3   Protean Power and Revolutions in Rights

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Revolutions in rights are always momentous and always surprising. With hindsight, we find ways to explain them: attributing interests, sketching institutional architectures, unearthing material substrata, and artfully tracing key mechanisms and processes. But at the time, on the ground, in the turmoil of real-time politics, revolutions in rights have been either the stuff of dreams – long-term yet evolving objectives, animating activism that is one part strategy, two parts seat-of-the-pants innovation – or barely credible threats, unimaginable transformations of political orders defended by invested elites, backed by material might, and undergirded by old values codified in law. Revolutions in rights are always the product of struggle, generally long and sustained. Yet their triumphs come with a rush. Undercurrents of change break the surface, and suddenly the impossible becomes real: long hostile public opinion swings, new institutional opportunities hand activists unexpected victories, coercion becomes counterproductive, opponents lose the will to fight what was once beyond the pale, and all of a sudden, what constitutes a recognized fundamental right transforms, or the category of humans entitled to such rights expands. The same story has played out time and again: with anti-slavery, workers' rights, women's rights, indigenous rights, and now rights to marriage equality.

The surprising nature of revolutions in rights raises far-reaching questions about the nature of power. Two things stand out. First, how rights are defined and allocated affects the distribution of legitimate power in any social order in which individual rights are the prevailing form of moral and legal entitlement.[1] Rights are legitimate powers. They entitle rights-holders to act in particular ways, and circumscribe legitimate action beyond the domain of rights. They demand the exercise of political authority in some areas, but also circumscribe it. Second, because regimes of rights structure the organization of legitimate power in a social order, struggles for rights are struggles for power, and revolutions in rights

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[1] All social orders define and distribute entitlements, but these are not always defined in terms of rights and are not always allocated to individuals.

are the product of such struggles. Yet the workings of power within these revolutions is only partially captured by our prevailing conceptions. For Lucia Seybert and Peter Katzenstein (Chapter 1), these conceptions understand power as control, as the ability to exercise control in situations of calculable risk. Evidence of such power can certainly be found in revolutionary struggles for rights: establishment elites have routinely exercised their material and institutional capabilities in calculated attempts to prevent change, often succeeding for long periods of time. The power that ultimately produces change, however, has been far more complex, and cannot be reduced to actors' capabilities exercised under conditions of calculable risk. In all struggles, uncertainty has been the order of the day, and power has come, often unexpectedly, through innovation in an order's cracks and contradictions, not control.

This chapter explores the nature and workings of this "protean" form of power, focusing on a particularly consequential revolution in rights, that associated with the codification of the 1945 human rights regime and the associated reconstitution of the right to self-determination. As I have shown elsewhere, today's global system of sovereign states is the product of successive waves of imperial collapse, the most significant of which were driven by struggles for individual rights.[2] Post-1945 decolonization was the most momentous of these waves: not only did multiple empires collapse, but so too did the institution of empire. Conventional accounts attribute this transformation to a shift in control power: after the Second World War, European powers lost their material capacity to control their empires; the new superpowers, the United States and the Soviet Union, were both anti-imperial; and local anti-colonial struggles raging across multiple empires defeated the European powers on the ground. Common though this view is, it sits uncomfortably with the facts. After the war most imperial powers reasserted their commitment to empire, and their material frailties were evident in some colonies but not in others. Washington's anti-imperialism waned with the onset of the Cold War, and it ended up siding with the imperial powers to oppose any *right* to self-determination. The Soviet Union's rhetorical opposition to empire was contradicted by its own quasi-imperial structure, and its stance in anti-colonial debates was increasingly at odds with that of leading post-colonial states. Local anti-colonial struggles varied greatly in strength, and cannot be credited with the near simultaneous collapse of multiple empires, or the demise of the institution of empire itself. Post-1945 decolonization *was* the product of a struggle for power, but it was protean power, entangled in a complex rights revolution that drove change, not control power.

[2] See Reus-Smit 2011; 2013.

The discussion proceeds in two parts. The first is theoretical. Building on Seybert's and Katzenstein's conception of protean power, I advance three propositions: radical uncertainty is a condition of all systems of rule; some ideas are politically dynamic and defy control; and actors innovate within the cracks and contradictions of institutional complexes, understood as arrays of co-existing, overlapping, but often discordant singular institutions (in this case, the post-1945 complex of persistent empires and the emerging universal institutions of the United Nations [UN], but a phenomenon also highlighted by Phillip Ayoub (Chapter 4) as well as Noelle Brigden and Peter Andreas (Chapter 5). Taken together, these propositions challenge Stephen Krasner's oft-quoted argument about power in a world of normative complexity. States encounter multiple, often contradictory, international norms, he contends, allowing materially powerful actors to select norms that serve their strategic interests. "In an environment characterized by multiple norms, power asymmetries, and the absence of authoritative structures that could resolve conflict, rulers can select among strategies that deploy normative as well as material resources in different and sometimes original ways."[3] Normative complexity thus favors the exercise of control power. Yet in the argument that follows precisely the opposite is true. If the uncertainty inherent to institutional complexes privileges any kind of power, it is protean power not control power. When the meaning of norms is indeterminate, and when multiple norms co-exist in institutional complexes, uncertainty overwhelms the calculable, and innovation in the cracks and contradictions of an institutional complex can challenge the exercise of control. Part 2 illustrates these propositions with reference to the revolution in rights that drove the wholesale decolonization of Europe's empires and the emergence of a universal system of sovereign states.

