarily a function of hegemony, an expression of politics and power that serve to give a new lease on life to the historical civilizing mission of the West.[44] To others still, they are "nonsense upon stilts," mere moral aspirations without enough teeth to give them reality.[45] Despite the occasional tendency to elide complexity, the human rights idea simmers and bristles with varied impulses and contradictions. It is less a monolith than a heterogeneous composite of a number of moral, legal, political, cultural, religious, and philosophical traditions that continue to evolve and interact over time, and which are both a function of and partially constitutive of the chaotic kaleidoscope of global politics. There is therefore an inherent polyphony and multidimensionality

40. On legalism, *see generally* Judith N. Shklar, Legalism: Law, Morals, and Political Trials (1986).
41. *See* Fariss, *Respect for Human Rights*, *supra* note 8; *See* Kathryn Sikkink, The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics (2011).
42. Alston, *supra* note 11.
43. *See* Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 (2001); Posner, *supra* note 4, at 7.
44. *See generally* Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights,* 42 Harv. Int'l L. J. 201 (2001).
45. Jeremy Bentham, The Works of Jeremy Bentham, Vol. 2, at 501 (John Bowring executor, 1838–1843).

to the human rights idea. Simplifying this multifaceted nature somewhat, a Venn diagram illustrating the overlaps between the moral, legal, and political dimensions of human rights serves as a heuristic aide to facilitate discussion of contemporary dilemmas, strategies, and priorities, including those inherent in calls to "pragmatism" or away from legalism.

The human rights idea draws some of its power from each of these domains. The first is the moral domain, which is the repository of our highest ideas and values; the well from which the ideas about human dignity and natural law that have in part inspired the modern human rights project have been drawn. The moral domain is part of the reason why human rights shaming works, and why human rights violations are not typically seen as mere legal technicalities.[46] Second, we have the domain of positive law—the world of human rights treaties and associated institutional machinery—which typically attempts to encode moral norms into sets of formal rules, said to be "binding" on states parties and requiring "compliance." The legal domain allows advocates to argue from a space that can take on the appearance of transcending mere parochial policy preferences and morally wishful thinking. The legal domain is the reason that advocates are not always seen as mere political partisans, and that certain policy options, involving, for example, clear discrimination against minorities, can be rejected categorically without having to reason through, in each instance, the pros and cons as if from first principles. Finally, we have the political domain, which is the realm of hard choices and tradeoffs affecting the distribution of resources and power in which human rights are ultimately realized. The political domain allows advocates to engage with the detailed translation of moral and legal human rights norms into "real world" policy and practice. We might call this the "nitty-gritty" of human rights. Possibilities for framing the activities of human rights advocacy can be found in each of these domains and, as will be discussed below, there are relative advantages and disadvantages to grounding efforts at various points along the Venn diagram.

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46. Amanda M. Murdie & David R. Davis, *Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights INGOs*, 56 Int'l Stud. Q. 1 (2012).

In offering this simple heuristic, I do not mean to suggest that there are not other, alternative, or additional domains, whether those of culture, psychology, religion, and so on. At different times and in different contexts, the human rights idea has been invoked in ways that suggest that it constitutes one, two, all, or even none of the above. Neither do I mean to suggest that these domains have any sharp edges or any independent reality apart from the human mind. They are clearly conceptual categories, the boundaries of which are culturally, ideologically, and politically constructed and contested. It is hardly a novel insight, therefore, to say that these domains are overlapping and interpenetrating, and that it is extremely difficult if not impossible to draw any kind of clean line between, say, the legal and the political. Even if it is clear that human rights law seems to be more stable than political relations, the line between what has been called "the power of law" to constrain the brutal scrum of politics and "the law of power" is often a very thin one.[47] The law, including human rights law, operates both as a check on power, but also in service to power by sanctioning some injustices and not others. Moreover, the persistence of the cultural relativism debate, among other things, makes it challenging to retreat even to the moral dimension of rights in an attempt to escape the vicissitudes of the political and legal realms. Thus, all three domains—moral, legal, and political—have a degree of contingency and co-productivity that make them fuzzy and unstable. Like objects in a quantum field that can take the form of a particle or a wave, their nature may well depend on the observer.

