Introduction

Social and Political Transformation within, against, and beyond the Law

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I.1 Juristocracy and the Dialectics of Reckoning

In light of pervasive critiques of human rights, constitutionalism, international and transnational justice mechanisms, and even the rule of law itself, what remains of the status of law as a framework for justice-seeking and social change? Relatedly, given the fact that diverse movements for social and political change around the world were "juridified" or reframed through legal categories during the key first decade of the post-cold war, which UN Secretary-General Kofi Annan described in 2000 as the "Age of Human Rights," how do social and political movements view their relation to law in the present, after this "Age of Human Rights" has passed away? And if law and legal categories no longer form the obvious basis for social and political mobilization across the ideological spectrum, has any other transversal framework come to replace them?

As a contribution to these and related debates over the status of law against a background of "neoliberal maelstrom" (Moyn 2018), populist insurgence, planetary heating, and other global crises, *Reckoning with Law in Excess* explores the divergences and complexities of a generalized process we describe as "juristocratic reckoning." Derived from legally, politically, and culturally diverse case studies from around the word, the category of juristocratic reckoning builds on, yet critically modifies and reappropriates, the notion of "juristocracy." Ran Hirschl introduced this framework in 2004 to describe something more limited: the post-cold war emergence of "new constitutionalism" as an ideology and practice in which political demands were transformed when they were absorbed into constitutional bills of rights. Juristocracy was also used to describe the

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newly expansive role accorded to judicial review exercised by theoretically independent judiciaries. Hirschl focused on a number of signal moments in the historical shift "toward juristocracy," most importantly, the juridification of South Africa's post-apartheid transition, in which longstanding demands for land redistribution, economic and political equality, and racial justice, among others, were both reframed and incompletely expressed through law, notably through the country's landmark 1996 Constitution (see Zenker, this volume; Klug 2000; Wilson 2001).

However, despite the broader importance of key historical moments, our claim is that these do not completely circumscribe the meaning or significance of juristocracy, which should be understood as both a more diffuse and transhistorical phase in law's social, discursive, and institutional lives and afterlives. At a more definitional level, we see "juristocracy" as a process of transformation – sometimes subtle and implicit, in others accompanied by different forms of intentionality – through which law and legal categories are invested with unusual weight and responsibility beyond their more conventional roles in conflict resolution, government regulation, and the social response to wrongdoing. In this sense, we understand "juristocracy" as a process of sharpening and concentration – for a variety of reasons and, more importantly, with a variety of consequences – through which the law, broadly conceived, is freighted with demands and expectations that overflow its normal institutional, instrumental, and normative carrying capacity.

From this expanded perspective, we can say that passages into juristocracy have taken place quite often and at different levels: transnational, international, regional, national, and local. But regardless of the empirical and historical diversity, there is another dimension to juristocracy that is essential to understanding its generalized importance. This is the fact that the over-freighting of law, the way law and legal categories are charged with functions that go well beyond their conventional limits, typically involves a *dialectics of reckoning*. This is a two-part process of coming to terms, of critical evaluation, and of social response, which helps to explain why law is elevated during certain moments in time, but also, equally important, what happens when the law and legal categories fail to usher in the often-utopian future that the always-temporary juristocratic transformation promises.

In the first phase of juristocratic reckoning, law is amplified as a privileged mechanism for coming to terms with both past and ongoing injustice, either through the struggle for the equal application of existing laws, or through novel and expansive applications of existing law, or

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through the fight for new legal instruments, new legal protections, and new legally recognized rights. This initial transition into juristocracy is thus a form of reckoning with the relative failures of nonlegal approaches to justice-seeking and transformative change, a form of reckoning that has as a consequence – despite its various specificities and variances – the corresponding elevation of legal institutions (courts, commissions, regulatory bodies) to positions of even greater centrality and political importance than they otherwise would occupy. And, during this first part of the dialectics of reckoning, social and political movements that had previously taken to the streets or otherwise pursued revolutionary violence, direct action, or other nonlegal strategies for change, now experience a relative decline in legitimacy that corresponds to the rise of law in its heightened forms.

Yet almost inevitably, the sharpening of law and legal categories into instruments that promise widespread transformation, or reconciliation, or reparation, or social leveling, give way – historically and ideologically – to a second phase in the dialectics of reckoning: a coming to terms with the perceived failures or incapacities of juristocracy itself, an often-drawn-out process of unraveling marked by critique, skepticism, and eventual disenchantment. The disillusionment with the ultimate limits of social, political, and economic transformation *through* law doesn't last forever, since the underlying legacies of past injustice, and the pressing realities of ongoing injustice, remain; indeed, the urgent need to address injustice is often heightened as the dialectics of juristocratic reckoning unfold. This is because the elevation of law into an overestimated framework during the initial transition into juristocracy often masks the persistence, if not expansion and deepening, of social, economic, environmental, and other forms of conflict. At the same time, given the ironic if not paradoxical potential of law *as law* to reveal its intrinsic limits and even inevitable failures *in and of itself*, that is, of inviting having its bluff called given the stark contrast between its promise and practice, the framework of juristocratic reckoning offers a new analytical lens through which to appreciate the urgency of these ongoing injustices *despite* the stubborn historical presence of law.

