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Nationalist Revivals and Reproductive Rights in Post-Transitional Societies

(Cite: *Annual Review of Law and Social Science*,
<https://www.annualreviews.org/content/journals/10.1146/annurev-lawsocsci-062124-122233>)

Abstract:

This article reviews the literature on the intersection of democratic transitions, nationalist revivals, and reproductive rights in three post-transitional regions: East-Central Europe, sub-Saharan Africa, and Latin America. After discussing studies on global contestations of human rights, the article identifies four thematic clusters in the literature: the double bind of gender and democracy, the projection of internal tensions within the human rights framework onto transitional societies, the rise of new biopolitical regimes, and the phenomenon of human rights capture and hijacking. These themes provide a structured framework for understanding how the renewed prominence of nationhood in post-transitional contexts has shaped the contested realization and protection of reproductive rights, drawing significant political and scholarly attention. The conclusion examines the internal dynamics of the threefold concept of justice, exploring how reproductive, transitional, and historical justice contribute to the contestations of human rights in post-transitional nationalist revivals.

Keywords:

reproductive rights, human rights, abortion, nationalism, transition, democratization

Some liberal democracies are noticeably less liberal than others when it comes to reproductive rights—rights related to individuals' decisions regarding various aspects of sexual reproduction, such as access to abortion, in vitro fertilization, and emergency contraception (cf. Erdman, Cook 2011). The conceptual association between liberal democracy and a relatively liberal stance on reproductive rights seems well-established and is partially supported by empirical quantitative data (Wang 2004). However, recent review by Joanna Erdman and Paola Bergallo (2024), suggests that a liberal understanding of reproductive rights can sometimes lead to outcomes that are diametrically opposed. Furthermore, the positive statistical relationship between democracy and reproductive rights does not imply a straightforward progression toward greater liberalization in democratizing countries.

This is partly because of the conceptual conflation of democracy with liberalism, a distinction that is often difficult to untangle (Rhoden 2013). Another reason lies in the fact that the effects of a functioning liberal democracy are not identical to those of the process of becoming one—a phenomenon I will refer to here as the "democratic transition." The connection between democratic transitions and approaches to reproductive rights has been frequently noted in the literature (see Krajewska 2021), and quantitative analyses indicate that these transitions often impose significant and unevenly distributed reproductive costs (Wejnert 2008). For these reasons, I argue that the literature on the impact of democratic transitions on reproductive rights warrants attention in its own rights.

Scholars often refer to societies transitioning from one form to another as undergoing either transitions or transformations. The term "transition" typically implies a passage along a defined path toward a specific goal, whereas "transformation" emphasizes the open-ended and inherently

uncertain nature of the change (Merkel, Kollmorgen, Waegner 2019). I will use the term "transition" and refer to societies that have followed such paths as "post-transitional" societies. This terminology does not suggest that transformations are complete or that the transition process has definitively ended. I propose examining the widespread phenomenon of nationalist revivals as a critical aspect of the experiences of many post-transitional societies, closely tied to their democratic transitions. By "nationalist revivals," I mean the resurgence of nationalist political forces after a period of diminished influence. While such revivals are not an inherent feature of the transition process, their occurrence has been documented in numerous post-transitional societies worldwide (Zaslavsky 2021; Tismaneanu 2009; Sahakyan 2022; Hur 2022; Iamamoto, Mano, Summa 2023; Jagmohan 2024).

Despite revisions to the categories traditionally used in transition and transformation studies—and the corresponding critique of the linear sequencing of historical transitions—a general consensus persists that democratic transitions occur in chronological clusters. Samuel Huntington (1991) famously described these clusters as "waves," a metaphor that has been both influential and widely debated (see also Gunitsky 2018; Weylan 2014). The vast majority of what Huntington identified as the "third wave" of democratization, encompassing regions such as Western Europe, Latin America, the Asia-Pacific, Eastern Europe, and sub-Saharan Africa, occurred before the concept of reproductive rights was formally articulated and gained prominence in international human rights law. This shift began with the 1994 International Conference on Population and Development in Cairo and the 1995 Fourth World Conference on Women in Beijing. These events established human rights guarantees as a framework for securing sexual and reproductive health, creating a distinct category of reproductive rights within the international human rights system (Beninger 2021).