Even with these caveats, the trichotomy I have offered remains useful for purposes of discussing the future of human rights, including advocacy strategies for the advancement of human rights in the challenging contemporary climate. Despite the inherent fuzziness and instability, there may be times in human rights advocacy where it is useful to categorize and essentialize, to emphasize a particular dimension of human rights in keeping with Gayatri Chakravorty Spivak's concept of "strategic essentialisms."[48] Such efforts may at times give the impression that concepts such as "the law" are neater and tidier than they really are, and yet subversive appropriation of simplified notions of legality has its power and place. Rather than dwelling on the inherent indeterminacy of the law and its intersection with politics, an individual being tortured, for example, may wish to emphasize that torture is quite simply morally wrong and legally prohibited.

Historically, human rights advocates have largely preferred—particularly in public—to emphasize the legal and moral dimensions of human rights,

47. Terrence E. Paupp, Redefining Human Rights in the Struggle for Peace and Development 257 (2014).

48. *See* Jenny H. Peterson, *A Conceptual Unpacking of Hybridity: Accounting for Notions of Power, Politics and Progress in Analyses of Aid-Drive Interfaces*, 7 J. Peacebuilding & Dev. 9, 14 (2012).

finding their most comfortable balance point at the nexus of natural and positive law.[49] This is not to say, as has been suggested by critics,[50] that advocates have embraced some kind of naïve legalism—that rules have a magical power to compel compliance by simple virtue of the fact that they are rules. Neither does it mean that activists are not shrewd strategists and operators, painfully conscious of the limitations of the law and the intersections between law and politics.[51] It would be more correct to say that the dominant script of human rights practice has been heavily law-centered. That is, the law is often pushed into the foreground of advocacy work and has been largely constitutive of thinking and action, with the parameters of the possible shaped in no small measure by understandings of positive law. For the most part, there has been a reluctance to engage in discussions that are seen as falling outside of these parameters, such as the costs, tradeoffs, and choices inherent in governance and detailed policymaking, and questions of resources and distribution, including budgets, tax policy, fiscal policy, and so on.[52] There has been an aversion to basing arguments on utilitarian rather than deontological logics.[53] This could suggest a desire for a sort of transcendence, seeking perhaps to extricate the human rights idea from the grubby, day-to-day scrabble and petty intrigues of politics, to suggest that advocates and human rights organizations are somehow above the fray.[54] On the other hand, the historic emphasis on the moral and legal dimensions of human rights could also simply be a smart strategy for maximizing power, possessing a brutally pragmatic logic all its own. By self-consciously conveying a sense that human rights are somehow technocratic and apolitical, advocates may hope that what is asserted will be less subject to dispute; that their authority and legitimacy will be enhanced, thereby increasing the leverage of the human rights advocate.

Unfortunately, however, failure to attend to the larger political implications of advocacy work is not without its costs, and may create blind spots that lead to longer-term problems. What might be thought of as an innocent strategic priority based on legalistic and methodological challenges to emphasize right A but not right B, civil and political rights and not economic and social rights, has a clear political dimension, and gives the impression that human rights are the handmaiden to a neoliberal ideology that has been largely tone deaf to questions of rising inequality.[55] It is inevitably in the

49. Hopgood, *supra* note 4, at ix-xii.
50. Posner, *supra* note 4, at 7.
51. *See, e.g.,* Jo Becker, Campaigning for Justice: Human Rights Advocacy in Practice 8 (2013).
52. Alston, *supra* note 11, at 10.
53. Dustin N. Sharp, *Human Rights Fact-Finding and the Reproduction of Hierarchies, in* The Transformation of Human Rights Fact-Finding 69, 73–74 (Philip Alston & Sarah Knuckey eds., 2016).
54. *See* Hopgood, *supra* note 4, at xii.
55. On the methodological challenges of economic and social rights advocacy, *see generally* Chris Albin-Lackey, *Corruption, Human Rights, and Activism: Useful Connections*

political realm, at least in part, where rights must be translated into reality since treaties do not interpret and execute themselves into policy, nor do they set priorities for enforcement or emphasis as among rights. To fail to engage this realm more squarely cedes the opportunity to make decisions about these hard choices to someone else.

IV. FOUCAULT'S SWINGING PENDULUM: CONSIDERING AN ALTERNATIVE AXIS OF ADVOCACY

Given the potential for myopia and lost opportunities inherent in overemphasis of the legal dimensions of human rights, it is worth considering the overall balance of emphasis in advocacy. If we picture Foucault's pendulum swinging over the Venn diagram illustrated above, the question becomes whether it needs to shift away from the moral-legal domains—over which it has found its habitual axis—in favor of a moral-political axis. What might more flexible and less formalistic and law-centered approaches to human rights advocacy entail? Like the concept of solidarity, might the broader concept of human rights serve as a useful platform for action apart from its narrower legal associations?[56] In this section, I sketch out ten possibilities before turning in the following section to analyzing some of the potential costs and trade-offs of such approaches. These ideas are intended more as broad-brush sketches of alternatives to mainstream, law-centric human rights activism than true roadmaps to action; more an act of brainstorming—of taking an idea out for a walk—than down-in-the-weeds planning. To be sure, each of the alternatives might be seen as somewhat polemical, and each has a much longer history of inquiry and debate than can be explored in this article for reasons of space.