Radical Uncertainty

Michael Barnett and Raymond Duvall identify four conceptions of power: compulsory, institutional, structural, and productive. Compulsory power "focuses on a range of relations between actors that allow one to shape directly the circumstances and/or actions of another," and institutional power concerns "the formal and informal institutions that mediate between A and B, as A, working through the rules and procedures that define those institutions, guides, steers, and constrains the actions (or non-actions) and conditions of existence of others, sometimes even unknowingly."[4] With structural and productive power, agency is more diffuse and obscure.

[3] Krasner 1999: 72.   [4] Barnett and Duvall 2005: 13, 15.

Structural power "produces the very social capacities of structural, or subject, positions in direct relation to one another," while productive power constitutes social subjects "through social systems of knowledge and discursive practices of broad and general scope."[5] While this framework accommodates many of the existing ways that international relations scholars understand power, the "protean" power emphasized in this volume sits uncomfortably within its conceptual distinctions. Control power is easily assimilated within the categories of compulsory or institutional power, but, as we shall see, protean power confounds these categories, particularly institutional power. Furthermore, while protean power can change actor's subjectivities, as well as their structural positions, how this works is not easily accommodated within conventional notions of structural or productive power. Crucially, protean power comes to the fore under conditions of uncertainty, conditions inimical to structural control.

Seybert and Katzenstein distinguish between two kinds of uncertainty. *Operational* uncertainty consists of known unknowns, and can, at least in theory, be transformed by greater knowledge into the world of risk. *Radical* uncertainty is characterized by unknown unknowns, which "are unknowable and cannot be converted to risk" (Katzenstein and Seybert, Chapter 2, p. 41). The closer one moves to the second of these, the more uncertainty appears not simply as a cognitive condition – a lack of knowledge – but an inherent feature of complexity. Some contexts are relatively simple and are amenable to control through the calculation of risk. But increasingly actors must navigate complex, polycentric social, political, and economic contexts in which uncertainty is an existential condition. Furthermore, complex contexts have constitutive effects, creating social subjects. Innovators are not free-wheeling entrepreneurs who step, pre-constituted, into complex environments and work their magic. As Chapter 6 on science and start-ups shows, innovators are products of uncertainty bred of complexity. Innovation is a knowledgeable practice, learnt through engagement with the demands of uncertainty. And "innovator" is a social identity, clearly apparent in Sergey Brin's recent declaration that "Google is not a conventional company. We do not intend to become one."[6]

To understand the workings of protean power in rights revolutions, the concept of radical uncertainty requires further elaboration, as does its distinctive manifestation in struggles for rights. In what follows, I advance three propositions. The first is the general proposition that uncertainty

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[5] Ibid.: 18, 20.   [6] *The Guardian*, August 11, 2015.

can take radical forms, where unknowable unknowns are hard-wired into complex contexts. The second and third focus on two aspects of radical uncertainty peculiar to revolutions in rights: the open, dynamic nature of rights themselves, and the uncertainty inherent to institutional complexes.

Beyond Cognitive Uncertainty

Some kinds of uncertainty are contextual, others are not. If I sit down to work out a tough problem in mathematics, I am sure to be uncertain about how to proceed: how do I break it down, what techniques do I employ to solve each part, how do I put it all together? My uncertainty is real, but it is not contextual: it derives from the limits of my cognitive capacities, and the puzzling nature of an abstract, deontological equation. This is in contrast to other forms of uncertainty that have less to do with my cognitive limitations than with the social context in which I seek to act. Practice theorists speak of an actor's social competence, defined as socially recognized mastery of a practice or practices.[7] I might be a fully competent actor, a recognized master of relevant practices, but still encounter contexts marked by endemic uncertainty. Diplomats – recognized masters of diplomatic practice – spend most of their time navigating such contexts. No degree of competence renders such contexts controllable arenas of calculable risk: uncertainty is hard-wired into their complex configurations.

As noted above, when Seybert and Katzenstein think about uncertainty and risk, they do so in contextual and experiential terms: from the perspective of the observer, contexts can be uncertain or risky, and actors within such contexts may, or may not, experience them as such (Seybert and Katzenstein, Chapter 1, p. 13, Figure 1.1). This emphasis on experience and context is evident in their desire to accommodate both control and protean power. While they criticize the field's overemphasis on control power, they do not deny its existence or relevance to world politics. Indeed, they insist that some contexts – those that most closely approximate closed laboratory systems – are, from the perspective of the observer, amenable to the exercise of such power, to control through the calculation of risk. Their point, however, is that contexts such as these are far from the norm. World politics is increasingly characterized by complex "open social systems," in which inherent uncertainty defies control and the effective calculation of risk. Uncertainty is thus a feature

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[7] Adler-Nissen and Pouliot 2014.

of a particular kind of context, and protean power is a product of innovation, a knowledgeable practice impelled by uncertainty.

