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Kathryn McNeilly, *Human Rights and Radical Social Transformation: Futurity, Alterity, Power* (Routledge, 2018), ISBN 9781138690219, 166 pages.

Costas Douzinas once wrote that

[h]uman rights are the negative principle at the heart of the social imaginary. The end of human rights, like that of natural law, is the promise of the "not yet," of the indeterminacy of existential self-creation against the fear of uncertainty and the inauthentic certainties of the present. When the apologists of pragmatism pronounce the end of ideology, of history or utopia, they do not mark the triumph of human rights; on the contrary, they bring human rights to an end. The end of human rights comes when they lose their utopian end.¹

Kathryn McNeilly's book, *Human Rights and Radical Social Transformation: Futurity, Alterity, Power*,² offers extended reflection upon the "not yet" of human rights and its promise for radical politics—a promise, which like the utopian end explored by Douzinas, is a restless, impossible principle of hope.³ McNeilly constructs an account of human rights emphasizing the persistence and significance of their not yet—a performative, agonistic leaning-forwardness—in which human rights are to be understood as a ceaseless grappling with the political, expressed through ineradicable tensions between power, vulnerability and alterity.

In making her argument, McNeilly draws upon established critical engagements with the multiple paradoxes of human rights. She is fully aware that human rights ascendancy is marked by their extensive violation, by ambivalent dynamics between their emancipatory impulses and their dark complicities with hegemonic power. McNeilly understands, therefore, the skepticism of activists and thinkers concerning human rights. Her central question is animated by a deep recognition of human rights failures in full cognizance of their uneasy role in relation to contemporary crises—including the contemporary crisis of human rights legitimacy: Can human

rights, despite all this, "offer possibilities for contemporary radical politics?" This is a question that can only be answered adequately by examining the "relationship between human rights and radical social transformation" under present configurations of power.⁴ McNeilly's book reaches out to battle weary activists and thinkers to make the case that human rights *can* be a vehicle for radical politics in confrontation with the hegemony of contemporary power:

I advance that an alternative conception of rights compatible with the promotion of different regimes of class, gendered, racial, ablest and heteronormative power and meaningful social equality is made possible through the concept of "human rights to come."⁵

Human rights to come, then, is in essence McNeilly's account of the not yet of human rights. She offers an extended engagement with the "futurity" that Douzinas sees human rights "inscribe [into] law"⁶ by focusing her attention on the inherent futurity of human rights themselves. There *is* a way, McNeilly insists, for human rights to offer hope of renewed critical engagement and to recover the vital energies of their inherently political nature. Indeed, it is the very "depoliticization" (following Ranciere)⁷ of rights as a result of their widespread codification and positivization, converging with radical politics having "[run] out of tools to meaningfully challenge hegemonic regimes of power,"⁸ that opens out the promise and urgency of human rights to come. The power of human rights as a language of claim, combined with reclamation of their political nature and the responsiveness of human rights to crisis, suggests that a futural conception of human rights can reinvigorate the power of the political for contemporary politics.⁹

McNeilly develops her thesis by beginning with the idea, well established in critical human rights thinking, that human rights always contain a movement of (re)articulation, that their meanings remain persistently open (Chapter 2). This dynamic of permanent excess means that human rights are always "*inherently* 'to come,' and . . . strive towards a futural conception of

living and being that is free from alterity."¹⁰

McNeilly posits an interlocking set of four theoretical aspects of human rights to come: performativity (Chapter 3), universality as universalization (Chapter 4), agonistic pluralism (Chapter 5) and the paradoxical vulnerable subject (Chapter 6). She then unfolds "translation" as a core mode of practice for human rights to come (Chapter 7) before applying her analysis to a reconsideration of feminist approaches to human rights (Chapter 8). Finally, she offers a "non-conclusion," emphasizing that the conception of human rights to come is but the beginning of a conversation (Chapter 9).

The first of McNeilly's theoretical aspects emphasizes a performative "(re)doing" of rights (Chapter 3) as "a dynamic and generative *doing* that works to bring the content of rights, and the subjects who claim them, into being."¹¹ This means that human rights are to be understood not as juridical objects,¹² but as a politico-legal activity. McNeilly argues that human rights must be understood not only as performative, but as "a performative doing *in futurity*"¹³—human rights must be understood as ceaselessly open carriers of the not yet that *never arrives*—and equally, as an unending critical performative activity.