With these caveats in mind, human rights advocates pursuing such a pendulum swing might consider the following options:

First, advocates should begin by acknowledging that seeking change under the banner of human rights is to engage in a fundamentally political act. Ultimately, human rights norms involve structuring, constraining, and contesting the exercise of power and the distribution of resources. In this sense, seeking to constrain the margin for political maneuver within certain moral and legal norms by pushing legal and moral discourse to the

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and their Limits, in Justice and Economic Violence in Transition 139 (Dustin N. Sharp ed., 2014). On the possible connections between the mainstream thinking and practice of human rights and inequality, *see* Samuel Moyn, *Do Human Rights Increase Inequality?,* The Chronicle of Higher Ed. 26 May 2015, *available at* https://www.chronicle.com/article/Do-Human-Rights-Increase/230297.

56. For an example of this kind of use of the idea of human rights, *see* Greg Asbed, *Coalition of Immokalee Workers: "¡Golpear a Uno Es Golpear a Todos!" To Beat One of Us Is to Beat Us All!, in* Bringing Human Rights Home Vol. 3, at 1 (Cynthia Soohoo, Catherine Albisa, & Martha F. Davis eds., 2008).

foreground of advocacy does not make the overall exercise apolitical. Even if we understand human rights as a function of positive law, the treaties do not read, emphasize, or execute themselves. Any reading of those treaties necessarily involves emphasis and de-emphasis, and the creation of a particular narrative intended to contest other narratives. In short, we do not escape politics by invoking the law.

Second, advocates might accept that even if characterizing something "as a human right elevates it above the rank and file competing societal goals,"[57] this does not remove it entirely from the political and economic marketplace. While Ronald Dworkin's metaphor of rights as "trumps"[58] helps to capture some of what makes "rights talk"[59] unlike other forms of discourse, we cannot expect the invocation of a particular right to conjure away the tradeoffs and hard choices inherent in governance. In practice, no right is above such a fray. Even assuming good faith on the part of the government actors, creating an environment where the realization of human rights is realistically possible is tremendously challenging. Might asking a government to fund better police training and forensic laboratories—something that might help to address a problem of coerced confessions—result in the reduction of the funds needed to provide the extra judges that might decrease prolonged pre-trial detention? Could shaming and pressuring a government due to inadequate healthcare mean that it will spend less on the roads that impoverished farmers need to get their product to market? The long road to human rights compliance is paved with such unintended consequences. These are questions that should be asked, studied, and followed by human rights advocates rather than being written off as "someone else's problem." And yet for the most part, established human rights organizations have been reluctant to examine the budgetary implications of their recommendations, or to propose budgetary (re)allocations when the money to realize a particular right is clearly lacking.[60]

Third, advocates might engage more with constituency building, mobilization, creative alliances, and helping to generate a sense of solidarity needed to support human rights governance. A sense of shared humanity or solidarity is central to the realization of human rights, and yet it has not featured prominantly in the discourse and practice of the highly professionalized, law-oriented, and expertise-driven model of human rights advocacy that is so prominent today.[61] Human rights organizations have tended to

57. Philip Alston, *Making Space for New Human Rights: The Case for the Right to Development*, 1 Hum. Rts. Y.B. 3, 3 (1988).
58. Ronald Dworkin, Taking Rights Seriously (1977).
59. Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse (1991).
60. *See* Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26 Hum. Rts. Q. 63, 65 (2004).
61. *See* Michael O'Flaherty & George Ulrich, *The Professionalization of Human Rights Field Work*, 2 J. Hum. Rts. Prac. 1 (2010) (observing that the language and categories