In part as a recognition of the ever-present need to confront injustice, and in part as a critical acknowledgement of the structural limits of law and legal categories in light of the pressing demand for more effective action, social and political movements *remobilize* beyond the boundaries of law, either by drawing on past ideological or organizational models or by launching new models for change – or, it must be added, through

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hybrid mobilizations that involve reimaginings or reinventions of existing models within historical moments that are themselves hybrid. Where this subsequent phase of a relational "return to politics" (Postero & Elinoff 2019) leads to in the dialectics of reckoning remains an open empirical and historical question, and we don't want to make over-broad claims about its cross-cultural and transhistorical similarities. Nevertheless, as the chapters in the volume demonstrate, processes of juristocratic reckoning – that is, the ebbs and flows of relative transitions into and then against legal apotheosis – can be seen across a surprisingly wide range of otherwise diverse contexts.

In addition to the widespread, if diverse, persistence of juristocratic reckoning, there is another dimension to the phenomenon that is examined in different chapters. Even if, at a more general level, the transition into and then against juristocracy shares commonalities across different historical and ethnographic case studies, certain instances of juristocratic reckoning are invested – both in the moment and then in retrospect – with greater degrees of importance. Returning to the work of Ran Hirschl, this fact allows us to create a theoretical bridge between Hirschl's original use of juristocracy and the ways in which the volume appropriates and expands it. This theoretical bridge is grounded in the recognition that certain histories of juristocratic reckoning are imbued with what might be thought of as an "iconic indexicality," in which their supposed historical significance itself enters into the process of juristocratic elevation and then unraveling. Even more, the fact of being invested – by various actors, for various reasons – with iconic importance, especially during the transition *into* juristocracy, has the corresponding effect of heightening the affective consequences of the relative disenchantment that follows and of rendering more violent the mobilizations to which this intense social disenchantment frequently gives way.

For example, the historical case of South Africa's post-apartheid transition is taken as a paradigmatic example of first the elevation of law, especially constitutional law, as a coming to terms with the illegitimacy or impracticability of pursuing other forms of social transformation and justice-seeking, and then a reckoning – which is ongoing – with the relative failures of law to fulfill the utopian promises of South Africa's rights-based "rainbow revolution" (Zenker, this volume; Klug 2018; Zenker, Walker & Boggenpoel 2024). Although the process of reckoning *against* the law in South Africa has taken a variety of forms, it is also seen as an iconic model for other contemporary backlashes against the post-cold war liberal constitutional order, backlashes that have been driven by

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both right-wing and left-wing populism, both of which depend heavily on the weaponization of national, religious, racial, and other categories of identity. But despite the fact that populist mobilization is partly justified as a response to the failures of human rights, international law, and even the rule of law itself, the sources of populist discontent remain, arguably, largely political-economic. As Martin Krygier (2022: 21) has argued, the underlying causes of injustice are to be found "outside the law," "in besieged domains of life that [law] often can't reach, and even if it does, where it has limited sway."

In critically examining these and related problems, the chapters in the volume endeavor to trace the contours of juristocratic reckoning through a diverse and global range of case studies, which include those that are marked by an iconic indexicality and those that are not. The end result is a broad account of what we describe as "taxonomies of reckoning," which crystallize around different modalities, focal points, and driving forces behind context-specific and situational transitions into and out of elevated legalities. As we discuss in Section I.3 against the backdrop of a broader contextualization of our contemporary moment, the taxonomies that emerge from our case studies coalesce around concerns with "states of juristocracy," "alter-legal reckonings," as well as "juristocracies against the state," attesting to the persisting centrality – if always contested, variable, and fragmented – of the state form. These different forms include situations in which mobilization takes place more formally against law, and contexts in which the possibility of recourse to law is strategically preserved as one among a number of different strategies of political confrontation and logics of resistance.

I.2 Juristocratic Reckoning in an Era of Crisis and Confrontation

In proposing the concept of juristocratic reckoning as a framework through which the wider transhistorical relationship between law, social change, and politics is given new meaning and significance, *Reckoning with Law in Excess* must be located with respect to a number of legal, political, and social contexts, as well as academic debates that reflect on these contexts. First, the postwar international order, embodied in the United Nations and its various institutions and monitoring bodies, which arguably rose to its greatest level of power and legitimacy during the first post-cold war decade, continues its apparently inevitable descent into impotence in the face of a range of global crises (Koskenniemi 2011;

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Hopgood 2013; McNeilly 2017; Goodale 2022). At the same time that different super-sovereign permanent members of the UN Security Council – from the United States to China to Russia – refine a long tradition of manipulating the mechanisms of international law and politics as a tool for advancing national interest, a tradition that stands in utter contempt of the ideological grounding of the UN itself (Terretta 2012; Roberts 2015; Allen & Yuen 2022), the UN's actual incapacity to respond meaningfully to global problems such as climate change, socio-economic inequality, global pandemic, and, more recently, military invasion, remains as stark as ever (Posner 2014; Slaughter 2015; An-Na'im 2016; Moyn 2018).

