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## Jaw-jaw, war and law

### Blog entry

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## **Jaw-jaw, War and Law**

For forum on Reconstructing Human Rights

Disorder of Things

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<https://thedisorderofthings.com/2016/09/13/jaw-jaw-war-and-law/>

*Reconstructing Human Rights* is a remarkable book. It sets out, in a most compelling way, grounds to support human rights as an ethos – a way to approach politics that has the potential to be genuinely emancipatory. The book does so not from the widely (and rightly) disparaged universalist wing of political theory, but from a critical perspective. This is where the argument is most original and most impressive. There are plenty of us who are critical of many human rights practices, but supportive of the use of human rights language and law in some instances – or at least despairing of an alternative. Hoover provides, in a beautifully staged argument, a reconstruction of rights that weaves together strands from the work of theorists such as Dewey, Connolly and Honig (as well as drawing on Benhabib, Walzer, Habermas and others). Like many theorists, Hoover has a razor-sharp ability to recognise and expose flaws in arguments. More unusually, he treats the work he is responding to with humility and respect, and is thus able to draw his critiques into a constructive treatise. Engaging with the book was as rewarding as it was intellectually demanding, and the humanity with which Hoover thinks through his subject is testament to the potential of his approach.

So, I agree. He's right. There is virtually nothing of substance in the book that I would take issue with. This realisation left me in something of a bind when it came to writing this post. But it also, after some time reflecting on the implications of the book, left me with a familiar discomfort about the relationship between philosophy and action. Rather than discussing the book's argument, therefore, I want instead to think about the tensions that become apparent in campaigning for political change using the tool of human rights, in one form or another, if approached from Hoover's position.

### **Means and ends**

Hoover sets out a radical vision, calling for an ethics with 'a commitment to democratic inclusiveness. This commitment presumes that each person (or group) should have, at the very least, the space to articulate his claims upon

the social order' (p163). This is stated as a minimal requirement, consistent with the book's deep pluralism that allows for many ways to be human. However, this commitment to democratic inclusiveness would require, if it is to be meaningful, radical change. To be able to articulate claims within a political order, each person would need to be afforded, at the very least, reasonable welfare (including freedom from the politically disabling aspects of war), some decent standard of education, guarantees of free speech and expression, and the freedom to participate in public political life without fear of persecution.

But, as Hoover would have no problem acknowledging, the world is a long way from his ideal of democratic inclusiveness. Many millions of people face deep [poverty](#), violent [conflict](#), and [racism](#) and [misogyny](#) from state and non-state institutions that make their most basic participation in political processes either dangerous or impossible. Even in states insulated from the worst forms of threat to human flourishing, democratic deficits have led to [alienation](#), [riots](#) and the political empowerment of [petty demagogues](#). So, there is much work to be done if Hoover's vision is to be achieved.

I greatly admire the ambition of Reconstructing Human Rights, but am troubled by a sense that the premises of Hoover's argument rule out the means necessary to achieve it. Towards the end of the book (pp. 210-11), Hoover anticipates – and rejects – such an objection: that his argument weakens human rights by pulling the universalist rug out from under them. His line of reasoning is that there is a significant difference between undermining existing ethical principles and acknowledging the lack of universally binding principles. This is an important distinction, and I agree that there are no good reasons to think that we can establish ethics on anything other than shifting sands. But where we differ, I suspect, is what this acknowledgment leads us to conclude in terms of the justification of action to support necessarily contingent ethics. My argument is as follows:

- 1) radical change requires action beyond words, in particular in the form of coercion of one form or another but ...
- 2) the only acceptable form of practice of a human rights ethos if we follow Hoover's argument is non-coercive unless ...
- 3) we accept some form of contingent ethical fixity in terms of belief, consensus or law.

## **Fighting for rights**

The main tenor of Hoover's argument against a liberal human rights regime is that human rights, in liberalism, can be complicit in violence: 'I want to try to reveal rather than obscure the ways that liberal cultures of human rights are complicit in violence and oppression, noting that the good will expressed in such sentiments is compatible in many instances with hierarchy, exploitation, and harm' (p10). However, coercion in various forms, including violence, has played a critical role in the embedding of rights into political systems, including the international system. The [revolutions](#) that established rights within polities in the past were violent – lethally so. As were most processes of [decolonization](#), the ongoing [civil rights movement in the US](#) and the many battles (metaphorical and actual) over gender equality – including the [supposedly peace-loving suffragettes](#). I'm not making an argument here about the necessity of a Terror, or the cathartic qualities of violence, particularly for those who have been colonized or oppressed. Nor do I think Hoover needs to have a position on this. But he does need to acknowledge, I think, that the position he sets out mitigates against anything more than persuasion in order to pursue his vision. Yet the history of rights (along with everything else I suspect we would agree to be 'progressive') shows that it often takes some combination of coercion, threats, intimidation, disruption and violence (to property, to institutions, to oneself and to others) to change the status quo. Change is almost always resisted, particularly when that change involves the restriction of the freedoms of the powerful, and it is not therefore surprising that it requires more than rhetorical skill to bring it about. Coercive political action, i.e. action such as strikes, boycotts, riots, destruction of property and seizure/ occupation of land which disrupts the lives of others or makes them feel uncomfortable or threatened in significant ways, is a critical part of the human rights armory. But it is ethically far harder to justify than non-coercive action, due to its capacity to cause harm.