Uncertainty is not simply an externality generated by particular kinds of context though. Whether or not relevant actors fully experience it, uncertainty can be an intrinsic feature of those contexts. It would be an externality if all that was involved was complexity, where the sheer openness, multidimensional character, and tangled intersections of a context produced a host of known unknowns: what Seybert and Katzenstein term *operational* uncertainty (Chapter 2). Here uncertainty would be a product of unmanageable knowledge demands, impeding reasonable calculations of risk. This kind of uncertainty is common, but it often goes hand in hand with radical uncertainties. An uncertainty is radical if it comprises unknowable unknowns, if it cannot be reduced to attributes of the actors' in the prevailing context, and if it conditions actors' identities, interests, and actions. Quantum theory tells us that such uncertainties are inherent to the physical universe, but they can also be ideational.[8] Indeed, radical uncertainties are endemic to all complex institutional environments, where webs of intersubjective meanings structure social action. This is because such meanings are inherently indeterminate, open to diverse and often contradictory interpretations. Much has been written about the indeterminacy of legal rules, for example. While often touted as the most objective of all meanings, they are rendered indeterminate by both the "semantic openness of legal speech" (words and phrases can be open to diverse interpretation), and by contradictory reasons that generated the speech in the first place.[9]

My claim here is a strong one. Intersubjective meanings, whether embedded in norms, rules, or practices, whether formal or informal, generate radical uncertainties. These uncertainties are more than the known unknowns of operational uncertainty; they involve unknown – and unknowable – unknowns. Even in the realm of common law, where formal processes of judicial interpretation are informed by accumulated precedents, the scope of possible interpretations remains unknowable. This is not only because of the inherent indeterminacy of the law, but because the social domain of interpretation is not confined to formal legal processes. In many areas the meaning of legal rules is the subject of broad political debate, in which the scope and substance of interpretation has a relative autonomy from formal judicial reasoning. This is especially true in the international realm, where authoritative interpretation remains rare. Debate over the legality of the 2003 Iraq War, for example, was not confined to the UN Security Council, and debate within the Council

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[8] Wendt 2015.   [9] Koskenniemi 2005: 590–96.

did not determine how the Charter and past Council resolutions were interpreted in the broader political domain.

The radical uncertainty that attends intersubjective meanings is why Stephen Brooks and William Wohlforth are wrong when they claim that the United States, as the unipolar power, can define the terms of its own legitimacy. To be sure, dominant powers – unipoles, hegemons, or the like – have unrivaled capacities to mobilize and codify particular meanings, but this is not the same as controlling meanings. In an artful response to claims about America's declining legitimacy, Brooks and Wohlforth accept the importance of legitimacy, but insist that if transnational advocacy networks can mobilize norms in legitimacy contests, so too can a unipole, with an order of magnitude of greater capacity. "Advantages in power capabilities," they contend, "expand the range and scope of various strategies the United States can use to build legitimacy and mold institutions to its purposes."[10] Put differently, for Brooks and Wohlforth control power determines legitimacy. But even if a unipole enjoys certain advantages in the mobilization of meanings – and Washington's skill in this has been less than striking in recent years – the indeterminacy of relevant norms, and the complex institutional environment in which normative contestation takes place, leaves considerable scope for interpretive innovation and struggle. Indeed, the politics of legitimacy engaged by the United States evinces little evidence of control. To the contrary, American legitimacy has been conditioned by a swirling mix of control and protean power, the latter generated by supposedly weak but innovative actors exploiting the radical uncertainty that attends normative indeterminacy and complexity.[11]

Revolutions in rights have been profoundly affected by the radical uncertainties associated with meaning indeterminacy. To begin with, as we shall see below, the very idea of a general individual right, which has repeatedly animated such revolutions, is inherently dynamic: its constituent ideas provoke ever more expansive interpretation. Again, my claim here is a strong one. It is commonplace to describe some concepts as "essentially contested," in the sense that they can circulate widely, be invoked frequently in public debate, but be understood differently by different actors. Power, culture, democracy, etc. are classic examples. I want to suggest more than this, though: that some ideas, by their very nature, provoke debate, invite ever more expansive interpretation, and defy control. General individual rights are a prime example. Second, actors have mobilized and contested such ideas within multilayered,

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[10] Brooks and Wohlforth 2008: 206.
[11] On the challenges a unipole faces defining the terms of its own legitimacy, see Finnemore 2009.

highly variegated institutional contexts: some formal, some informal. These contexts are riddled with cracks and contradictions that enable some forms of mobilization and struggle while foreclosing others.