focus too heavily on elite-driven strategies for social change.[62] The targets of persuasion have too often been the press and the political elite, with the methods of change too focused on top-down legal and institutional reforms. While tales of the "endtimes of human rights" may be greatly exaggerated, neither can human rights survive without a broader and more diverse base of support. The evidence from history suggests that human rights are best advanced when they are supported by genuine "people power," which requires significant constituency building outside of elite circles. Redressing these imbalances will require accepting the need to persuade and to engage with the unpersuaded rather than simply asserting moral and legal principles and shaming those who do not adhere to them.[63] Kenneth Roth, for example, laments that populists have persuaded people that rights protect only terrorists, and maintains that the solution is a "vigorous reaffirmation of human rights," yet he appears to fail to ask whether that "reaffirmation" requires more than strenuous assertion.[64] Thus, in thinking about the human rights organizations of the twenty-first century, advocates would do well to look less at the large human rights NGOs of the 1990s, and more to labor unions, early twentieth century progressive movements, the mid-twentieth century civil rights movement, and other human rights campaigns that have not hewn to the more modern legal and expertise-driven script.[65]

Fourth, advocates might accept that even if human rights are in many ways an enlightenment idea, enlightenment humanism and rationalism simply cannot explain the world we are living in.[66] Individuals, entire societies even, may have seemingly emotional, irrational attachments and preferences fundamentally at odds with the dominant reading of the human rights corpus. Achieving enlightenment goals in such a world may require models more associated with conflict resolution than the shaming and confrontation that have been the bread and butter of human rights advocacy; more dialogue and listening practices than legal tactics intended to compel compliance. Human rights advocates need to address the head and the heart, appealing to universal ideals, but perhaps also engaging with the hard realities and

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of professionalism are increasingly employed to describe human rights work.); Gay J. McDougall, *A Decade of NGO Struggle*, 11 Hum. Rts. Brief 12, 15 (2004) (discussing elitism and professionalism in NGOs in the Global South).

62. This is, of course, not a new observation. *See, e.g.*, David Rieff, *The Precarious Triumph of Human Rights*, N.Y. Times Mag. 8 Aug. 1999, *available at* https://www.nytimes.com/1999/08/08/magazine/the-precarious-triumph-of-human-rights.html.
63. Alston, *supra* note 11, at 11.
64. Roth, *supra* note 5.
65. Adam Hochschild has done an excellent job capturing the tactics used by pioneering social justice movements that did not hew to the modern, law-centered script. *See, e.g.*, Adam Hochschild, King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa (1998); Adam Hochschild, Bury the Chains; Prophets and Rebels in the Fight to Free an Empire's Slaves (2005).
66. *See* Pankaj Mishra, Age of Anger: A History of the Present (2017).

persistence of tribalism and identity. This will involve attending to the need for dignity on all sides; for minorities to be sure, but also for shrinking majorities who fear change and a loss of status. A legalistic straightjacket approach to human rights, or a patronizing and condescending approach that is assured of its own moral righteousness and that does not acknowledge this complexity, may backfire. This suggests that the possibility of "overlegalization" needs to be taken seriously, and that at times the level of optimal compliance may not be perfect compliance, at least in the short run.[67] Addressing these preferences and complexities may require us to engage with and develop some kind of global margin of appreciation, notwithstanding the considerable difficulties,[68] and to generate a renewed discussion on the meaning of self-determination outside of the context of decolonization.[69]

Fifth, advocates might focus less on enforcement in a narrow legal sense, and more on holistic operationalization of human rights.[70] Operationalization might require greater attention to broader conditions and institutions of social justice and social services delivery that allow for real and full enjoyment of the panoply of human rights.[71] Pushing for such conditions would not preclude a traditional focus on state conduct that violates international treaties in a more narrowly legal way. It would also involve a focus on the deeper drivers of conflict and injustice that create an environment in which realization of human rights is less likely as opposed to a narrow focus on the epiphenomena of particular violations.

Sixth, advocates might engage more with threats to human security—including global warming, underdevelopment and corruption—that do not fit perfectly within the four squares of the positivist legal cosmovision of the human rights treaties. This might involve a renewed debate over proposals for a right to a clean environment and the much-maligned right to development.[72] If human rights are not seen as relevant to the most critical threats to human security of the twenty-first century, this will eventually weaken respect and support for the human rights idea. In addition, a world roiled by the turbulence of global warming, crushing poverty, and so on, is unlikely

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67. On the dangers of overlegalization, *see* Laurence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 Col. L. Rev. 1832 (2002); James L. Cavallaro & Emily J. Schaffer, *Less as More: Rethinking Supranational Litigation of Economic and Social Rights in the Americas*, 56 Hastings L.J. 217 (2004).
68. Posner, *supra* note 4, at 98–102.
69. *See generally* James Crawford, *The Right of Self-Determination in International Law: Its Development and Future, in* People's Rights 7 (Philip Alston ed., 2001).
70. Jeanne Woods & Henry F. Bonura Jr., *Theorizing Peace as a Human Right*, 7 Hum. Rts. & Int'l Legal Discourse 178, 230 (2013).
71. Sharp, *Human Rights Fact-Finding*, *supra* note 53, at 74.
72. *See* Dustin N. Sharp, *Re-Appraising the Significance of 'Third-Generation' Rights in a Globalised World, in* Human Rights and Power in Times of Globalisation 42 (Ekaterina Yahyaoui Krivenko ed., 2018).

to be a hospitable climate in which to realize the treaty rights that have been formally articulated.

