

The Borders of Human Rights and the Need for Utopian Blueprints Today

Maurice Stierl

2021-08-19T08:00:00

Wolfgang Kaleck's book *The Concrete Utopia of Human Rights* has emerged from within a period of crisis and profound transformation – and could thus not be any timelier. The Covid-19 pandemic has both laid bare and exacerbated global inequalities, societal divisions, and erosions of human rights. The sentiment and slogan 'we are all in this together' so hopefully pronounced in the early phases of the health crisis, have faded in light of the 'realpolitik' of vaccine nationalism, resistance to patent waivers, hardening borders, and what [António Guterres](#), secretary-general of the United Nations, calls "a pandemic of human rights abuses".

Stuck in Berlin during the pandemic, Kaleck invites the reader to follow his "dialectical monologue" on justice and its absence, drawing from encounters with human rights defenders around the world and from decades of practical experience as a former criminal lawyer and the co-founder of the European Center for Constitutional and Human Rights. The issues and challenges he outlines are immense: Virulent racism, oppression of minorities, emboldened authoritarians, mass surveillance, rampant neo-liberal capitalism, and the climate crisis. One can sense his despair that in view of these systemic, complex, and often inter-related challenges, "simplistic recipes", such as "the myths of re-nationalisation and border closures, or beliefs in the authoritarian state" have gained wide-spread currency in societies around the globe.

Retrotopia vs. Concrete Utopia

Given the sheer number and scale of global problems, Kaleck observes that the present condition "may appear dystopian" and that it has become a fertile ground for the rise to "retropias" which, according to [Zygmunt Bauman](#), are "visions located in the lost/stolen/abandoned but undead past". Kaleck warns passionately against retrotopic revivals, the now so prevalent nostalgic longing for an idealised past, and instead fills the pages of this important book with hope and an unwavering belief that the future is not predetermined but still 'up for grabs'. Quoting James Baldwin, his mantra is: "Not everything that is faced can be changed, but nothing can be changed until it is faced".

Facing up to contemporary problems and responding to them in creative, courageous, and collective ways means also daring to believe in the possibility of alternative futures. Drawing from the work of the philosopher Ernst Bloch, Kaleck develops the idea of a "concrete utopia", a vision that is more than abstract speculation about an ideal world to come. Instead, it emerges from present-day struggles and a consciousness of "unimaginable histories" – historic moments where previously unthinkable, unexpected, or improbable progress toward justice was made. For Kaleck, the French revolution and its human rights declaration of

1789 or the Haitian revolution of 1791 exemplify such historic ruptures that made the unimaginable possible.

Ambivalence of the Law

Of course, as a legal practitioner and scholar, Kaleck focuses on the role of the law and the potential of human rights. The law itself, he suggests, is nothing neutral but an ambivalent instrument that may protect from violence and abuse but can also allow for their exercise, able to cement forms of discrimination and oppression. Human rights themselves have regularly become wrapped up in Western sentiments of superiority, instrumentalised by hegemonic powers, or been turned into empty promises and signifiers. Moreover, as Kaleck notes, many of the international organisations that speak in the name of human rights have tended to produce and reinforce victim/saviour narratives, have focussed their energies on gaining a monopoly on human rights by outshining 'competitors', have catered to questionable donors, reduced political complexities, and ignored the structural and systematic underpinnings of inequality and injustice.

Nevertheless, Kaleck endeavours to highlight the transformative potential of human rights and points to Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights." Declared on 10 December 1948, not long after the end of the Second World War, this Article describes a condition desired for all human beings and thereby opens up a future-oriented horizon. In this way, it formulates a utopia that is often brutally obstructed, but which is built toward by the myriad struggles of human rights campaigners and defenders. Kaleck views the potential of the law and human rights beyond the 'success' or 'failure' of legal campaigns. Though noting the significance of specific legal achievements, including those that lead to the arrest of Pinochet in the UK or the 'Trial of the Juntas' in Argentina, he emphasises the importance of political mobilisations outside the court room that engender, even in instances of legal defeat, the concrete utopia of human rights.