General Individual Rights   The revolutions in rights that interest me here have all been about general individual rights, of which human rights are a species. Individual rights can take two forms: "special" rights and "general" rights. A special right is one that an individual holds by virtue of a particular transaction or social relationship in which they stand or are engaged. A good example are the rights an individual acquires when contracting to buy or sell a house. The contract of sale grants both the vendor and the purchaser individual rights – rights that would not exist without the contract, and rights only the parties to that contract hold. This type of rights is in contrast to general individual rights. An individual has such rights not because of particular transactions or social relationships, but because they are said to constitute a particular kind of moral being. Human rights are the best examples of such rights. As explained elsewhere, "individuals have such rights because they are human beings: normative agents with the capacity to 'form pictures of what a good life would be' and to 'try and realize these pictures.' Individuals have human rights to protect these capacities, to safeguard their moral 'personhood.'"[12]

Two forms of indeterminacy are built into the idea of general individual rights. The first concerns their scope: what are they rights to? If they are meant to safeguard an individual's moral personhood, what kind of rights are essential to this end? Reaching a definitive answer to this question is probably impossible, as is evident in the persistent debate about what constitute essential human rights: civil and political rights, social and economic rights, or some combination thereof? The second form of indeterminacy concerns the zone of application of individual rights: the group of individuals who, at any given historical moment, are thought to be moral beings worthy of such rights. We now assume that all biological humans are entitled to general individual rights, thus rendering them "human" rights in the full sense. Yet for most of the history of general rights only a portion of the human population has been deemed moral beings with such entitlements. The norm has been for a select group to assert their status as such beings while confidently denying that other human beings qualified. Slaves, followers of other religions, unpropertied men, colonialized peoples, women, indigenous peoples, homosexuals, and transsexuals have all found themselves excluded from the zone of application.

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[12] Reus-Smit 2013: 37.

In what follows I am particularly interested in this second kind of indeterminacy. The idea of a general individual right depends on the existence of qualified moral beings. Not only are such beings the bearers of general rights, their perceived needs determine what these rights are. Yet defining what such a moral being is, and who among all biological humans qualify, is an entirely subjective enterprise. All sorts of arguments have been used historically to define the zone of application in one way or another. Religion, race, civilization, property, gender, and sexuality have all been invoked to justify patterns of inclusion and exclusion. None have ever come close to being objective, as what constitutes a worthy moral being can be defined only with reference to other subjective values. Added to this, any non-universal attempt to define such beings, and to draw an exclusionary zone of application, has been politically contentious. As explained above, how rights are allocated in a social order affects the distribution of legitimate power, often in life and death ways. Any non-universal definition of the zone of application simultaneously empowers some while disempowering others, giving the latter powerful incentives to challenge prevailing definitions of the moral subject and expand the zone of application. Herein lies the inherent political dynamism of the idea of general individual rights. Non-universal definitions of the zone of application beg revision, almost always through struggle. And the bounds of such revision, and the potential scope of struggle, is as indeterminate as the concept of a qualified moral being. This is evident in the discussion of decolonization that follows, and in Phillip Ayoub's analysis of LGBT rights (Chapter 4). Even drawing the line around all biological humans has proven to be controversial, as attempts persist to exclude some humans as being morally incompetent or compromised, and calls are made to extend basic rights to non-human species: great apes, for example.

Institutional Complexes   If radical uncertainty can be a product of the meaning indeterminacy that attends general individual rights, this is compounded by the institutional environments in which actors have mobilized and contested rights claims. Institutions are commonly defined as "stable sets of norms, rules, and principles that serve two functions in shaping social relations: they constitute actors as knowledgeable social agents, and they regulate behavior."[13] Institutions, so understood, are thought to be embedded in, and reproduced by, actors' routinized social practices: they are the product not only of what actors think and say, but what they do.[14] As the rights case illustrates, actors navigate their way

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[13] Reus-Smit 1999: 13.   [14] Adler and Pouliot 2011: 42.

through multiple, often contradictory, institutions simultaneously, and since meaning indeterminacy is inherent to all of their constituent rules and norms, radical uncertainty is accentuated, both as an observed reality of institutional environments and the lived experiences of actors themselves (locating the institutional politics of rights in the lower right-hand quadrant of Figure 1.1).

It is common in international relations to theorize institutional behavior as though actors exist within single institutions. Regime theorists studied the regulatory effects of *an* institution – the GATT, the NPT, the EU, etc. – on the actors operating within that institution. Similarly, most constructivist work on the constitutive effects of social norms has focused on single norms: how they emerge, how they socialize actors, and now, how they erode. The idea that actors might operate within multiple institutions features only at the margins. Regime theorists acknowledge that actors forum-shop, jumping from one institutional arena to another in a strategic effort to maximize gains. In the end, though, all this says is that utility-maximizing actors who face a menu of institutional options will gravitate toward the optimal single institution. Constructivists talk about the grafting of norms, how norm entrepreneurs seed new norms by appealing "to values higher than those which they want to justify, by proving that the latter are but an interpretation of the higher values, or that they can be related to these higher values without logical contradiction."[15] These remain stories, however, of the construction of single norms, albeit in association with other extant norms.