The comparative irrelevance of the UN system has important implications for the study of the relationship between law, politics, and social change, because so many of the legal forms at the center of key instances of juristocratic reckoning, such as human rights, can be traced back to legal treaties and doctrines with origins in international law. This means that the kinds of specific case studies of juristocratic reckoning examined in this volume *cannot* be framed against a transnational or international legal order in which the rule of law actually meets its expansive objectives – for example, "to maintain international peace and security" – since such a well-functioning international legal order doesn't exist, and never has (Mattei & Nader 2008; Stark 2015; Morales 2017; Meierhenrich & Loughlin 2021; but see Pirie 2021).

Second, even as the chapters in *Reckoning with Law in Excess* explore the ways in which both international and national legal orders are characterized by shifts between legal apotheosis, political disenchantment, and political mobilization, there are nevertheless other related dynamics that must be acknowledged, dynamics that reflect on the core problem of juristocratic reckoning, but more indirectly. One of these dynamics that has received scholarly attention recently is the emergence of investigative communities that work in the shadows of formal legal processes but in terms of radically different organizational and technological logics. For example, across a diverse number of regions, everyday citizens have become involved in using social media to document mass violence in collaboration with communities of citizen-scientists, who use digital technologies to locate clandestine graves, identify sites of ethnic cleansing, and otherwise gather evidence of mass atrocities that remain hidden to national or international legal institutions (Bishr & Kuhn 2007; Rubin 2020). And beyond their "para-legal" applications, scholars have described the ways that new communication technologies have shaped

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social movements as a form of "bio-constitutionalism" (Jasanoff 2011; Agathangelou 2017, 2019) animated by an ideology of "hashtag activism" (Ristovska 2016; Clarke 2017; Niezen 2020). For purposes of the volume, the rise of hashtag activism and crowdsourced forensic investigations raises questions about whether these new technologies should be seen as a way of preserving a semblance of legal legitimacy, given that their use often takes place in relation to ongoing legal procedures, or whether they should be included within the catalogue of political backlash *against* the inadequacies of law. In many contexts, it seems, they ambiguously oscillate between both modes.

And finally, despite the fact that the framework of *Reckoning with Law in Excess* is meant to shed light on a more general, transhistorical phenomenon – the dialectical relationship between the alternating rise and fall of law and politics as mechanisms for justice-seeking and social change – it is important to take stock of a number of recent examples of juristocratic reckoning by way of underscoring the complexity in the relative movements from law to politics and back again. This can best be appreciated with reference to several notable contemporary social and political movements whose ongoing practices of mobilization and refusal illustrate an argument made collectively across the book's chapters: that the political reckoning with law takes a range of forms, some of which are more clearly framed – situationally or as a matter of principle – as a backlash against law, while others maintain a more strategic or ambiguous relationship with it.

For example, important contemporary mobilizations against the unfolding climate crisis are being undertaken by groups such as Just Stop Oil and especially Extinction Rebellion, a decentralized environmental justice movement that has national and local branches in over eighty countries, giving it global scope. Organized around the principle that extractive industrial capitalism is the driving factor behind global warming, biodiversity loss, and ecological collapse, Extinction Rebellion activists engage in various strategies of civil disobedience, monkey-wrenching (the destruction of equipment used for extractive activities), and symbolic acts of often spectacular public protest (Extinction Rebellion 2023). But in demanding a "just energy transition," and in insisting that governments around the world "act now" to undo the economic and social structures that contribute to the climate crisis, Extinction Rebellion has little use for law or legal categories; it neither justifies its claims as flowing from rights or legal entitlements nor looks to legal institutions – at whatever level – to oversee the "just energy transition."

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The relationship between law and politics is equally revealing for another transnational movement: Black Lives Matter (BLM). BLM is a similarly decentralized social and political movement that has less of a global imprint than Extinction Rebellion, although BLM-inspired organizations, which mobilize for racial justice and against systemic and institutional racism, have been established in different countries beyond the United States, where BLM was founded in 2013. As a social and political movement working for racial justice and the end of what they perceive as a pervasive culture of white supremacy, BLM activists use a variety of direct-action strategies, including mass public protest, naming-and-shaming, and online media campaigns (Célestine & Martin-Breteau 2016). But much like Extinction Rebellion, BLM is manifestly *not* a movement whose claims are framed through legal categories. With reference to BLM's origins and continuing base of highest visibility in the United States, it is notable that a contemporary movement for racial justice *does not* position itself as a civil rights movement. If anything, BLM resembles much more the antilegal – or, at least, nonlegal – revolutionary movements of the traditional Marxist or socialist left, in strategy, if not in ideology.