Seventh, and related to point six, advocates might acknowledge that a formal, positivist, state-based conception of human rights duties is at times ill-suited to the realities of a globalized world, and that human rights may need to be stretched to fit the world as it is rather than the one that existed during the post-WWII explosion of international law-making. Increasingly, a host of non-state actors play a major role in de facto enjoyment of human rights; and states vigorously reject the notion of exterritorial human rights duties, even as their global footprint is considerably larger than their own territory. Yet from the standpoint of the individual rights holder, it hardly matters whether enjoyment of human rights is occluded by a rapacious corporation, a structural adjustment policy imposed by the World Bank, or an abusive military that has been strengthened through assistance and training provided by international "partners." A broader and more "purposive" approach to understanding the traditional positivist framework[73] may be key to addressing these realities, and lead to a greater focus on the impediments to the enjoyment of human rights created by a broader range of actors than nation states.

Eighth, advocates might re-examine long-held assumptions and articles of faith relating to post-conflict justice and retributivism. Justice is an essentially contested and deeply contextual concept, taking a wide variety of forms across the globe. Given this complexity, the lack of retributive justice alone is not always tantamount to "impunity," and overzealous insistence on the prosecution of atrocity crimes—murder, rape, torture—may occlude the need to address the structural, economic, and cultural violence that may have helped to produce the conflict in the first place.[74] If advocates persistently address only the epiphenomena of the deeper currents that serve to produce and re-produce violations, this is at best a missed opportunity. At worst, a simplistic diagnosis of the problem may lead to prescriptions for change that fail to address the roots and drivers at issue, stunting possibilities for genuine change. This is not to say that retributive justice does not have a role to play in the resolution of conflict, building the rule of law, reducing impunity, and so on, but that zealously emphasizing it to the possible exclusion of restorative and distributive justice is problematic.[75]

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73. Adam McBeth, *What do Human Rights Require of the Global Economy? Beyond a Narrow Legal View, in* Human Rights: The Hard Questions 153, 154–62 (Cindy Holder & David Reidy eds., 2013).
74. *See generally* Justice and Economic Violence in Transition (Dustin N. Sharp ed., 2014).
75. *See, e.g.,* Reed Brody, *Justice: The First Casualty of Truth?,* The Nation (12 Apr. 2001). On the need to balance the various dimensions of justice, *see* Rama Mani, Beyond Retribution: Seeking Justice in the Shadows of War (2002).

Ninth, advocates might address the problem of rising inequality and consider whether mainstream human rights thinking and practice may have been "part of the problem."[76] Human rights in the West has often taken a neoliberal form, envisioning individual liberty and formal legal equality as the key pillars to the good society, without doing much to engage or promote the need for solidarity. As Philip Alston and Kenneth Roth have lamented, in far too many countries today, there is a (mis)perception that human rights exist only for the protection of persecuted minorities, asylum seekers, prisoners, terrorists, and so on.[77] If many share this view, it may be a partial consequence of the failure of the human rights movement to take both economic and social rights and the problem of rising inequality more seriously. Western human rights organizations have been far quicker to denounce the jailing of a dissident or lack of bathroom access for transgendered children than a trade policy that creates massive economic dislocation, or a tax policy that subsidizes Wall Street at the expense of the working and middle classes. And yet, addressing these issues is essential not only to taming power in times of globalization, but also to convincing skeptical publics—and not simply asserting—that human rights are essential to the welfare of all.