The second theoretical aspect involves the reconceptualization of universality as "universalization"—which is the universality distinctive to human rights to come (Chapter 4). This focus on universalization as process is necessary, of course, if McNeilly is to remain theoretically consistent with her emphasis on the futural performativity of human rights. Universality, like human rights themselves, is thus always not yet. Here, again, McNeilly returns to alterity—arguing that "human rights to come encourages an understanding of universality as an ongoing process of universalisation which aims to rid the universal of alterity."¹⁴ This, then, is the universalizing dynamic of human rights as a tool for radical critique and politics, exposing

and freeing human rights from the alterity erected by settled notions of their content and subject.

Next, McNeilly argues that human rights to come turn away from the predominant presentation of human rights progress as consensus building, and towards rights as "characterised by conflict," (Chapter 5), arguing that

[i]t is only when conflict and its ineradicable place in the politics of human rights is embraced that the radical possibilities of human rights can be pursued in terms of sustaining a futural conception of rights which is never settled, never fully within grasp and thus facilitates ongoing critical engagements with power.¹⁵

To explore and defend this move, McNeilly turns to agonistic pluralism and, in particular, to Chantal Mouffe. Mouffe's agonism, McNeilly explains, turns upon the idea that every identity is the "determination of an 'other' that is going to play the role of a 'constitutive outside'."¹⁶ The "we/they" relationalities thus constructed exist as "legitimate adversaries" within a commonality of commitment to the pluralistic, democratic space within which their conflict takes place—and "the task of democracy is to transform antagonism into agonism."¹⁷ McNeilly argues that not only is Mouffe's agonism useful for conceptualizing human rights to come, but that human rights to come supplements Mouffe's work by providing a rights-based component of agonistic democratic relations.¹⁸ Foregrounding "conflict" as central to rights and enabling participants to engage in the politics of human rights as "adversaries conflicting on what human rights mean and how current concepts relate to relations of power"¹⁹ is key to the transformation of human rights for a wider radical politics.

It is at this point that an important ambiguity emerges in McNeilly's thesis. At a couple of points earlier in her book, some readers might have been led by her wording to think that McNeilly believes in the possibility of freedom from alterity. The centrality of futurity, performativity and agonism to McNeilly's account strongly suggests otherwise: McNeilly's

freedom from alterity is futural—part of the not yet—akin to the impossible but necessary utopianism of human rights delineated by Douzinas. There is, however, a genuine ambiguity concerning alterity arising from the reliance placed upon Mouffe's agonistic pluralism.

Mouffe argues that "an adversary is an enemy, but a legitimate enemy, one with whom we have some common ground because we have a shared adhesion to the ethico-political principles of liberal democracy: liberty and equality."²⁰ McNeilly endorses this position, arguing that human rights to come would transfer this legitimate adversarialism to ongoing disputes concerning human rights meanings.²¹ Yet Mouffe's legitimate adversary—transposed into human rights—seems to operate, on the face of it, *against* the radical ambit of freedom from alterity by erecting a limit beyond which human rights politics will not recognize a human being as a legitimate adversary. If so, human rights to come are rendered a potentially less radical response to the alterity of human beings *per se*, narrowing the ambit of a futural politics of rights to include only those with either shared or alternative conceptions of rights, rather than those rejecting rights entirely. If this were to be the case, human rights to come would exhibit a core paradox similar to that expressed by international human rights law's unsettling gap between "the citizen" and the human being "as such."²²

McNeilly never addresses the possibility that reliance on Mouffe might suggest limits of a human rights *agon* confined to those who share a framework for conflicts concerning human rights and their disputed meanings. This ambiguity is important, however, because if McNeilly imports Mouffe in this way, the impetus towards freedom from alterity in human rights to come may not be so much a *human rights* aspiration as a *democratic rights* aspiration.

In Chapter 6, McNeilly considers the ontology of human rights by exploring the paradoxical relationship between sovereignty and vulnerability in the human rights subject. She

suggests that this relationship provides her with two opportunities: first, to deploy the vulnerability of the "paradoxical subject . . . as a *source of critical engagement with alterity and power* in the politics of human rights,"²³ and second, to foreground vulnerability as "a *source for resistant action*."²⁴ McNeilly's account is energized here by the important critical claim that not all people experience universal vulnerability in the same way—a claim producing "an attention to marginalization and suffering . . . and challeng[ing] . . . how power operates to lead to differential experiences of vulnerability."²⁵

There is a radically universalizing potentiality in vulnerability as a critical tool—one with the potential—I think—to reach past the ambiguity of human rights to come as a form of agonistic democratic construct. This potential is present in McNeilly's argument that human rights to come draw attention to "the particular conditions of vulnerability that various subjects face, foregrounding this particularity within the context of a critical relation to alterity and power."²⁶ However, the ambiguity persists, because McNeilly seems—again—to locate human rights to come within a distinctively democratic agonistic pluralism: human rights activism should take the form of "opening to the other . . . acknowledging the demands of the other made upon the self through democratic processes which also may open possibilities for enhanced pain or suffering."²⁷ What then, of the *practice* of human rights to come?