In reality, actors exist within, and spend their lives navigating, complexes of multiple institutions. The regulatory effects of any one institution (in the field of climate change, for example) will depend on how it stands in relation to the other institutions actors engage (such as in the area of trade). And how actors are constituted as knowledgeable social agents will be determined by the highly variegated, often contradictory, institutional complexes in which they are socialized, complexes that by definition vary from one individual actor to another. The crucial thing for our purposes is that radical uncertainty in institutional complexes is doubly determined. Not only do the norms, rules, and practices of individual institutions suffer meaning indeterminacy, institutional complexes are riddled with cracks and contradictions, generating yet another layer of uncertainty. This doubly determined uncertainty is evident in current international legal debates, where recognition of the indeterminacy of legal rules is joined by growing consternation about the proliferation of overlapping and contradictory legal instruments and mechanisms that

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[15] Heller 1987: 239.

threaten to dissolve the international legal order into a fragmented insti-
tutional complex.[16]

The Instability of Mixed Worlds

Seybert and Katzenstein (Chapter 1, p. 10, Table 1.1) rightly argue that
pure worlds of calculable risk and control power, on the one hand, and
uncertainty and protean power, on the other, are ideal types. Real worlds
are always mixed. Arenas of calculable risk that permit control always co-
exist with radical and operational uncertainties that demand innovation
and improvisation, producing often transformative circuits of protean
power. To capture this, Seybert and Katzenstein propose an interactive
approach: these "two kinds of power co-exist and co-evolve" (Chapter 1,
p. 5). Nothing in this chapter contests this proposition. I want to suggest,
however, that mixed worlds of risk and uncertainty, and control and
protean power, can be far from stable. Indeed, in crucial cases they are
not only unstable, but pull toward uncertainty, innovation, and protean
power.

This is especially true in the case of systems of rule. Systems of rule are
the framing arenas for politics, and international systems of rule, whether
we call them systems, societies, or orders, provide the political architec-
ture for international politics. They define the political game – the princi-
pal political units, how they stand in relation to one another, and the
bounds of acceptable political action – and their rise and fall alters the
basic parameters of political life. International systems of rule take multi-
ple forms, varying principally according to their organizing principles.
Some are sovereign, some are suzerain, some are heteronomous, and,
importantly for us, some are hybrids. What matters, though, is that stable
systems of rule – whatever their form – cannot rest on control power
alone. The quintessential form of such power is compulsory: the ability of
"one to shape directly the circumstances and/or actions of another,"[17] an
ability derived from the material command of the distribution of risk. But
as Edmund Burke pointed out in a classic statement, "the use of force is
but *temporary*. It may subdue for a moment, but it does not remove the
necessity of subduing again; and a nation is not governed, which is to be
perpetually conquered."[18] Stable systems of rule depend on something
additional, on legitimacy: the "generalized perception or assumption that
the actions of an entity are desirable, proper, appropriate within some
socially constructed system of norms, values, beliefs, and definitions."[19]

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[16] Alter and Meunier 2009; United Nations 2006; Young 2012.
[17] Barnett and Duvall 2005: 13. [18] Burke 1908: 89. [19] Suchman 1995: 574.

Yet as soon as legitimacy enters the equation, so too does uncertainty. To begin with, legitimacy is in the eye of the beholder. Auto-legitimation is impossible; it always depends on the perceptions of others, and these are difficult to control as millennia of politicians have discovered. At best, perceptions of legitimacy are known unknowns. Second, perceptions of legitimacy, as the Suchman quote indicates, are norm-referential. Actors make legitimacy judgments with reference to interpretations of prevailing intersubjective understandings about rightful agency and action. But this brings us into the realm of meaning indeterminacy, where norms, rules, and practices can be open to diverse, and at times contradictory, interpretations. Struggles over legitimacy sometimes see actors appealing to radically different norms or principles, but often contests are over the meaning of the same norms. Finally, legitimacy is seldom constructed, sustained, or contested in singular institutional contexts. More commonly, the politics of legitimacy plays out within highly variegated institutional complexes. When this is combined with the meaning indeterminacy of legitimating norms, the context of uncertainty moves from operational to radical.

If this is true, surely mixed worlds are likely to be stable? A stable system of rule, for example, might settle on an optimal balance of control and legitimacy, risk and uncertainty. While theoretically possible, two empirical reasons suggest otherwise. Seybert and Katzenstein (Chapter 2) argue that open systems are inherently uncertain and privilege innovation and, in turn, protean power. The openness of a system is generally understood in interactional terms, but systems can be open epistemically as well. New ideas can enter a system through creativity – the artful fashioning of new knowledge out of extant ideational resources – and through cross-fertilization and localization: two forms of innovation. Systems of rule are open systems in both interactional and epistemic terms, and the structures and practices of legitimation that sustain them are always vulnerable to the creation and conscription of new ideas. The second reason has to do with elite incapacity. When the mobilization of new ideas challenges the legitimacy of a system of rule, elites can either recalibrate the system's legitimacy, or they can compensate for a legitimacy deficit by deploying greater control power: most commonly, coercion and bribery. Historically, in the great rights revolutions that have transformed international orders, elites have almost always chosen the second of these paths, ultimately compounding the crisis of legitimacy. For both of these reasons, I suggest, mixed systems, if systems of rule are anything to go by, pull toward uncertainty and protean power, and artful politics is needed to sustain any balance.

