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SYMPOSIUM ON TRANSDISCIPLINARY APPROACHES TO MIGRANT SOLIDARITY IN THEORY, LAW, AND PRAXIS

SOLIDARITY AS A FORCE FOR SYSTEMIC CHANGE

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Invocations of solidarity often appear to be merely rhetorical. In contrast, in this essay we seek to show that solidarity can be a potent force for systemic change. We focus on a particular kind of solidarity—experiential solidarity—which is rooted in shared and lived experiences. In doing so, we de-center the role of states as targets and agents of solidarity and foreground the communities that are actively "doing" human rights by fostering bottom-up social change and collective self-actualization. Our approach to solidarity recasts human rights entitlements across spatial, temporal, relational, and intersectional scales and brings different duty-bearing actors to the fore, thereby emphasizing the transformative potential of collective action. Our account bolsters the agency of non-state actors in pursuing rights-based protection of migrants, thereby enabling strategic and forward-looking action in a politically and emotionally charged domain.

Experiential Solidarity and Human Rights Experimentalism

When interrogating what function(s) solidarity fulfills in mediating the relationship between human rights law and social justice, several distinct approaches can be discerned, including a rights-based approach, an institutional approach, and a conceptual approach. In all of these, solidarity's function of mediating between human rights law and social justice is understood predominantly through a lens of state operationalization. Solidarity is conceived as a legal tool deployed within, and therefore constrained by, a state-centric legal system and that system's legal actors.[1] For instance, solidarity rights (e.g., right to a healthy environment), institutional obligations of solidarity (e.g., solidarity as an obligation within the European Union's policy on borders, asylum, and migration per Article 80 of the Treaty on the Functioning of the European Union), and solidarity as a foundational value of cooperation between states (e.g., Article 2 of the Treaty on the European Union) are all contingent on states' willingness and capacity to implement them. In the realm of migration and border governance, states' perceived lack of will (as evinced by increased securitization and externalization rhetoric) and proclaimed lack of capacity to engage in meaningful

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Authors are listed in alphabetical order to reflect the non-hierarchical solidaristic co-production of knowledge underpinning this essay, entailing a trans-disciplinary collaboration among scholars from different backgrounds and non-academics.

[1] *See* *Treaty on the Functioning of the European Union*, Art. 80; Eleni Karageorgiou & Gregor Noll, *What Is Wrong with Solidarity in EU Asylum and Migration Law?*, 4 Jus Cogens 143, 143–44 (2022). *See also* Céline Paré, *Selective Solidarity? Racialised Othering in European Immigration Politics*, 1 Amsterdam Rev. Eur. Affs. 42 (2022).

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solidarity work has stymied the development of novel and creative ways of reimagining mobility.[2] Moreover, these limitations appear to legitimize an erosion of solidarity-based thinking.

This understanding of solidarity obscures the value and role of "experiential solidarity," which foregrounds the activities, experiences, and motivations of a plethora of non-state actors that live, breathe, and enact solidarity in everyday human rights practice, beyond the state-centric legal system. Experiential solidarity prioritizes grassroots driven mobilization involving communities actively "doing" human rights and leveraging solidarity-driven practices to transform and effectuate social justice within the law.[3]

Responding to critics of human rights that lament the project's state-centricity, its focus on individual rights, and its inability to create and sustain distributive equality, de Búrca advances a "transnational experimentalist theory of human rights law and advocacy," explaining that experimentalist thinking, which

> proposes that social and political action and change can—and should—come about not by means of hierarchical direction or systems of control from above, but through an iterative system of contestation and learning from the on-the-ground experience, in conjunction with ongoing collective reflection, reaction, and institutional response, and in the interaction over time between multiple actors and institutions at various levels.[4]

Rather than conceiving of human rights as merely being a top-down affair and the near-exclusive responsibility of states, a human rights experimentalist perspective allows the foregrounding of non-state actors as active agents of human rights protection. De Búrca continues to explain that "the attraction of an experimentalist system lies precisely in its decentralized, participatory, and iterative character,"[5] allowing a revisualization of the human rights project as being instead—and contrary to popular critique—a participatory, iterative, and deliberative endeavor.[6]

Seen through this lens, experiential solidarity forms an integral component in managing the relationship between human rights law and social justice—by supplementing state-driven solidarity. More importantly, it can act as a catalyst for changed understandings of what human rights can and should look like, freed from the restraints that encumber states in effectuating social justice.