This is more than just an empirical issue – though the empirics matter, and I'm happy to be corrected if the historical record shows non-coercive action in support of rights to be effective (not necessarily *more* effective than coercive action, given the drawbacks of coercion). Relevant evidence would need, however, to differentiate between coercive and non-coercive action rather than [violent and non-violent](#), as Hoover's position makes any kind of coercion impossible to justify.

Perhaps as important as the empirical question is a conceptual point about what is *fair* to require of citizens within democracies. Juliet Hooker's [recent work](#) on the Black Lives Matter movement, and black activism around civil rights in the US more broadly, posits an interesting challenge to Hoover's

argument here. She contends that the ways in which black activism is policed into forms of legitimate and illegitimate politics (broadly mapping onto non-coercive and coercive action) open to black activists is in itself a form of injustice. In a functioning democracy, all groups must occasionally bear the costs of the system – no one will have their interests prioritized all of the time. However, Hooker notes that people of colour in the US bear the costs of the system *almost always*. The state does little to protect their interests, and state organs are a direct threat to black lives. It is, therefore, unjust to require that black activism observes democratic norms of non-coercive action. At the same time, Hooker argues that scholars and activists have misread evidence about the efficacy of peaceful acquiescence by subordinated groups. She shows that non-coercive action has little effect on the ethics of dominant groups. Victories that have been won by the civil rights movement, on this account, have only been won because they have been fought for through disruption, disorder and sometimes force.

And it isn't just the establishment of rights that might require coercion. The *protection* of human rights as they are currently conceived also requires more than talk. I used 'war' in the blog title largely because it rhymes. But, more substantively, coercive and even military action on behalf of the state might be necessary to [protect particular groups](#) and to [prosecute those who do not uphold human rights](#). [Coercive pressure from non-state actors](#) may be most effective in holding entities such as multinationals to account for their ethical and political responsibilities towards their stakeholders. And, in extremis, military action might be needed if the most basic rights of those caught up involuntarily in conflict are to be protected, assuming (and it's a big assumption) that such action does not cause a more egregious breach of rights, or more substantial harm, than it prevents. I won't say more about this here, although suspect that something should be said about the agents involved and whether coercive action is more justifiable when used either by a legitimate democratic state and/ or by the relatively powerless/ rights-less.

The argument above suggests that the bounds of civilized dissent probably need to be breached if we are to get from where we are now to a world in which the realization of Hoover's radical vision is underway. If it is the case that coercive action is required, then can a justification for its use be found that is consistent with Hoover's philosophy? I suspect not. Attempts to persuade others of our views can certainly be justified, as can, I think, information campaigns and, probably, peaceful protests and relatively innocuous civil disobedience (depending on the extent to which they respect alternative ways of being human and are designed to be as unthreatening as

possible to those who are affected by them). However, as the ways of fighting for rights (or any form of ethical or political goods) become more disruptive to the lives of others, they get less and less justifiable from a position that takes seriously its own contingency and claims to respect the ways others live and the values they express. Hoover seems to recognize this within the text, e.g. 'such an ethos respects deep pluralism by seeking modes of contestation that enable coexistence and encourage inclusion in setting the terms of social order, rather than allowing contestation to degenerate into violence and exclusion' (211). He also commends Connolly's 'militant pluralism' in its approach – reaching out to others, engaging them and seeking to understand their views and exposing the tactics and assumptions of extremists (161). Yet he, like Connolly, has little to say about the 'more stringent actions' (Connolly, quoted in Hoover at p162 fn75) that might be required when 'the issue is on the line' (ibid).

This is not to say that Hoover doesn't support the use of some forms of coercion to in pursuit of some specific ethical goals – see, for instance, his descriptions of coercive actions, such as occupation, taken by the housing movement (202-3). He also commends Connolly and Dewey for recognizing 'the necessity of force and coercion in politics' (162). And I suspect that Hoover would support the premises and conclusion of Hooker's argument discussed above, including the importance and justifiability of coercive action in the civil rights movement. My reading of his argument, however, suggests that such support is problematic and quite possibly unjustifiable within the terms set out in the book.