Rights and Universal Sovereignty

Today's global system of rule has one feature that distinguishes it from all prior international orders: universal state sovereignty. Systems of sovereign states have been rare in world history, and always regional affairs: Ancient Greece; the warring states period in China; Renaissance Italy; and post-Westphalian Europe. Today's order is unique in being global, and unique in having a single legitimate form of polity: the sovereign state. Furthermore, this novel global order is very young, emerging fully only in the wake of post-1945 decolonization. Prior to this, a hybrid order organized political life across most of the globe, an order in which sovereignty in the European core was institutionally tied to empire in the non-European periphery. The transition from sovereign/imperial order to universal sovereignty was one of the momentous shifts in the global configuration of political authority in world history.

The dismantling of the sovereign/imperial order occurred over several centuries, propelled by a series of great imperial implosions: the eighteenth- and nineteenth-centuries collapse of Europe's empires in the Americas; the early twentieth-century break-up of the Austro-Hungarian, German, and Ottoman empires; and then, most dramatically, the total dissolution of Europe's remaining empires after 1945. Across these waves of imperial fragmentation, the sovereign core of the hybrid order gradually expanded: the number of recognized sovereign states grew, eventually drawing in non-European states, and the institutional norms of the sovereign order clarified and consolidated. It was not until the final act, however – post-1945 decolonization – that empire, as a legitimate form of rule, was discredited. Individual empires might have fallen, each suffering their own distinct crisis of legitimacy, but the institution of empire remained robust well into the second half of the twentieth century. As Edward Keene explains, until post-1945 decolonization, Europeans (and Westerners more generally) were quite comfortable "adopting one kind of relationship, equality and mutual independence, as the norm in their dealings with each other, and another, imperial paramountcy, as normal in their relations with non-Europeans."[20] It was not until the 1960s that these norms were finally undercut, leaving the hybrid order without legitimating foundations.

As noted in the introduction, conventional accounts of post-1945 decolonization emphasize shifts in control power: the waning of metropolitan power; the rise of anti-imperial superpowers; and the diffusion of power to anti-colonial nationalists. According to such accounts, Europe's

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[20] Keene 2002: 6.

far-flung empires were held together by the imperial powers' material might. After half a century of world war such might no longer existed, and the balance of global power had shifted to the United States and the Soviet Union, both of whom were anti-imperial. Added to this, Europe's grip on empire was undercut by anti-colonial wars in Africa and Asia, wars that the Europeans lacked both the will and capacity to defeat. Common though this view is, it is contradicted by the facts. The Europeans were greatly weakened by a half a century of war, but in most cases weakness encouraged renewed commitments to empire. The United States and the Soviet Union had long touted their anti-imperial credentials, but as the Cold War intensified, Washington fell in behind the imperial powers, and Moscow's brand of anti-imperialism clashed with that emanating from much of the colonial world. Anti-colonial struggles were waged in many colonies, but not all were destined for success, and local struggles cannot explain the wholesale dissolution of Europe's empires.

The greatest failing of these accounts, however, is that shifts in the balance of control power tell us little about arguably the most important feature of post-1945 decolonization: that it involved not only the simultaneous collapse of multiple empires across the globe, but also, and most significantly, the moral disintegration of the institution of empire itself. In the space of two decades, empire went from being the norm, a thoroughly acceptable system of rule, to a moral, if not a legal, crime. The institution of empire suffered a profound crisis of legitimacy from which it never recovered. Scholars debate whether the United States is an imperial power – a move that stretches the concept too far in my view – and some like Niall Ferguson think Washington should come clean and embrace this status.[21] But since the 1960s no state concerned with its moral standing could make such a declaration: "empire" became, and has remained, a term of moral opprobrium.

A focus on control power cannot explain the collapse of the institution of empire, a key factor in the rapid and simultaneous disintegration of multiple particular empires. To understand this collapse, we need to see it for what it was: a collapse in legitimacy. In 1945, the drafters of the UN Charter could still describe Western tutelage of non-Western peoples as a "sacred trust," but by the 1970s, UN General Assembly Resolution 2621 called "the continuation of colonialism in all its forms and manifestations a crime."[22] By 1960, the legitimacy of empire had all but disintegrated, and this in turn undercut the last vestiges of local imperial legitimacy. In the decade following the 1960 UN Declaration on the Granting of

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[21] Ferguson 2004.   [22] Quoted in Reus-Smit 2013: 156.