By reframing the analysis to consider how experiential solidarity manages the relationship between human rights law and the pursuit of social justice, the traditionally state-oriented understanding of solidarity is decentered. Instead, this approach highlights the critical role of private individuals in human rights practice, and how such practices are leveraged directly and indirectly to influence how human rights are geared toward social justice. The transformative power of experiential solidarity emerges on two fundamental dimensions of human rights: the rights dimension and the duty dimension.

The Rights Dimension

Experiential solidarity prompts a two-fold shift in how rights entitlements are typically construed. It not only consolidates the perception of human rights as being collective as opposed to being predominantly individual, but also advances the understanding of rights entitlements as being justiciable for diverse publics across varying temporal and spatial scales. For example, South Africa advanced an *erga omnes partes* claim against Israel before the International Court of Justice, inspired by its own history of apartheid, in the interest of safeguarding rights of

[2] Karageorgiou & Noll, *supra* note 1, at 131–54.

[3] Gráinne de Búrca, Reframing Human Rights in a Turbulent Era 256 (2021).

[4] *Id.* at 38.

[5] *Id.* at 39.

[6] *Id.* at 41.

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those who have no alternative means of seeing their rights enforced through litigation within their territory.[7] Spatially speaking, the territorial constraints of traditional human rights law are thus overcome.[8] From a temporal angle, the *KlimaSeniorinnen* case before the European Court of Human Rights showcases how the experiences of elderly individuals can prompt considerations of intergenerational justice within the climate change arena that temporally affect the rights of not only those individuals directly implicated in the case.[9]

In addition, experiential solidarity underscores the intersectional and relational nature of rights, through the gathering of scaled evidence revealing systemic, intersectional, and relational human rights harms beyond what individual litigation can reveal.

The Duties Dimension

While the role of non-state actors in respecting, protecting, and fulfilling human rights has been the topic of extensive scrutiny, such inquiries typically concern human rights duties of private (transnational) corporations and international organizations. Experiential solidarity broadens the understanding of who bears human rights duties and obligations by foregrounding practices of self-actualization of human rights by private individuals and communities operating outside the strict confines of the human rights law regime. It highlights how practices of communities and networks interact with legal systems on a micro, meso, and macro level to effectuate change in an experimentalist manner.

Within the realm of migration, such practices are evinced by the legal contestation of search and rescue initiatives by private individuals in response to states' unwillingness and inability to intervene. While many of these practices were and continue to be criminalized, successful legal actions brought before Sicilian courts evince how search and rescue practices can transform who may be permitted to ensure rights of individuals in search of international protection.[10]

Solidarity Beyond the State: Collective Self-actualization

The bedrock of solidarity is a shared understanding by multiple groups that the harms inflicted by systems of oppression on rights, be it at the hands of local law enforcement, immigration officials, or housing authorities, can impact them either directly or indirectly. In this awareness of shared risks, values, and objectives, a sense of unity and co-responsibility for each other is created. It is from this place of unity, that solidarity work—which can range from subtle words of caution against being harmed by trigger-happy police, to transforming local mosques to makeshift shelters and food pantries—begins.

The UndocuBlack Network is an organization that serves the needs of currently and formerly undocumented Black immigrants. A key component of UndocuBlack's solidarity work is a focus on the rights and dignity of all who are oppressed by state actors and harmful systems more generally through cross-movement and cross-

[7] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Application Instituting Proceedings and Request for the Indication of Provisional Measures (ICJ Dec. 29, 2023).

[8] There are three commonly referred to instances where human rights apply extraterritorially. The first occurs when there is state-agent control over an individual outside of state territory. Human rights typically also apply where there is effective control by a state over (a part of) the territory of another state. Finally, situations giving rise to "special features" may also result in extraterritorial application of human rights. For an appraisal of extraterritoriality in international human rights law, see Marko Milanovic, Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy (2011).

[9] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application No. 53600/20, Judgment, Grand Chamber (Eur. Ct. H.R. Apr. 9, 2024).

[10] Lorenzo Tondo, *Crew of Migrant Rescue Boat Acquitted in Italy After Seven-Year Ordeal*, Guardian (Apr. 19, 2024).