Tenth and finally, advocates might consider that what Stephen Hopgood calls "Human Rights" (the formal, bureaucratic, and legalistic international human rights system) might not always be the best means of advancing "human rights" (the ability of everyday people to find varied ways of living in dignity).[78] Accepting this as a practical matter would likely entail deciding that in certain times and places, deploying the strategy and discourse of Human Rights might not make very much sense. In such cases, alternative vocabularies of emancipation, whether religious or secular, should be considered as adjuncts or alternatives to advancing actual human rights.[79] As Naz Modirzadeh has pointed out, human rights organizations have historically been reluctant to engage other vocabularies such as Sharia law, and this may at times reduce the possibilities for constructive dialogue and change.[80]

V. POTENTIAL COSTS OF OVER AND UNDER-EMPHASIS

If human rights advocates have often operated at the intersection of the moral and the legal, is it necessarily more pragmatic to de-emphasize the legal in favor of more flexible, less formalistic, and more political approaches to

76. *See* Kennedy, *supra* note 13; Moyn, *supra* note 55.
77. Alston, *supra* note 11, at 6; Roth, *supra* note 5.
78. Hopgood, *supra* note 4, at viii-ix.
79. *See* Kennedy, *supra* note 13.
80. *See* Naz K. Modirzadeh, *Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds*, 19 Harv. Hum. Rts. J. 191 (2006).

human rights—perhaps along the lines of some of the ideas sketched out in the preceding section? If we understand "pragmatic" in the sense of "effective at advancing the realization of human rights" rather than something that is simply open-ended and not bound by fixed rules, then the answer to this question is highly context dependent. Emphasis on each domain—moral, legal, and political—comes with tradeoffs, and emphasis of one domain over another may make more sense in one context than another.

As already noted, in keeping with Spivak's concept of "strategic essentialisms," there may be times and places for a heavy emphasis on the moral, legal, or political aspects of human rights. Much will depend on the opportunity structures and advocacy hooks that are available. In certain times and places, for example, it might suit an advocate to heavily emphasize the moral dimensions of human rights, perhaps in cases where the law appears weak or unclear and the politics resistant to change. In other instances, an advocate seeking to carve out a space for local autonomy and decision making in the pursuit of human rights might emphasize the political and contingent notions of dominant international interpretations of rights. Alternatively, an advocate might seek to invoke human rights as part of a budgetary battle of priorities, pitting, for example, the need for educational outlays over additional military expenditures. In still other cases, particularly in countries with strong institutions and long-established traditions and jurisprudence of rights-based lawyering, emphasis on the binding legality of human rights may make the most sense. Even in the same country, the value of a particular emphasis might vary from issue to issue.

Outside of contexts where it clearly makes sense to emphasize one domain relative to another, there may be as much danger in "too much" emphasis as "too little." For example, if we focus heavily on the moral domain, human rights might become too metaphysical and abstract, thereby blunting any hard, "real world" edge. We may be left to reason from Rorschach concepts like "human dignity" or to attempt to extract principles from the ether of reason in something akin to a natural law tradition.[81] Advocacy might become a function of asserting moral truths, on which there might be considerable disagreement, rather than engaging in process and persuasion. On the other hand, if advocates focus too little on the moral dimension, human rights might lose some of the potential to galvanize and inspire reverence as a representation of our highest values and ideals. This might lead to a hollowing out, making human rights into a mere function of what power-hungry and often oppressive states can accept. If there is a violation, it would only be because of something that states parties put to paper, and it follows that torture would be acceptable if only it were not legally prohibited.

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81. *See* John Finnis, Natural Law & Natural Rights (2011).

If we focus too much on the legal domain, human rights become a mere function of positive law and we cannot avoid being embarrassed and disillusioned by patchy compliance and the failure of the law to constrain power to the degree one would hope.[82] We risk falling under the sway of a sort of rule naïveté, a utopian pipedream in which we can escape from the stench of politics through law. We may ignore that politics and power disparities can be embedded in law as much as anywhere else. Furthermore, to the extent that law is seen as the domain of technocratic experts, overemphasis on the legal dimensions of human rights may provide a shaky foundation for building a sense of solidarity as a platform for collective mobilization. It may, for example, tend to favor technical approaches to complex human rights problems, and bias solutions towards retributivism and top-down legal-institutional reforms,[83] stunting our theories of change and occluding the need for "bottom-up" or cultural change. On the other hand, if we focus too little on the legal dimensions, we may find ourselves equally disillusioned with the cynical takeaway view that human rights are more about the law of power than the power of law.[84] "It's all just politics," one might say, and compliance should only be expected when it is in a state's interest to comply. Reverence and respect for the law might be diminished, and diminished expectations may in turn undercut the power of the human rights idea to promote compliance. Social movements that once found themselves empowered and emboldened by the idea of having "the law on their side" may lose steam.