While some democratic transitions led to expanded access to and recognition of reproductive rights—particularly in areas such as contraception and sex education (Milanesio 2022)—others experienced the opposite trend. For example, countries like Poland and Eastern Germany saw significant rollbacks in reproductive rights (Dienerowitz, Bauer 2023; Fuszara 2005; Graff 2003; Bucholc, Gospodarczyk 2024). In certain post-transitional contexts, such as Nicaragua, there has been a reversal of liberalization, with the introduction of more restrictive laws and policies (Getgen 2008). Furthermore, in many regions, including much of Africa, the implementation of reproductive rights remains inadequate (Stevens 2021).

Even in countries where legal or regulatory frameworks have not imposed additional restrictions, barriers to accessing legal abortion persist. These obstacles have been extensively documented in the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights (Fenwick 2012; Cosentino 2015; Smyth 2020, 2024a, 2024b). While patterns of regression or stagnation are not universal across post-transitional regions, they are recurring phenomena that have prompted scholars to seek explanations.

This article examines the combined impact of democratic transitions and nationalist revivals on reproductive rights in post-transitional societies. While nationalism has long been a central theme in transition studies, it is rarely a focal point in comparative reproductive rights research, often only discussed in relation to phenomena like religious fundamentalism, conservatism, or right-wing populism (see Krygier, Czarnota, Sadurski 2022). By focusing on the intersection of democratic transitions, nationalism, and reproductive rights, this review highlights the role of nationalist revivals in shaping post-transitional approaches to reproductive rights, particularly in East-Central Europe, sub-Saharan Africa, and Latin America, where reproductive rights remain deeply contested.

I begin by examining the scholarship aligned with what I term "the global contestation paradigm," discussing its strengths while addressing its limitations in accounting for the legal effects of post-transitional nationalism. I then explore four key themes in the literature on reproductive rights contestation: the gender-democracy double bind, the projection of internal tensions within human rights frameworks onto transitional societies, the rise of new biopolitical regimes, and the dynamics of human rights capture and hijacking in post-transitional contexts. These themes provide a framework for understanding how the renewed salience of nationhood shapes the realization and protection of reproductive rights in post-transitional societies.

The global contestation paradigm

A key heuristic in the scholarship on reproductive rights contestation is its connection to what David Paternotte and Roman Kuhar (2017) call "anti-gender campaigns." This global approach frames opposition to reproductive rights as a widespread phenomenon, emphasizing the "family resemblances" across regions. A timeline links the rise of gender studies in the late 20th century with opposition led by the Catholic Church, which began popularizing the term "gender ideology" in the mid-2010s (Corredor 2019; Korolczuk 2016). Scholars examine historical and cultural factors enabling anti-gender campaigns, including collaborations between Catholic, Orthodox, Protestant, and Muslim groups (Abdou 2021).

Research also highlights regional and global networks that foster religious-political alliances through churches, conservative parties, NGOs, and GONGOS (McEwen, Narayanaswamy 2023; Pető 2015; Graff 2021; Desperak 2023). The most significant conclusion is the explicit link between anti-gender campaigns—reacting to the Cairo and Beijing conferences of the 1990s—and the rise of the "global right" (Paternotte, Kuhar 2017; Graff, Kapur, Walter 2019). Within the global contestation paradigm, political developments are framed under the influence of the global right, supported by evidence of collaborative links and recurring "family resemblances" in anti-gender movements.