Independence to Colonial Countries and Peoples the rate of decolonization tripled, from 1.26 new states per year between 1946 and 1960 to 3.86 per year thereafter.[23]

To understand the crisis that befell the institution of empire, we need to see empires as systemic hierarchies: they rest on an unequal distribution of authority between the core and periphery, and a differential allocation of social and political entitlements between metropolitan citizens and colonial subjects. Elsewhere I call these "regimes of unequal entitlements,"[24] regimes comprising differential special rights (grounded in custom and law, and derived from social position). In empires, a central political challenge sustains the legitimacy of these regimes, both within the metropole and among subject peoples. From the late eighteenth century onward, Europeans justified such regimes with reference to a standard of civilization that in the nineteenth century they codified in international law. This standard, which divided humanity into civilized, barbarian, and savage peoples, placed Europeans at the top of a human pyramid and licensed both their domination/tutelage of the non-European world, as well as the unjust distribution of social and political entitlements within their individual empires.[25]

The dramatic collapse of imperial legitimacy was the product of artful innovation under conditions of radical uncertainty – uncertainty generated by institutional complexity and norm indeterminacy. The struggles over imperial legitimacy that intensified after 1945 took place within a distinctive institutional complex. In the eighteenth and nineteenth centuries, the institutional arena for struggles over imperial legitimacy was predominantly intra-imperial. For example, both the Concert of Europe and the Holy Alliance were concerned with the fate of the Spanish empire in the Americas, but anti-colonial forces had no access to these institutions. It was insurgent Cortes of Cadiz, formed in response to Napoleon's usurpation of the Spanish crown, that provided the principal, intra-imperial institutional setting for debates over the empire's legitimacy. With the Versailles peace negotiations and eventual settlement after the First World War a more complex institutional environment emerged, in which struggles over imperial legitimacy could play out both within individual empires and in the embryonic fora of the League of Nations. After 1945, this multidimensional institutional context received ever greater elaboration, as the UN developed not only an increasingly robust general assembly of states, but also emergent human rights fora charged with negotiating an international bill of rights. Proponents and critics of

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[23] Quoted in ibid.: 154.   [24] Ibid.: 41–42.
[25] The classic works on this are Gong 1984 and Adas 1989.

empire were thus faced with a highly variegated institutional context, in which local imperial institutions co-existed with new supranational institutional arenas.

This new institutional complex significantly empowered purportedly weak actors, most notably newly independent post-colonial states that joined the UN in its first decade. The emergent institutions of the UN provided unexpected spaces in which to innovate with key norms of international society, particularly those pertaining to membership and legitimate statehood. Crucial here were UN bodies charged with negotiating the two binding international covenants on human rights: the Human Rights Commission and the Third Committee of the General Assembly. As others have shown, the UN's founders were far from anti-imperial, and the early architects of its human rights instruments did not see them as a tool against empire.[26] Yet newly independent post-colonial states found spaces in the UN's emergent human rights bodies in which to redefine and rehabilitate the collective right to self-determination, grafting it onto evolving human rights norms.

After Versailles the right to self-determination was defined as a right of ethnically defined nations, and only those within Europe. This conception emerged from the Second World War as morally and politically denuded. The Nazi Holocaust cast a pall over any claims to ethnic exclusivity, and the idea that only ethnically defined nations could claim self-determination was of little use to colonial peoples in Africa, Asia, and the Pacific, most of whom were ethnically heterogeneous. If such a right was to be of any use after 1945 it had to be reconstituted by placing it on more universalist foundations. Newly independent post-colonial states – such as India, Pakistan, the Philippines, and Lebanon, working closely with key Latin American states – used UN human rights fora to achieve this reconstitution.

There is a long-standing myth, taught to all students of human rights, that the international human rights regime was a Western achievement: a myth that gives pride of place to enlightened liberal powers, especially the United States, and iconic norm entrepreneurs, such as Eleanor Roosevelt. The truth is almost the reverse. The myth holds that African and Asian states favored social and economic rights over civil and political rights. But while this was consistently the Soviet Union's position, key post-colonial states insisted on the primacy of civil and political rights. When debating the Universal Declaration of Human Rights, the Soviet Union tried to subordinate civil and political rights, to which India asserted that it "would never agree to restricting political rights in order

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[26] Mazower 2009.

to realize social aims."[27] The myth also holds that Western states were strongly committed to the universality of human rights. In reality, Australia, Canada, and the United States joined Europe's imperial powers in seeking to limit the application of human rights norms within colonial territories and federal states. Again, it was newly independent post-colonial states who defeated these moves, thus ensuring a universal zone of application. It was these states who put the "human" in human rights.[28]

What we see here is innovation bred of norm indeterminacy. As noted earlier, human rights, as general individual rights, suffer from two forms of indeterminacy, both stemming from the idea of a worthy moral being. The first concerns the scope of such rights: what rights are essential to protect someone's moral personhood? The debate about the relative priority of civil and political rights over social and economic rights reflects this indeterminacy. The second concerns the zone of application of core human rights; a zone the new UN institutional fora enabled post-colonial states to expand.