Yet if two of the most important contemporary political and social movements would seem to illustrate quite clearly how mobilizations *for* justice – environmental, racial, or otherwise – can also be understood as a backlash *against* the incapacities of law and legal categories, a third and final example is more ambiguous. Like BLM, the #MeToo movement began in the United States through the organizing of small groups of activists who also used different digital platforms to promote awareness of the movement and its objectives. The #MeToo movement, for which the hashtag itself serves as both the symbol of the movement and statement of one of its organizational logics – the creation of solidarity through the acknowledgment of shared experiences of harm – fights against cultures of sexual abuse and harassment. Analogous to BLM, the #MeToo movement is animated by the principle that such cultures are pervasive, systemic, and reproduced in different forms around the world. And even more obviously than BLM, #MeToo is now a global movement, in which the translation of the English-language hashtag into dozens of languages becomes a vehicle for contextualizing the general global problem of sexual abuse and harassment into national, regional, and local cultural terms.

But *unlike* both Extinction Rebellion and BLM, the #MeToo movement engages deeply with law and legal categories, both in the way in

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which the movement frames its objectives, and in the way that legal mechanisms are key tools in the fight for justice. Beyond high-profile criminal prosecutions or civil procedures against powerful figures in business, entertainment, academia, and in many other sectors, #MeToo activists frame the movement as part of a wider struggle for women's rights (Vogelstein & Stone 2021). In this sense, the example of the #MeToo movement shows how juristocratic reckoning is never simple or uniform. At the same time that movements like Extinction Rebellion and BLM can be located as part of a backlash against the failures of law, the #MeToo movement maintains a partial anchorage in an earlier juristocratic history, the "Age of Human Rights," even as it also deploys methods of political activism well beyond the boundaries of law.

Although these examples of notable contemporary movements help to bring the themes of the volume into immediate focus, most of the chapters in *Reckoning with Law in Excess* examine the nuances of juristocratic reckoning through case studies that are less obvious or well known, yet nevertheless remain critical for reinforcing the scope of the volume's arguments and extending its explanatory reach.

I.3 Charting Taxonomies of Juristocratic Reckoning

Within the volume's broader framework around an expanded conception of juristocracy and what we argue are different forms of reckoning with the rise and fall of law, the chapters can be grouped into a number of taxonomic categories. It is important to recognize, however, that these groupings do not represent a comprehensive or complete taxonomy of juristocratic reckoning; instead, as open-ended taxonomies of reckoning, they offer an initial starting point, one that we hope other scholars will pick up and adapt to their own critical analyses of the lives and afterlives of law in the current conjuncture. In addition, the chapters in *Reckoning with Law* are not equally distributed among these groupings. Nevertheless, this imbalance should not be taken as a signal of relative importance, since the analytical distribution here is more a function of the kinds of practical exigences that characterize all such collective academic publications, especially those that have their origins in a workshop or conference. This is the reason we choose not to divide the volume's table of contents into parts that would – for these reasons – require an unequal distribution of chapters.

That said, and again, in our effort to use these initial groupings in part to point toward the fuller range of forms of juristocratic reckoning, we

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can identity three distinct categories that emerge from the richness and diversity of the volume's case studies. The first taxonomic grouping shines a light on the ways in which the state plays a critical role in the process through which law is freighted with importance and responsibility for social and political transformation as well as legitimization of the state itself, an overloading that often leads to backlash, resistance, and nonlegal mobilization. At least theoretically, one can imagine a spectrum of possible ways in which the state, any state, might be implicated in the different phases of juristocratic reckoning. The state itself might resist the demand for juristocracy; conversely, the state might be the main instrument for the apotheosis of law or the judicialization of politics. The latter may also slide into authoritarian forms of reckoning when the state captures legal doctrines and institutions in order to prevent their progressive usages against state abuses.

However, in all cases, the state will exercise a unique form of power in relation to juristocracy, including through its historic claim to monopolize the legitimate use of force. This is what several chapters in the volume demonstrate quite clearly: *states of juristocracy* are often profoundly shaped by the ways in which states attempt to manage the different phases of reckoning with law in excess for purposes that advance the interests of the state as much as the interests of social and political transformation. Of course, what these purposes are will vary widely by the kind of state involved: its history, its underlying political grounding, its changing fates, and so on. But the centrality of the state in states of juristocracy, in its dual meaning, remains the interconnecting taxonomic thread.

For example, Olaf Zenker's chapter takes up the iconically indexical case of South Africa, whose rainbow Constitution was used for decades as *the* primary example of juristocracy, the instrumentalization of law – especially constitutional law – as the privileged mechanism for social and political change and reparation for historical injustices. Yet as he shows, South Africa has been enveloped by a slow process of reckoning with the failures of "transformative constitutionalism," a process in which the South African state has played an important part in failing to deliver on its legal promises, in violently opposing popular protests, and in advancing a corrupt regime of state capture. His chapter examines contemporary debates over land reform, widely regarded as failing, and especially the proposal to amend the Constitution to allow for the expropriation of land without compensation.

Zenker's chapter explores more recent developments in the longer arc of post-apartheid South Africa, including the juristocratic reckoning of

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the South African state itself, which has been marked by the ambiguous and simultaneous rise of both constitutional *and* anti-constitutional populism, with uncertain implications for the country's post-iconic era. However, freeing South Africa from its iconic status of indexing law's allegedly messianic potential might clear the way for actors on all sides to engage collectively with hard-headed questions about how to best achieve redistributive justice through what Zenker calls "transformational triage."