In Chapter 7, McNeilly turns to this important question. She again foregrounds the iterative performativity of human rights, locating human rights activism and practice in the idea of "translation" as "an activity that is fundamentally *disruptive* of the dominant and *futural* in nature, foregrounding a critical relation to alterity and power."²⁸ McNeilly emphasizes the importance of shifting the practice of rights translation towards the overtly critical—and towards engagement in important (postcolonial) questions of power and resistance of dominant regimes

and conceptions.²⁹ The "to come" of human rights is central to human rights as translational practice—and McNeilly re-emphasizes human rights to come as an agonistic process "whereby all share a commitment to the values that human rights represent, but promote translational contest over the specific form these values take in particular locations and contexts based on a critical relation to alterity."³⁰

McNeilly also argues that Butler's cultural translation³¹ (which she draws upon) "visibilises the alterity within the dominant [universal as] norm and thereby 'exposes the failure of the norm to effect the universal reach for which it stands.'"³² Perhaps here, in the universalizing futural horizon of a visualized alterity, the radicalism of human rights to come as praxis might press beyond the limits of the *agon*. This possibility is present in the fact that human rights translations are never final; conceptions of the universal can never be allowed triumphant rest. In this sense, translation insists that, as Douzinas puts it, the justice of human rights "will always lie in an open future"—expressing "the energy of freedom in the service of our ethical responsibility for the other."³³ The radicalism of translation is further emphasized by McNeilly's deployment of postcolonial critique. When she argues that the role of translators should be seen as resisting the "idea that the practice of human rights [is] ever . . . closed or finished," McNeilly comes close to touching upon the materio-semiotic energies of human rights that always overflow—overflow the limits of democracy; overflow definitions of polity, nation and even existing designations of humanity itself—to reach out and touch, with outraged compassion, the suffering of human beings *as such*.

In Chapter 8, McNeilly turns to a re-reading of feminist engagements with rights through the lens of human rights to come. She draws together the various theoretical aspects of her work to offer a "right to gender flourishing" as a concept addressing the limitations of feminist human

rights work, while pointing towards future feminist engagements with human rights to come.³⁴

Finally, in Chapter 9, McNeilly offers her "non-conclusion": the relationship between human rights to come and the potential for radical social transformation is always driven by the energies of the not yet. It is this not yet, the dynamism of which moves within and between the four main theoretical aspects of human rights to come and which is operationalized through translation, that holds out the hope of re-approaching human rights in the service of radical politics, to "advance the claims of those on the margins and critique, as opposed to reify, restrictive regimes of power."³⁵

The non-conclusion of human rights to come, McNeilly argues, sustains rich possibilities for thinkers and activists. First, such non-conclusory human rights make explicit, and maintain, the need for ongoing resistance, critique and future-facing work. In addition, a non-conclusory human rights facilitates reflexivity—human rights to come are always "viewed as contingent and responsive."³⁶ Third, this non-conclusiveness can move human rights and their politics "away from the structures and thinkabilities of law"—auguring a human rights politics "opened up to unpredictable new possibilities . . . [exceeding] their current order and articulation within law and legal structures."³⁷

There are also, however, challenges arising from this very same non-conclusion—not least that the futural nature of human rights to come can appear exhausting, involves uncertainty and risk,³⁸ and "the agonistic contest which characterizes rights politics is an uncontrollable process . . . [reflecting] the wider uncontrollable nature of democracy itself."³⁹ The risks, though, are unavoidable if the challenging political work of human rights to come is to be done.

Finally, McNeilly assures us that her work is also just a beginning, just as the "non-conclusion of human rights to come must be grasped as not an ending, but just another

beginning."⁴⁰ Questions remain. There is much ground to be explored.⁴¹ This ground, I suggest, includes the haunting relationship between democracy and human rights that is never entirely resolved in this invigorating book.