The legal impact of anti-gender campaigns has been widely studied in national and international law. Scholars have highlighted their role in undermining liberal democracy, eroding human rights, and introducing "ideological colonization" by global anti-gender movements (Korolczuk 2023; Sosa 2021; Duffy 2024). These movements can promote hate speech against women and gender minorities, enforce heteronormative family views, limit reproductive health access for minorities, and restrict sexual education for children (Vaggione 2020; McEwen 2024). Anti-gender campaigns are particularly influential in issues like hostility toward LGBTIQAI+ individuals and abortion law, two key concerns in global reproductive rights. These movements have shaped domestic legislation in countries like Poland, Chile, and Uganda (Bucholc, Gospodarczyk 2024; Vivaldi 2024; Glass 2023). They also consolidate anti-gender arguments through strategic litigation, amicus briefs, and advising international organizations and policymakers (Collins 2018; Kocemba, Stambulski 2024; Datta, Paternotte 2023; Cupać, Ebetürk 2020).

The global contestation paradigm highlights the transnational collaboration in creating and sharing knowledge that often underpins legal restrictions on reproductive rights. It provides a framework for analyzing local campaigns, which are frequently inspired, orchestrated, informed, and funded by international networks. This approach opens the door for significant advancements in transnational socio-legal studies. However, its focus on family resemblances in the contestation of reproductive rights does not address the specific mechanisms that generate these resemblances. Consequently, one of the most prominent and widespread aspects of this contestation—its connection to cultural and political conservatism—becomes a central theme. As a result, demographic and economic factors driving the contestation of reproductive rights, whose

connection to conservatism is not always straightforward, are often overshadowed by cultural factors, where the link is more easily established. In discussions of reproductive rights contestations, the influence of nationalism often becomes indistinguishable from that of conservatism. Nationalism is thus, at best, reduced to an ideological tool of conservatism, with concepts like nationhood and national identity being integrated into the cultural resources mobilized by conservative movements.

The combination of conservatism and nationalism is not universal. Michai Varga and Aron Buzogany identify two types of conservatism with different intellectual roots and relationships to nationhood: revolutionary conservatives and national conservatives (Varga, Buzogány 2022). These differences influence local conservative contestations of reproductive rights in post-transitional societies, where nationhood is often reinvented or redefined during nationalist revivals that reassess or reject the democratic period's legacy. Scholars highlight post-transitional societies like Brazil, Russia, and Hungary, where "conservative revolutions" (Pfahl-Traugher 1998; Cohen 2024) assert national identity and sovereignty, sometimes led by former liberals like Viktor Orbán, using conservatism as a tool.

Today's conservative contestation of reproductive rights serves as a clear example. National-conservative leaders such as Poland's Jarosław Kaczyński and Slovakia's Robert Fico have championed what Zuzana Mad'arová and Pavol Hradoš (2022) term "gendered illiberal transformation" as part of their nationalist agendas, having undergone a process of conservative radicalization for political pragmatism. A similar selective use of conservative language, framed by national revival rhetoric, can be seen in the "neopatriot" movements led by figures like Javier Milei in Argentina, Jair Bolsonaro in Brazil, and José Antonio Kast in Chile (Sanahuja, Burian 2024). This trend has been explored in studies framed by the concept of the "global right."

In Africa, nationalism has developed through a complex blend of Western political ideas and indigenous values, emphasizing African identities and pan-Africanism in opposition to the arbitrary borders of colonial nation-states (Neuberger, Datan 2023). The region's history of colonial oppression and exploitation has led to a revision of concepts like nationhood, statehood, and democracy, based on shared experiences. Scholarship on opposition to sexual and reproductive rights in Africa often frames these issues within the global contestation paradigm, citing African traditions and values as markers of adherence to the "global right" (Okech 2024). While Africa's involvement in global anti-gender campaigns is well-documented (McEwen, Narayanaswamy 2023), the intersection of conservatism and nationalism has received less attention. Few scholars address the impact of rising African nationalism on reproductive rights outside the context of global conservative campaigns—a gap that could grow more significant as nationalist revivals in countries like Nigeria (Olasupo, Oladeji, Ijeoma 2017) and Somaliland (Bayeh 2024) gain momentum.