Directly addressing state domination through law beyond the progressive promises of constitutionalism, the chapter by Julia Eckert and Kiri Santer uses a comparative approach to explore the ways in which states intervene amidst wider debates over the role of law to impose a more restrictive form of juristocracy from above. They describe a dynamic unfolding through authoritarian legalism restricting rights and remedies through law, the geopolitical dispersion of law in action, as well as the undermining of legal precedent through the singularizing logic of out-of-court settlements through the growing tribunalization of law. From legal pluralism in India to European migration law to the legal regulation of global capitalism, Eckert and Santer show how states (or supra-states, like the European Union) are able to use their positions of institutional power to impose (or deepen) hegemony *in the name of* juristocratic reckoning.

And finally, within this grouping of chapter themes, Nitzan Shoshan's study of housing activists and debates over housing law in Berlin likewise shows the ways in which states of juristocracy are both reshaped and reshaping within processes of juristocratic reckoning. In this case, like in Zenker's chapter, the conflict in question revolves around the relationship between land, property, and calls for social justice. However, *unlike* in the chapters by Zenker and by Eckert and Santer, here the demand for legal changes as an outflow of juristocratic reckoning takes place from below. In part as a critique of the German state's inability to use existing laws to promote housing equality, activists demand not less but *more* law as a response; in particular, a long-dormant provision of Germany's postwar Constitution, which would allow the state to "socialize" property currently owned by private multinational real estate companies. Shoshan's chapter reminds us that not all backlashes against juristocracy take the form of anti- or nonlegal political mobilization. For the housing activists in Berlin, the backlash against legal inaction or impotence might be seen as a strategy of social (or socialist) reckoning with the actually existing German state of juristocracy they find wanting.

A second taxonomic grouping of chapters is more heterogenous, in part because it involves a form of juristocratic reckoning that is itself

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necessarily more expansive. This is a form of reckoning in which the response to the elevation and then perceived failure of law and legal categories – usually those associated with state institutions – is not strictly anti- or nonlegal but rather what might be described as "alternatively legal." In such *alter-legal reckonings*, the dialectical backlash to juristocracy takes the form of alternative and creative reconceptualizations of law, some of which push the boundaries so far that it raises the question of whether what results should be considered legal claims or movements or mobilizations at all. Examples of reckoning with law in excess that seek to retain some semblance of legality or even, more broadly, normativity, can be explained as a strategic move, a way to harness some of the law's existing power while simultaneously reconfiguring its form and content. At the same time, reconceptualization-as-reckoning might also be understood as a reluctance to embrace fully anti- or nonlegal methods for social and political transformation, especially since some of these methods can easily give way to different kinds of violence.

A number of chapters in the volume illustrate the breadth of alter-legal reckonings as a distinct and important taxonomic category. As Lynette Chua puts it in her chapter, what we make of moments of law depends on where we look for legalities, which is a key insight that emerges from the different narratives she examines. The reconceptualizations of law she explores are diverse, from the use of human rights by Burmese activists as a form of what one of us has described as "connotative power" (Goodale 2007) to the Singaporean state's attempt to develop novel legal categories to regulate urban contagion. Under conditions of a recent authoritarian backlash in Myanmar, human rights practice as a way of life allows LGBT rights activists within and beyond Burmese territory to hold on to cyclical understandings of the temporal turns and transformative returns of juristocratic reckonings beyond formal law. By contrast, the *longue durée* of quarantine laws in Singapore has amalgamated a form of "governing through contagion" that fuses centralization and normalization in ways that produce fragmented temporal spaces of inter- and disconnections.

In Matthew Canfield's chapter, by contrast, the domains of reconceptualization are transnational. His case study builds on his long-term research with different movements for "food sovereignty" that have developed categories of rights, such as the right to food, beyond the boundaries of existing international human rights law. As Canfield argues, the articulation of the putative right to food represents a critique of the incapacities of international law to guarantee adequate food provision on a global scale while at the same time reaffirming the

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underlying value of rights themselves as a grammar of justice-seeking. This way, the counter-mobilization of the food sovereignty movement can be seen as a form of alter-legal reckoning, in which its critique of stakeholder capitalism pushes toward an expanded understanding, and lived reality, of postliberal democracy.

Mark Goodale's chapter moves from case studies of different instances of reconceptualization to a more theoretical and autocritical perspective. Returning to his recently published book, which examines the consequences of reinventing human rights for the future of social, political, and economic transformation, he extends his analysis to the question of juristocratic reckoning while also responding to initial questions about key concepts such as "translocality," rights pluralism, and dejuridification. Like the chapters of Chua and Canfield, Goodale's reflects on the ways in which reckoning with law in excess can – and, as he argues, *should* – take paralegal forms, given that more radical alternatives, often grounded in revolutionary methodologies, suffer from their own clear limitations, their own inadequacies and potential for failure.