Taken together, McNeilly's fourfold theoretical aspects combined with the practice of translation point towards a stimulating framework for future human rights thinking and engagement. The productive ambiguity concerning the relationship between human rights and democracy—and the inherently unpredictable power of non-conclusory human rights to come *to move beyond*—point to a rich seam of future theorization. At points, the reader may find that the argument moves a little too rapidly—there are moments where a more detailed exploration of how human rights to come move beyond existing critical work would be welcome, but as McNeilly herself points out, her book is an opening contribution in an ongoing and important theoretical conversation. McNeilly's thoughtful, imaginative, well-informed portrayal of the endless, restless processes of iteration at the heart of human rights and the contestable performativities that jostle for concretization beneath the surface of human rights as usual is more than welcome. This book carves out a thought provoking space in which the futurity of human rights might inform a renewing rights politics.

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Endnotes

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¹ COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS* 380 (2000).

² KATHRYN MCNEILLY, *HUMAN RIGHTS AND RADICAL SOCIAL TRANSFORMATION: FUTURITY, ALTERITY, POWER* (2018).

³ Douzinas is explicit concerning utopianism as a principle, rather than an outcome:

Human rights can never triumph; they can suffer and even be temporarily destroyed. But their victory and their justice will always lie in an open future and in a fleeting, but pressing present. It is in this sense, that human rights are our utopian principle: a negative principle which places the energy of freedom in the service of our ethical responsibility for the other.

DOUZINAS, *supra* note 1, at 369.

⁴ MCNEILLY, *supra* note 2, at 2.

⁵ *Id.* at 4.

⁶ DOUZINAS, *supra* note 1, at 369.

⁷ MCNEILLY, *supra* note 2, at 5 (*citing* Jacques Ranciere, *Who Is the Subject of the Rights of Man?* 103 *SOUTH ATLANTIC Q.* 297, 307).

⁸ *Id.*

⁹ *Id.* at 4-7.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 34.

¹² *Id.* at 35-39.

¹³ *Id.* at 34, 39-51.

¹⁴ *Id.* at 55.

¹⁵ *Id.* at 76.

¹⁶ *Id.* at 83 (*citing* CHANTAL MOUFFE, *THE RETURN OF THE POLITICAL* 2 (2005)).

¹⁷ *Id.* (*citing* CHANTAL MOUFFE, *ON THE POLITICAL* 20 (2005)).

¹⁸ *Id.* at 88.

¹⁹ *Id.* at 91.

²⁰ Chantal Mouffe, *Deliberative Democracy or Agonistic Pluralism* 1, 15 (IHS Political Science Series, Working Paper No. 72, 2000), *available at* https://www.ihs.ac.at/publications/pol/pw_72.pdf.

²¹ MCNEILLY, *supra* note 2, at 84.

It is only through meaningful engagement with alternative conceptions of rights articulated by others and responding to the limits of such within a shared framework of rights politics that the work of human rights to come can proceed. Participants in this process must not be understood as enemies seeking to destroy one another, but as legitimate adversaries who must tolerate each other and enter into conflictual engagement on this basis in the politics of rights. By encouraging participants to see one another in this way, human rights to come is capable of constructing a *we/they* in the politics of rights that is compatible with democratic pluralism in Mouffe's sense.

²² A point famously made by Hannah Arendt: Human rights is

based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in [them] were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human.

HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 299 (1973).

²³ MCNEILLY, *supra* note 2, at 96.

²⁴ *Id.* at 97.

²⁵ *Id.* at 104. McNeilly argues that it is "only through her vulnerability that the subject can act resistantly, and do so in a radical politics of human rights to come." *Id.* at 97.

²⁶ *Id.* at 105.

²⁷ *Id.*

²⁸ *Id.* at 117.

²⁹ *Id.* at 119-20.

³⁰ *Id.* at 124.

³¹ McNeilly draws at this point of her discussion on a combination of references to: Judith Butler, *Universality in Culture*, in FOR LOVE OF COUNTRY? IN A NEW DEMOCRACY FORUM ON THE LIMITS OF PATRIOTISM 45 (Martha C. Nussbaum & Jonathan Cohen ed., 1996); JUDITH BUTLER, UNDOING GENDER (2004); JUDITH BUTLER, ERNESTO LACLAU, & SLAVOJ ŽIŽEK, CONTINGENCY, HEGEMONY, UNIVERSALITY: CONTEMPORARY DIALOGUES ON THE LEFT (2000).

³² MCNEILLY, *supra* note 2, at 124.

³³ DOUZINAS, *supra* note 1, at 369.

³⁴ MCNEILLY, *supra* note 2, at 135-36.

³⁵ *Id.* at 157.

³⁶ *Id.* at 158.

³⁷ *Id.* at 159.

³⁸ *Id.* at 160.

³⁹ *Id.*

⁴⁰ *Id.* at 162.

⁴¹ *Id.* at 161.