If we focus too much on the political domain, human rights risk being seen as a mere function of the possibilities of power. One need look no further than voting in the Human Rights Council for evidence of this reality.[85] This might produce distaste for the idea of human rights as a hypocritical and self-serving enterprise. Human rights advocacy itself may risk being seen as a crude form of pressure-group politics, where advocates stand not on a bedrock of law, but on mere policy preferences. On the other hand, if we focus too little on the political dimensions, the result might be an ignorance of the hard business of actually governing, of the trade-offs and fraught choices involved in creating a world where de facto enjoyment of rights is realistically possible. Human rights advocacy may become a shrill activity of denunciation and "speaking truth to power," where the "speaking" has little more to offer than simplistic variations of "stop the violations" and "punish the violators." Recognizing the political dimensions teaches us that we should not look for purity or salvation in the idea of human rights, nor

82. Hafner-Burton & Tsutsui, *supra* note 9, at 408.
83. Sharp, *Human Rights Fact-Finding*, *supra* note 53, at 72.
84. Paupp, *supra* note 47, at 257.
85. *See generally* Simon Hug & Richard Lukács, *Preferences or Blocks? Voting in the United Nations Human Rights Council*, 9 Rev. Int'l Org. 83 (2014).

should we be shocked when it turns out that human rights governance is bitterly contested, and that human rights law is a terrain for political struggle. Human rights are, after all, about constraining power, and the powerful do not give up power easily. "There's always going to be politics," one might say, which could be seen as a wiser and less cynical companion to action than "it's all just politics."

With the dangers of "too much" and "too little" in mind, it becomes clear that my list of ten ideas for more flexible and less law-centric approaches to human rights advocacy may involve costs and tradeoffs that need careful assessment:

First, as noted above, in shifting away from the law to a more flexible engagement with the political realm, one risk is that human rights advocacy comes to be seen as a form of partisan politics. The influence of human rights organizations has been built over time upon the self-conscious projection of apolitical and technocratic expertise, a studied effort not to "take sides," and a willingness to investigate and shame powers small and large.[86] However, what happens if human rights groups are seen to be operating outside the four squares of the human rights treaties? In fact, human rights groups are already seen as quasi-opposition parties in some countries. As a Chadian minister once said in a meeting I attended with the heads of local human rights organizations: "we northerners have control of the government, and you southerners have your NGOs and your human rights." Mobilizing the public to rally and demonstrate, calling for re-allocations of budgetary expenditures, and addressing issues that do not fit neatly into the categories of protected rights, such as inequality and global warming, may only strengthen the impression that human rights organizations are attempting to have their own policy preferences enacted under the guise of human rights law. This impression risks pushing human rights organizations out onto even thinner ice and may diminish their authority. In contexts where politics and violence vividly intersect, it may also make them into a "safer" target for physical attack. On the other hand, one could well argue that in a world where political leaders and political parties increasingly take a stand in favor of torture or other human rights abuses,[87] attempting to seem nonpartisan is little more than a weak disguise. It may be that to fight for human rights occasionally means explicitly "taking sides," and simply acting as a neutral referee is unlikely to usher in better human rights governance anytime soon.

Second, an associated risk with the ten possibilities I outline above is that it takes human rights advocates into an arena where their expertise is

86. Sharp, *Human Rights Fact-Finding*, *supra* note 53, at 76.
87. *See, e.g.*, Michael Posner, *Trump Abandons the Human-Rights Agenda*, The New Yorker 26 May 2017, *available at* https://www.newyorker.com/news/news-desk/trump-abandons-the-human-rights-agenda.

lower and their moral authority weaker. Particularly for international organizations that operate without a large constituency in many of the countries where they are active, this may enhance the impression of a modern-day *mission civilisatrice*, of intervention where one has no standing. It is for this very reason that Kenneth Roth has argued against engaging in debates about budgetary allocations, for example.[88] On the other hand, engagement with the nitty-gritty of budgets and the hard-tradeoffs of governance may help to convey the impression that human rights advocates are sophisticated and "realistic" players who have thought hard enough about a particular problem to put workable policy solutions on the table. This might generate persuasive power insofar as it offers greater value than simplistic denunciation or policy recommendations ill-suited to the political, economic, cultural, and religious realities of the context.