In her chapter, Arzoo Osanloo examines the ways in which the practice of mercy-seeking within the Iranian criminal justice system has emerged as a surprising example of reckoning, not with the failures of law, but with its harsh rigor and entrenchment of the rule of an absolute sovereign. As she explains, Iran's legal system is shaped by a particular interpretation of Islamic law, which mandates a series of severe punishments for a wide range of infractions. In this sense, Iran's theocratic form of government is also a religious juristocracy, which reinforces the more general argument that juristocracy must be understood beyond either liberal legality or certain iconic examples. Yet if the practice of mercy in Iran represents a reconceptualization that pushes the boundaries of law, one in which victims can subvert criminal sentences by forgiving the perpetrators, it is also a practice that has ambiguous implications for social justice more generally. As Osanloo argues, similar dynamics are at play in unexpected places. Humanitarianism reveals itself to be rooted in similar appeals for mercy and care by distant others, thereby reproducing the very systems that modern human rights were intended to eradicate in favor of approaches ostensibly founded on principles of egalitarianism and respect for human dignity. In this way, the rise of mercy-seeking has the capacity to replace potential social and political transformation with supplication and, as she puts it, reduce everyone in society to a potential supplicant rather than a claimant.

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Agathe Mora's chapter allows us to refine even further our understanding of the reconceptualization of law as one among many forms of juristocratic reckoning. However, unlike the different case studies in the volume in which the creative reimagining or reinvention of law is undertaken in order to increase the chances for social or political transformation, here it serves a quite different purpose: the technical fulfillment of an international mandate without concern for whether or not justice or reparation is actually achieved. Mora conducted research with the Kosovo Property Agency (KPA), a transitional justice mechanism established by the United Nations to supposedly resolve property disputes in the aftermath of the armed conflict in Kosovo in the late 1990s. As her chapters shows, the personnel responsible for enacting this mandate transformed the KPA into a bureaucratic instrument that "law-washed" complicated disputes in part as a critique of international law – especially human rights law – and its ability to truly resolve underlying social and political conflicts.

If reconceptualization-as-reckoning in Kosovo is a complicated response to the incapacities of law that reflects deep disenchantment combined with a kind of Weberian surrender to the imperatives of bureaucratic rationality, Kamari Clarke's chapter examines this category of juristocratic reckoning at its widest and, arguably, most ambitious scope. Her research explores different ways in which communities in Nigeria reckon with the failures and inadequacies of law, not only *as law*, but as both instrument and symbol of (neo-)colonial imposition. As she argues, the forces of international law, including the International Criminal Court (ICC), have had a particular impact within the political histories of contemporary postcolonial Africa. International criminal justice and human rights law have been promoted as universal – and thus ahistorical – tools for an equally abstracted conception of justice-seeking. Yet as Clarke's chapter demonstrates, the widespread resistance by communities in Nigeria to the mechanisms and power of international law is coupled with the development of a range of alternatives, including "moral vigilantism" anchored in religion and the use of forensic technologies by communities as form of local empowerment.

Finally, a smaller grouping of chapters in the volume illuminates yet another form of reckoning, one that does not reject the inadequacies of law in excess but, rather, seeks precisely to harness the power of juristocracy as an unconventional weapon of the weak, that is, as a strategy of resistance. These *juristocracies against the state* are similar to a wider phenomenon that Eckert et al. (2012) described as "law against

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the state," except that this taxonomic form of reckoning takes place in moments in which the state is in crisis, including crisis associated with the failure of state law itself. Such juristocratic reckonings thus often creatively engage with, resist, and transform those contemporaneous states of juristocracy that constitute the first taxonomic category (see above).

In her chapter, Penelope Anthias unpacks the complicated landscape of social and political mobilization in a region of Bolivia that is at the center of state-controlled hydrocarbon production. As she argues, the Bolivian state has failed to reconcile its ideological commitment to sustainability, as inscribed into its post-neoliberal plurinational Constitution of 2009, with its ever-expanding reliance on resource extractivism. Local communities respond to this failure – which is expressed in both legal and political terms – by mobilizing various forms of resistance, including a continued insistence on and claiming of rights. She demonstrates that community activists deploy law and rights not as construed by (neo-)liberal elites, but rather as part of a strategy of discursive and material struggle by those who have been affected most strongly by racialized dispossession. Without necessarily prioritizing legal processes over more disruptive forms of protest, Indigenous and peasant communities on extractive frontiers continue to reckon from below with the possibilities and limitations of law and rights. They do so, as Anthias shows, by reimagining themselves as guardians of the 2009 Constitution, guardians who must protect its vision even *against* the state. As custodians of a juristocratic settlement achieved through popular mobilization, they are able to denounce the state for violating the promises of the 2009 Constitution through its relations with transnational extractive corporations. Importantly, even if currently failing to bring about justice through the law, legal cases are still regarded as relevant in generating a legal record to be taken up again in the future under more ideal juristocratic conditions.