### **The radical potential of the law**

So how is it possible, philosophically, to respect the ways of being human lived by others and to recognize the contingency of your own views, but also to engage in coercive action in favour of some particular rights/ values/ principles that you happen to, contingently but powerfully, support? By basing action on belief, consensus or law – although only the last, I argue below, is able to justify the use of coercion as a tool of ethics.

The least justifiable bases for coercive action are appeals to belief and to consensus. Many fights for human rights have been founded on deep personal beliefs about particular issues: on the dominium that people should enjoy over their own bodies, on the fundamental equality of humans irrespective of sex, race, religion etc. I feel very comfortable with these fights, and am willing to tolerate a great deal of coercive force to be applied to promote or uphold

these values. But that's because I share the personal beliefs in question. If the use of coercion can be founded on strength of belief alone, with no reference to the source or form of the particular beliefs, then we would need, if we are to remain consistent in our human rights politics, to uphold the rights of those who hold deep personal beliefs that we find to be abhorrent to undertake the same kinds of coercive actions. But few would view coercive acts to extend gun control laws in the same way as coercive acts to limit them. Or to challenge racist police practices versus to uphold them. And looking for partners in our beliefs doesn't help us much here (at least if the 'us' is a group broadly on the political left). Simple consensus, however powerful or widespread, cannot philosophically justify the use of coercive force. History shows us that a vile and ignominious variety of views (in terms of my way of being human) about, for instance women, people of colour and immigrants, have enjoyed and still enjoy widespread consensus. And indeed Hoover carefully and explicitly rejects consensus as grounding ethics within the book (and in the introduction to this forum). But Hoover does make a more subtle appeal to consensus, through use of a particular vocabulary of 'progressive' and 'regressive', which gestures at positions around which his readers are likely to agree. In various places, Hoover refers to 'progressive' ends, visions and politics. These contrast, in the text, with that which is 'regressive', 'exclusionary' and 'violent'. Progressive is used here as an acclamation – being progressive is a good thing, and to be aimed at. Being regressive, by contrast, is bad, and being violent (as noted above) is worse. But the experience of the British public in the political campaign around [Brexit](#), where each side tended to campaign passionately within its own echo chamber, shows us that the views of what counts as progressive or regressive are not widely shared. And even if they were, consensus alone cannot act as sufficient grounds for coercive political action – it has [no ethical value in and of itself](#).

There is another way of generating a kind of contingent fixity to justify the coercive action that has arguably been necessary to win human rights victories in the past: converting ethical and political positions into law. Hoover does not have much time for human rights law, noting that '[t]he centralization of human rights as law and rhetoric is inherently problematic as it cedes what rhetorical and political power human rights may have to established authorities, to heads of state and international institutions (135). But law has significant advantages over belief and consensus – at its best it is public, specific, authoritative and legitimate. It is also efficient. Political action for a thorough-going Hooverite would, frankly, be exhausting. Endless participation in temporary assemblages would make only temporary gains, and any gains



made would have to be endlessly protected. Law offers a way to institutionalize change – to [utilize state power for ‘progressive’ ends](#). It also provides a foundation from which to justify coercive (even illegal) action to [support the application of existing law](#), or to [bring about legal change](#). Law is not, of course, an inherently ‘progressive’ tool and is capable of being used for good or ill. But Hoover focuses almost exclusively on the limits of law and the paradox of institutionalization (179), even while acknowledging that many of the social movements he engages spend significant amounts of their time campaigning for changes in law or for existing law to be properly administered and upheld (180). Law is Janus-faced in this context – it both regulates the use of coercion in societies but also provides the only decent justification for coercive (often illegal) action to bring about political change, once the contingency of ethics has been acknowledged.

We are left, at the end of *Reconstructing Human Rights*, with an inspiring vision: ‘to fight, free of our national belongings, our partial memberships in communities of privilege and exclusion; ... to see every human face as the face of a compatriot, of a subject of care, of an equal’ (218). But in demonstrating and celebrating the variety of ways in which human rights have been interpreted in particular political fights, Hoover has left significant questions hanging. If persuasion does not work on some particular issue, how can we legitimately use a human rights ethos to fight, while also affording equal respect to all and taking seriously the contingency of our own views? Isn’t law the best, or perhaps the least bad, option here, as, ironically, it provides the kind of slipping anchor – a temporary but authoritative universal – that can justify the coercive action often necessary to bring about radical change?