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cultural collaboration.[11] UndocuBlack is an immigrants' rights organization, but its members do not live single-issue lives. Action-oriented solidarity is a necessity in the liberatory work of keeping Black and undocumented community members safe and whole. While the right to shelter, food, healthcare, and other means to living a dignified life are recognized by international law, the mere existence of these laws is not sufficient to facilitate those rights. More often than not, grassroots organizations must take on the work of actualizing certain rights for vulnerable populations, such as the one UndocuBlack serves.

For example, in July 2023, the government of Texas bussed about five hundred Black and Arab asylum-seekers to New York, where they had no family, money, or housing.[12] The city of New York placed these migrants in a makeshift shelter in Brooklyn.[13] The conditions at the center were uninhabitable and failed to comport with any semblance of human rights and dignity. For more than a month, the city housed new migrants in a space that lacked functioning restrooms and showers; air conditioning at a time when New York was experiencing unprecedented high temperatures; translation services for French, Arabic, Pulaar, Wolof, Soninke, and Portuguese speakers; access to legal representation and support for immigration cases; or medical support of any kind.[14]

The use of the word "crisis" has become increasingly prevalent during this time. It is not used to describe the use of human beings as political pawns by Governor Abbot of Texas and other Republicans sending migrants to so-called "sanctuary cities" and "Blue states."[15] Nor is it used to describe the failures of those cities and states in providing the basic necessities for survival such as food, shelter, and medical care, for its long-term residents and newcomers alike. The use of the word "crisis" becomes central to framing the mere existence of Black and Brown migrants, invoking their international human right to seek asylum at the U.S.-Mexico border or New York City as an expensive and politically inconvenient phenomenon.[16] This harmful framing by politicians and the media alike works to pit some residents of New York against their new neighbors. But many others see the wave of new migrants, along with the dog whistle of a "crisis," as an opportunity for solidarity.

UndocuBlack, Communities United for Status and Protection, the Black Arab Migration Solidarity Alliance, Black Alliance for Just Immigration, Bushwick City Farms, and Muslims Giving Back held several emergency meetings to respond to the human rights failures unfolding in New York City during the summer of 2023. Know-Your-Rights materials were developed for asylum-seekers and made available in English, French, and Arabic. Food and hygiene kits were provided to the migrants who were being sheltered across the city. Community organizations performed this work hand in hand with long-term residents of New York, while demanding that the city support such efforts.

None of the contributing organizations or individual volunteers were particularly equipped or prepared to respond to what would become thousands of new migrants arriving that summer. But having served Black and Brown communities in New York and across the country, it was understood that inequities that new migrants were facing were the same as those that long-term Black immigrants and African American communities had endured for years prior. In this knowing, solutions were not far or hard to find to take care of the newly arrived migrants. Rather, existing structures of community support were revived or leaned on. This collaboration solidified what many already understood on an instinctive level: the United States is not an inherently welcoming place for Black and Brown people regardless of their immigration status. The work of ensuring the safe resettlement and

[11] UndocuBlack Network.

[12] *Black Migrant Housing Crisis in NYC*, BAJI (July 18, 2023).

[13] *Id.*

[14] *Id.*

[15] Bobby Caina Calvan, *After Sending Busloads of Migrants to NYC, Texas Governor Visits City to Fault Biden for Crisis*, AP NEWS (Oct. 16, 2023).

[16] *Updating the Costs of NYC's Asylum Seeker Crisis*, NYC.GOV (May 28, 2024).

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survival of new immigrants thus de facto falls, at least in part, on organizations and community members rather than the state. Seen through a legal lens, such work suggests, at least in part, a trend of solidarity-driven self-actualization of existing human rights.

Solidarity Beyond "Crisis": Toward Structural Transformation

A vision of solidarity-driven self-actualization of structural transformation of conditions of exclusion, beyond immigration status and beyond the formal framework of human rights, as currently implemented, is also present in various migrant shelters and migrant-led organizations across Mexico and the United States. Many organized communities in Mexico and the United States challenge frameworks of humanitarian assistance that respond to migration only in contexts of emergency and "crisis," thereby denying the agency of people in contexts of mobility. They advance actions that recognize the needs and demands of migrants and refugees as part of a broader, intersectional struggle that includes the communities that they join. The concept of "transformative solidarity" has been used by organizers in Black Youth Project 100[17] and DRUM (Desis Rising Up and Moving)[18] to express this commitment to a solidarity that, rather than merely responding to a "crisis" moment, seeks to alter existing economic, political, and social structures that create those conditions of emergency and that implicate both migrants and local communities.