Finally, in her chapter on Indigenous legalities in Guatemala, Rachel Sieder examines yet another side of juristocracies against the state. As she explains, the development of Indigenous rights processes in the late twentieth century, especially in Latin America, can be understood as another case of iconic indexicality, in which the elevation of law was supposed to usher in a new era of postcolonial empowerment for Indigenous peoples who had suffered from centuries of colonial and neocolonial violence. However, Indigenous communities have realized that the promise of juristocratic justice is no match for a range of

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systemic barriers, including endemic racism, institutional bias, and economic and territorial dispossession. While Indigenous peoples successfully mobilized human rights during the first decades of the twenty-first century, the intensification of extractive industries accelerated state capture by corrupt elites and criminal networks, leading to a backlash of authoritarian regression, which stalled or reversed earlier legal victories.

Yet as the case study shows, Indigenous communities in Guatemala do not turn against the law. Instead, they mobilize along parallel tracks, including the use of state-sanctioned Indigenous rights law – however flawed – *and* local justice mechanisms "premised on alternative life-worlds," as Sieder puts it. She urges us to view such persistent juristocracies against the state – continuously mobilizing the law amongst other horizons of justice even though the prospects of legal victory are bleak – in the *longue durée*. Within layered histories of repeated engagements with hegemonic forms of law since the colonial period, the current ebbs and flows in the dialectics of juristocratic reckoning are nothing new. As Sieder explains, the legal defense of Indigenous lands by Mayan activists still holds emancipatory potential, but only when viewed in the longer term, given that "legal engagements and framings form part of much wider and long-run processes of territorial defense, community organization, and subject formation."

I.4 (No) Conclusion: Moments, Momentums, and Mobilizations in the Living Archives of Law

The case studies assembled in this volume powerfully demonstrate, in all their complexity, diversity, and also divergence, that while the turn to law is never the only, and hardly ever an uncontested, option, the law does gain differential traction, comparatively speaking, in various places and within different contexts *over time*. This last point – the temporality of juristocracy – deserves more attention, since viewing the case studies through their various temporalities reinforces the wider point that dialectics of reckoning must be understood through their empirical and historical heterogeneities rather than as exemplars of an abstracted sociolegal category.

To begin with, and as several chapters illustrate quite clearly, in many settings there are, or have been, identifiable *moments* in which the law has been invested with unusual and peculiar weight and potentiality. Whether experienced more individually as a meaningful moment of powerful subject (re)formation, as with human rights as a way of life

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among Burmese LGBT activists, or celebrated and hailed more collectively as a new era of transformative constitutionalism or Indigenous rights, the phenomenology of legal times is nonlinear and multiple, subject to rhythms and flows, and at times shot through with memorable instances of iconic intensity and excessive significance (see also Chua 2021). While such moments of intensified juristocracy are often invested with popular hopes for transformative improvements through the law, various chapters in the volume demonstrate that such heightened and condensed legal times may also be closely tied to the authoritarian and repressive recourse to the law – in India, Guatemala, Bolivia, and beyond.

Demands and expectations of the law that overflow its more conventional and unremarkable carrying capacity may also envision its own time as one of duration. This can be seen in the enduring logic of mercy undergirding both humanitarianism and criminal prosecution in Iran, or as one of an "in-between," driven by a "logic of exception" animating the transitology of transitional justice (Anders & Zenker 2014), as in Kosovo. As the volume's chapters reveal in different ways, this sense of being right in the midst of intense legal time also gives way, at some point, to a sense of lagging behind, of being too late or after the fact, as the *kairos* – the right and opportune moment for legal engagements – has passed. This may be the case because the political climate changes when an authoritarian juristocratic backlash follows a phase of *right*-ful (or even *right-eous*) hope, as in Myanmar, or because of growing popular disillusionment with law's unfulfilled promises, as in South Africa. This may also occur because the veneer of law's promises of equality, egalitarianism, and justice start to crumble, revealing (neo-)colonial forces that have been at work all along, as in Nigeria.

These descriptions of legal temporalities hint at a second observation, namely, that the timing of juristocratic reckoning is not simply sequential, a series of momentary snapshots confined to more or less momentous moments. Instead, drawing metaphorically on mechanics in physics, juristocratic moments also have differential *momentums*: they become plotted into different, and often conflicting, imaginations regarding the relative weight of rights and legal provisions and their varying capacities to *matter*, in the here and now, but also for the future. In this way, the times and timing of juristocratic dialectics must also be understood as a function of *directionality*.

Several contributions grapple directly with the different momentums of juristocratic reckoning and their complicated directions – future or otherwise. For example, Shoshan shows how housing activists in Berlin

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are fully aware that their movement takes shape long after the moment of constitutional "socialization" in Germany, yet they nevertheless attempt to give the afterlives of a less proprietary utopia new momentum. Canfield interrogates the practices of food activists who work toward maintaining the momentum for transformed understandings of food rights beyond the neoliberal imagination. Goodale invites us to reinvent human rights in the full awareness that the celebrated momentum of human rights, as we know them, has passed. Zenker sees potential for a more open and hard-headed "transformational triage" after the moment and momentum of South Africa's iconic indexicality. Clarke engages the potential end-times of law and its state form in asking what might lie beyond when people increasingly place their hopes in the more literal afterlives of religious belief, rather than engaging with the this-worldly afterlives of law.