Post-colonial states redefined and rehabilitated the right to self-determination by grafting it onto the emergent human rights norms they were fashioning. This enabled them to transform a norm previously restricted to ethnically defined nations within Europe to a norm of universal reach. The connection was first made by Afghanistan and Saudi Arabia in 1950 when they moved a motion in the Third Committee of the General Assembly calling on the Human Rights Commission to study "the right of peoples and nations to self-determination." When the Commission failed to do so, post-colonial states called on the General Assembly to compel the Commission to include an article on self-determination in the draft covenants, arguing that "no basic human rights could be ensured unless this right were ensured."[29] The Commission not only went ahead and included the requested articles in both covenants, but asked the General Assembly to pass a resolution encouraging states to uphold the right. Resolution 637(A), adopted in 1952, states explicitly that "the right of peoples and nations to self-determination is a prerequisite for the enjoyment of all fundamental human rights."[30] In his well-publicized attempt to cast human rights as a post-1970s revolution, and to deny that decolonization had anything to do with human rights, Samuel Moyn misinterprets the meaning of "prerequisite" here. While he assumes that it meant normatively primary, to post-colonial states it meant no such

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[27] United Nations 1949: 533.   [28] Reus-Smit 2013: 182–87.
[29] United Nations 1951: 485.   [30] United Nations 1952: preamble.

thing. For them, fundamental human rights could not be secured unless people were self-determining, not that self-determination was a higher value than such rights.[31]

In Seybert's and Katzenstein's schema, protean power is an unintended effect of the innovative practices of knowledgeable actors, in which "micro-level" actions produce "macro" outcomes. In revolutions in rights, such as the one discussed above, this played out in complex ways. First, the model suggests that innovative actors can generate transformative protean power unintentionally. Intentionality is complicated in the rights case, though. Actors innovating with rights who intend to produce transformative protean power, or actors innovating with rights with no such intention, do not exhaust the range of possibilities. Rights are not just tools of innovation, they are constitutive values that when actors embrace them transform their understandings of themselves as moral beings. In doing so, rights may generate new circuits of protean power, manifest in new patterns of agency and identification, irrespective of their innovative mobilization. Second, the rights case is a clear example of how innovation under conditions of radical uncertainty produces transformative protean power. But it is also a case of how protean power defies possession. After 1945, newly independent post-colonial states played a central role in constructing today's international human rights regime, but many of these states are now being criticized on the basis of the very norms they helped to define and codify. Put differently, the radical uncertainty that characterized the post-1945 institutional environment encouraged innovation that had transformative effects. Yet, as Figure 1.1 captures (Seybert and Katzenstein, Chapter 1, p. 13, above), this first wave of uncertainty was displaced by a new wave of uncertainty, one that now confronts post-colonial states as they navigate the international human rights norms they helped to institutionalize, but are now mobilized by NGOs, international organizations, and leading Western states.

Conclusion

Those who wield control power are often the most surprised when revolutions in rights transform the social and political orders they have defended with all their might. How are such transformations possible when they, the order's elite, hold all the material cards, and when their lofty status ought to breed its own legitimacy? The answers lie in the diminishing value of control power to arrest crises of legitimacy, especially

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[31] Reus-Smit 2013: 165–71.

under conditions of radical uncertainty. A distinct pattern characterizes all the rights revolutions that have driven the expansion of the modern international system: those associated with the Westphalian settlement; the collapse of the Spanish Empire; and post-1945 decolonization. In each case, when the legitimacy of the regimes of unequal entitlements that held imperial hierarchy together was challenged by new rights claims, imperial elites sought control through coercion. In short, while objectively the context was one of radical uncertainty, these elites understood it as one of risk, placing them in the upper right-hand quadrant of Figure 1.1 (Chapter 1, p. 13, above). Not only did this further erode imperial legitimacy, it radicalized anti-imperial groups, pushing them from voice to exit. Furthermore, because these groups were animated by ideas of general individual rights, action took place under conditions of radical uncertainty: the scope and zone of the application of such rights is neither fixed nor amenable to control. Add to this the uncertainty that attends institutional complexity, and one has a realm of political action that privileges innovation. Time and again it has been the protean power generated by the innovations of seemingly weak actors that has driven change in the modern international order.

As Seybert and Katzenstein (Chapter 2) note, control power and protean power relate in complex and often contradictory ways. Brigden and Andreas (Chapter 5) show how in the migration case the two were mutually reinforcing. Just as prevailing systems of border control inspired new modes of transgressive improvisation and innovation, these very same modes also led to heightened transit dangers and ever more coercive means of border control. In yet another example of this complex relationship, Ayoub shows how the institutionalization of LGBT rights in the EU created a new form of control power, which then provoked "affirmation" and "refusal" in several Eastern European states, producing a new regime of control over LGBT communities (Chapter 4). This has, in turn, encouraged innovative new strategies of translation to encourage greater local acceptance of LGBT rights. The revolutions in rights discussed in this chapter suggest a third version of this complex relationship, this time working at the level of systems change from one kind of international order to another. The rights revolution that led to post-1945 decolonization replayed a common pattern: in their attempts to shore up the prevailing hybrid system of rule imperial elites relied ever more heavily on control power. Early withdrawal from some colonies was matched by violent repression in others, and the emerging institutions of the UN were used not to recalibrate the legitimacy of empire, but as sites for rearguard resistance against anti-colonialism. This in turn created new opportunities for

early post-colonial states to innovate with emerging human rights norms, enabling them to reconstitute the right to self-determination. Their eventual success, however, replaced one system of rule with another: the hybrid order was replaced by a universal system of states. The architecture of control power thus took a new institutional form and created the structural conditions for the post-1970s politics of human rights; a politics characterized by new manifestations of protean power born of the innovations of transnational advocacy networks.