Third, there are also risks associated with attempting to leverage the power of popular mobilization rather than simply retreating into fact-finding, litigation, and other areas that are highly driven by elite expertise. Connecting with various populations and learning to dialogue and persuade people for whom human rights ideas are not immediately or obviously resonant may require skills than many human rights advocates do not have in spades. Many of those working at "top-tier" global organizations like Human Rights Watch, Human Rights First, Amnesty International, and so on are highly educated elites, with degrees from prestigious universities where students are trained and socialized to think like global power insiders. Their training and mental maps are largely rooted in law, and not in community empowerment, dialogue facilitation, education, and so on. In addition, constituency building is expensive and requires significant organizational infrastructure to support it. For this reason, Kenneth Roth has argued that those advocating for a more constituency-based approach need to prove that it would work better than other approaches.[89] While one can argue about who bears the burden of proof in this debate, it remains clear that a million dollars spent on constituency building is a million dollars that cannot be spent on something else. Pragmatism demands an analysis of the tradeoffs.

Fourth, and finally, other risks are associated with approaches that attempt to stretch human rights law beyond its areas of traditional and strict application, whether in terms of issues of concern (global warming, inequality, corruption) or the nature of human rights duties (non-state actors, extra-territorial duties). There is a risk that the concept of human rights will become fuzzier and more diffuse, a feel-good idea more or less synonymous with social justice or "the good." If human rights potentially mean everything, one might say, it risks meaning nothing. Ultimately, pushing stricter

88. Roth, *Defending Economic, Social and Cultural Rights*, *supra* note 60, at 65.
89. *See* Kenneth Roth, *Response to Leonard S. Rubenstein*, 26 Hum. Rts. Q. 873, 876 (2004).

notions of human rights law and "rights talk"[90] deep into the background of thinking and action calls into question the nature of what it means to do human rights advocacy in the first place. Is an organization pushing for better social services delivery in the healthcare sector, for example, doing "human rights advocacy" even if it does not invoke human rights discourse as it is conventionally understood? If the answer to this question is "yes," the human rights movement becomes dramatically larger with increasing possibilities for partnership, and yet it might lose a sense of distinctness and common identity.

Taken together, these tensions and dilemmas certainly place the question of what it means to be pragmatic in human rights advocacy in an interesting light. While Posner argues that law-centered approaches need to be abandoned in favor of attempts to maximize well-being based on empirical assessment and experimentation inspired by development work,[91] Kenneth Roth presses for the retention of a more traditional approach to human rights advocacy, engaging governments only when there is strict legal clarity in terms of actors and obligations.[92] One of these directions is less law-centered than the other, and yet it is not clear that one is necessarily more pragmatic. One could argue that insofar as Roth engages in a fuller assessment of the costs and benefits associated with more or less legalized approaches, his tack has a cool sense of pragmatism, even if I have disagreed with his conclusions in the past.[93] In other ways, however, Poser and Roth share much in common in the sense that they are both far too categorical, either thoroughly rejecting the value of human rights law in all times and places, or being too unwilling to look beyond law-centered strategies where needed. In that sense, both authors are curiously un-pragmatic.

VI. CONCLUSION

Posner and Roth both make interesting points about different possible avenues for change, which may serve to illustrate the desirability of having a greater diversity of human rights organizations using a broader palette of advocacy tactics in the future. No one organization can or should try to do everything, and groups that anchor their efforts in strict readings of the treaties, such as Human Rights Watch, might seek to partner with those organizations inclined to pursue more flexible and less law-centered strategies, perhaps following some of the approaches outlined above. Beyond the organizations and activists themselves, much will depend on the willingness

90. Glendon, *supra* note 59.
91. Posner, *supra* note 4, at 7.
92. *See generally* Roth, *Defending Economic, Social and Cultural Rights*, *supra* note 60.
93. Sharp, *Human Rights Fact-Finding*, *supra* note 53, at 73–76.

of donors to help support a richer and more diverse ecosystem of advocacy organizations, including those organizations willing to pursue an alternative axis of advocacy. This could certainly be part of the "experimentalism" that Posner has called for, even if that is not exactly what he intended.[94] Fostering an advocacy ecosystem that better exploits the multidimensionality of human rights may require risk taking and placing some unusual bets. These, however, are bets worth taking, for even if the moral-legal dimensions of rights remain an important part of the advocacy landscape in the twenty-first century, neither is it obvious that human rights can be realized by failing to engage the political dimensions of rights more squarely, or by otherwise passing over less rigorously law-oriented strategies. If too many organizations hew to the classical moral-legal axis, drawing the great bulk of foundational support, we may fail to contest the deeper structures of power and injustice that serve to produce and re-produce human rights violations in the first place. This would be yet further grounds for human rights pessimism.

94. Posner, *supra* note 4, at 7.