Drawing on the physical imagery of momentum is helpful in highlighting the fact that the law differs, over time, in its capacity to carry the weight of heightened expectation and to signal the direction to which such legal movements become oriented, whether transitioning into or rather away from legal apotheosis. This physical imagery is also useful because it reminds us that how a specific momentum is perceived crucially depends on the frame of reference. This is where the analogy between physical momentum, at least in its classical-mechanic rendition, and juristocratic momentum, reaches its limits. While we assert that the notion of a dialectics of juristocratic reckoning is a useful analytic, the question of which moments and momentums prevail with regard to transformative practices, legal or otherwise, will always remain open and contestable. In other words, the subsumption of concrete empirical situations, practices, and events as viewed through a dialectics of reckoning will vary based on divergent perspectives, contextualizing narratives, and shifting scales of differing temporal horizons.

Whether the dormant provision of Germany's postwar Constitution for "socializing" property remains in post-juristocratic ruins as a paralyzing symbol of law's past failures, or whether it is the pre-juristocratic genie in the bottle that critics of private property regimes have been longing for all along, is a question with multiple possible answers and futures. And Chua's analysis of narratives of legalities and the fate of Burmese LGBT activists is also particularly pertinent here, as she compellingly mobilizes multiple temporalities in diverse and ongoing reckonings in an attempt to make sense of the contemporary moment of authoritarian backlash in Myanmar. In short, how the differing logics

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and stages of juristocratic reckoning come to play out in practice at different moments in time is profoundly shaped by the forms of *mobilizations* that are effectively put to work by various actors.

The two case studies from Bolivia and Guatemala discussed above under the taxonomy of juristocracies against the state explicitly highlight the various temporal horizons that Indigenous activists and lawyers mobilize in their current struggles over the protection of their lands. Apart from building their cases for potential litigation, these legal movements serve broader and longer-term goals. As Anthias and Sieder show, these juristocratic politics also help to translate alternative land ontologies and counter-hegemonic histories of land rights into the language of law so that they will be entered into the records of the state. In so doing, they actually work to *rebuild the record* of colonial and postcolonial racialized dispossession, which has consequences for future legal activism and offers at least the potential for some form of emancipation through the recrafted legal narratives that a rebuilt record affords.

More broadly, these processes of rebuilding the record speak to what Ann Stoler has analyzed as two distinct meanings of *the archive*, which are nevertheless blurred in practice: "the archive" as a concrete "body of documents and the institutions that house them"; and "the Archive" as "a metaphoric invocation for any corpus of selective collections and the longings that the acquisitive quests for the primary, originary, and untouched entail" (Stoler 2009: 45). The latter meaning is indebted to Michel Foucault's observation in *The Archaeology of Knowledge* that "the archive" – rather than primarily referring to a body of documents and the institutions that house them – "is the law of what can be said, the system that governs the appearance of statements as unique events" (Stoler 2002: 145), a historical a priori characterizing specific epistemes. Juristocratic reckonings in Latin America and beyond can thus be seen as simultaneously engaging with, and thereby seemingly succumbing to, the logics of the post/colonial archive, *while at the same time* challenging and reinscribing its "law of what can be said" with unruly meanings that redirect the historical a priori toward alternative futures.

If we take seriously the observation that how the dialectics of juristocratic reckoning become instantiated in concrete contexts, and are thus made socially consequential, is also profoundly shaped by the ways in which these settings are framed and *narrated* – that is, how social times become imbued with particular renditions of legal times (Beynon-Jones & Grabham 2019) – we also need to reflect on our own roles as scholars in creating and narrating moments of juristocratic reckoning. In other

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words, we must also reckon with "reckoning with law in excess" as a framing device for making sense of the comparative and relative rise and fall of law, in different settings and at various moments in time.

This brings us back to the starting point of both this Introduction and the volume itself: namely, our intuition that Hirschl's original framing of the early post-cold war order in terms of "juristocracy" did rightly identify an iconic moment and momentum that centered on the historic place of legal apotheosis, while missing (out on) its own indexicality in referencing a much broader transhistorical phenomenon. At the same time, current debates about the demise of the rule of law, debates that are themselves skewed by geopolitical and intellectual power inequalities, offers us yet another moment in which to think through the dialectics of juristocratic reckoning, yet this time in a way that acknowledges its own iconic indexicality.

In observing both the analytical utility of the framework of juristocratic reckoning and the fact that the search for empirical evidence of specific examples will often yield inconclusive or ambiguous results, we note that "reckoning with law in excess" may also function as a relational antidote against renditions of particular moments, momentums, and mobilizations in *any* archive of law that are too definitive, too self-assured. Instead, by conceiving of these archives as living and multiple, constantly in the making by multiple actors with different purposes, we acknowledge that both the many lives of law, and the framework developed in this volume, must also be understood as similarly inconclusive, similarly open to multiple interpretations, directions, and futures.

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