Great social transformations and revolutionary changes have never simply emerged from the drawing board, or the court room, but through both everyday struggles and radical imagination. Kaleck is aware of that and seeks to dispel a rather naïve belief in the righteousness of the law itself, which he regards to be predominant in Europe and the western world, and instead points to social movements from the Global South that understand political and social human rights to be indivisible. His conception of the law and practices of strategic litigation as means to strive toward the higher-order goals of ending structural inequality is reminiscent of the concept of "subaltern cosmopolitan legality" that [Boaventura de Sousa Santos and César A. Rodríguez-Garavito](#) have advanced to describe legal strategies of resistance used by the most marginalised.

Borders of Human Rights

Kaleck's reflections on the role of human rights are relevant also for the struggle field of migration and borders in the Mediterranean context, where I tend to spend [my time and energy](#). Here one can clearly observe that the law, as Foucault

notes, “is neither the truth of power nor its alibi. It is an instrument of power which is at once complex and partial.” This instrument has been wielded by states to criminalise migrants and those in solidarity with them, to justify non-assistance, and to reject state responsibility for mass drownings. Migrants are routinely turned into criminals today, persecuted as ‘smugglers’ simply for steering a boat or calling out for help via a phone, and sentenced to decades in European prisons. Even the refusal to be ‘refouled’ to places such as Libya and its horrendous camps, can lead to charges of ‘terrorism’ – which is what three African teenagers, the ‘[ElHiblu3](#)’, currently face before a Maltese court. ‘Lawfare’ has been experienced also by solidarity activists and humanitarians who have conducted mass rescue operations in the Mediterranean Sea. Daring to counteract Europe’s deadly deterrence policies, they have encountered an onslaught of cynical legal charges that intend to drain their resources and energies, foster divisions within activist communities, and whip up public hostility.

Conscious of the ways in which the law has been systematically used and abused to curtail precarious migration, to criminalise people on the move and supporters, and to undermine the very “right to have rights”, people on the move and migrant rights defenders have nonetheless continued to see strategic litigation as part of their repertoire of resistance. Even if the legal success in prosecuting those responsible for acts of border violence, abuse, and abandonment has been rather limited, a growing coalition of migrants, activists, humanitarians, researchers, journalists, and lawyers has been increasingly able to expose dramatic violations of human rights. By shrinking spaces of state impunity, Europe’s external borders have been opened up for scrutiny. In consequence, actors directly implicated in human rights violations, including national coastguards and the EU border agency Frontex, have come under intense public pressure.

Kaleck points to some of these struggles, importantly suggesting that forms of precarious migration should themselves be understood as acts of resistance. During 2015’s long summer of migration, he notes, hundreds of thousands “created facts” through their unauthorised movements across borders – borders that form part and parcel of systems of global injustice. With the artist [John Akomfrah](#), we can conceive those on the move as “rebels” who say “no to somewhere” and who, in doing so, express an “utopian yearning”. Through their crossing and subversion of violent borders, the mass migrations of 2015 made the unimaginable possible: the collapse of one of the most militarised systems of population control in the world.

Over the last years, and particularly over the past 18 months, the likelihood of witnessing such mass subversions of borders again has decreased. Indeed, responses to the Covid pandemic threaten to ‘borderise’ our world further. In the name of fighting the virus, states around the world, but in particular in the Global North, have dramatically escalated deterrence measures. Human rights violations along Europe’s external borders have become daily occurrences and attempts to prevent and scandalise them are met with increasing brutality. Clearly, the climate for human rights defenders has worsened during the pandemic. For [Judith Butler](#), people gathering on the streets in demonstrations, strikes, occupations, and assemblies embody demands for dignified and liveable conditions. During a time,

where standing closely together has become a health risk, human rights defenders have struggled to organise and mobilise, not least as they have faced authorities that have instrumentalised the pandemic to subdue critique and protest.

Blueprints for Freedom

In times like these, we need creative ideas and new impulses. There simply is no time for resignation or apathy. We need concrete utopias, or “utopian blueprints”, a notion proposed by [Alexander Weheliye](#) who asks whether we can detect moments of freedom within histories of colonial suffering, wondering “whether there exists freedom (not necessarily as a commonsensically positive category, but as a way to think what it makes possible) in this pain [...], and if said freedom might lead to other forms of emancipation, which can be imagined but not (yet) described.” In his book, Kaleck provides the reader with some speculative blueprints and much needed hope. Daring to imagine better futures, he points back to unimaginable histories whose legacies inform struggles for justice today.