Looking at these questions on the Mexican side of the border, where migration flows have increased significantly in recent years, while conditions of unemployment, inequality, and violence in the country continue, the invocation of solidarity is met with the question of how the needs of migrants in conditions of precarity can be addressed when many of the communities that they settle in along the way are also facing these conditions. Notwithstanding limited resources and support from the government, a network of approximately one hundred shelters, *casas del migrante* (migrant shelters), and *comedores* (soup kitchens) stretches from the southern border of Chiapas and Guatemala to the U.S.-Mexico border. Together with a growing presence of international organizations and non-governmental organizations, these shelters, led by local communities and, in most cases, by the Catholic church, have been responding to urgent needs of "*personas en contextos de movilidad*" (people in contexts of mobility, a term that is increasingly preferred to "*migrante*" by migrant-serving organizations).[19] At the same time, they support individuals and families' long-term goals to settle in Mexico or elsewhere, accompanying their legal cases, and advocating for broader changes in legislation, policies, and narratives that discriminate against and criminalize migrants. Some of these projects push further, in building projects focused on political agency, wellbeing, and repair beyond the framework of rights and the state, shifting their interventions and actions toward questions of structural injustice. Seeking to transform these structural conditions, they draw connections across struggles, showing how they are a result of historical injustices and forms of violence—often enacted by those who do the granting of rights and are in charge of protecting them.[20] As such, they require a commitment and a responsibility to address them that recognizes the different forms of vulnerability and precarity faced by different groups in a local context, but without a distinction based on migratory status.

Beyond the discourse of how immigration can be a gain for all by generating employment, or bringing in resources from the international community that can benefit migrants and locals, some shelters and organizations in Mexico, such as *La 72 Hogar-Refugio*, *Otros Dreams en Acción*, or *Espacio Migrante*, have been advocating for transformative solidarity. As such, they practice forms of solidarity grounded in an understanding of structural and

[17] Expanded Sanctuary Conference, The New School (Mar. 8, 2018).

[18] DRUM, *Transformative Solidarity*, Facebook (Mar. 15, 2015).

[19] Alexandra Délano Alonso, *Languages to Transform Contexts of Mobility*, 7 Critical Times 337 (2024).

[20] Ariella Aïsha Azoulay, Potential History: Unlearning Imperialism 450 (2019).

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systemic conditions of violence that generate migration and that are also present in local communities before migrants arrived and that will continue, regardless of migration flows. Similar to some organizations in the United States, such as UndocuBlack and others mentioned above, there is a shared focus on political agency and responsibility, and a transformation of conditions of injustice and violence that affect and implicate migrants and citizens alike, beginning with relationships between individuals, to larger systemic issues related to access to food, housing, emotional and physical health, hygiene, employment, or safety. Shared concepts such as "people in contexts of mobility," "accompaniment," "repair," "flourishing/thriving," and "translocality," frame these approaches and offer alternatives to existing frameworks and systems. This work takes place both within and against the state, within a framework to advocate for the exercise of rights and for changes in legislation and policy that benefit migrants and the local community, but also building frameworks outside of the state, outside of the structure of a grantor and grantee of human rights, including collective projects of relational solidarity, such as community defense, food sovereignty, and Indigenous healing practices, to self-actualize rights from the ground up.

Conclusion

The foregoing instances of experiential solidarity arising outside the formal human rights framework reveal a growing internalized obligation to act where states fail to protect both existing and emerging rights. This solidarity reshapes interpretations of rights and duties, emphasizing the intersectionality and relationality of harms through aggregated experiences. It fosters collective resistance, empowering rights-holders to mobilize legally, socially, or politically against systemic oppression by becoming agents of human rights protection. Highlighting such solidarity-driven actions strengthens the capacity of individuals and organizations to leverage human rights mechanisms while countering the critique that human rights are inherently individualistic.

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