A key argument against conflating nationalism with conservatism comes from literature on societies experiencing strong nationalist revivals while not universally hostile to reproductive rights. Examples include Israel, which has robust natalist policies, such as generous funding for IVF (by global standards), alongside relatively strict abortion laws (Shenhav-Goldberg, Brym, Lenton-Brym 2019), and the Netherlands, where progressive policies on LGBTIQ+ family rights coexist with rampant homonationalism (Bracke 2012). As Richard Togman (2019) has shown, natalist politics have been linked to nationalism for decades, if not centuries. Depending on technological advancements, institutional frameworks, and legal contexts, these policies may balance incentives and restrictions in ways that have disproportionate effects on the reproductive rights of affected populations. While some comparative studies, such as Alyson Brysk and Rujun Yang's analysis of European Value Survey results (2023), have established an empirical link between nationalism and anti-abortion views at a regional level, no systematic global comparison exists in the literature that explores how diverse reproductive rights relate to natalist and nationalist agendas. It remains a

legitimate question whether post-transitional national conservatives are more consistently hostile to reproductive rights than their counterparts in more established democracies.

Last but not least, new renditions of nationalism arose recently which can be combined with reproductive rights agendas in a variety of new ways, beyond the conservative-liberal dichotomy. First and foremost, the rise of resource nationalism has garnered attention in the context of nationalist revivals in Africa and Latin America, particularly in relation to these regions position in the global extractive political economy (Hickey, Abdulai et al. 2020; Monaldi 2020). This global phenomenon is highly relevant to discussions of reproductive rights. Scholars and activists are increasingly drawing connections between environmental and reproductive rights, as well as between reproductive health and environmental conditions (Schettler 1999; Di Chiro 2008). Since the 1970s, ecofeminists have highlighted the intrinsic link between restrictions on reproductive rights and extractive, exploitative attitudes and practices (Kitch 2023). In the context of emerging resource nationalisms, this connection is once again coming to the forefront.

Four themes across the local contestations

Conflating nationalism with conservatism by overemphasizing global family resemblances in the contestation of reproductive rights is less likely when local contestations are examined as case studies or within narrower comparative frameworks. The ways in which reproductive rights have been contested locally vary significantly, but several common themes have been identified and these mechanisms are relevant across different forms of nationalism within these contexts. I discuss four such mechanisms below: the double bind of gender regimes and democracy, the internal tensions within the human rights project, the rise of new biopolitical regimes, and the specific ways human rights are captured and hijacked. Together, these four themes provide a framework for reorganizing scholarly discussions, focusing on mechanisms that are shaped by both democratic transitions and subsequent national revivals.

Double bind of gender regimes and democracy

The theory of gender regimes to encompass the complexities of today's world is still work in progress (Walby 2020). The relationship between democratic transitions and gender regimes identified for entire societies is complex and multifaceted, involving an interplay of social, cultural, political, economic, and other factors. In fact, the literature on gender regimes in post-transitional societies highlights the limitations of the linear, progressive view of democratic transitions and underscores the weak empirical link between democratization and equal access to reproductive rights for all genders.

The most widely recognized impact of democratic transitions on reproductive rights is their effect on the status of women. This goes beyond new democracies' failure to achieve political gender equality (Dahlerup 2017) and the disproportionate economic hardships women face during democratic transitions (Moghadam 1993). In many post-transitional societies, women have often experienced de facto restrictions on their reproductive rights due to infrastructure deficits, welfare shortcomings, barriers to health services and education, reallocation of public funds, limited access to information, declining health, and state-sponsored cultural impositions. Unequal gender regimes that predate democratic transitions have been shown to persist and even thrive in liberal democracies, despite the implementation of a liberal rights-based order (Pascall, Kwak 2005). Beyond the de facto worsening of women's position, there have also been instances where women's rights have been formally restricted in the aftermath of democratic transitions through legislative and judicial interventions.

Poland is a frequently cited example of a post-socialist country where liberal transformation began with the statutory restriction of abortion in 1993, enacted by the first democratically elected parliament after 1989. This was followed by even stricter limitations in 2020, when a politically subordinate constitutional court ruled to further restrict abortion access. The trajectory of abortion law in Poland illustrates the effectiveness of long-standing contestation by national conservatives (Bucholc 2022), challenged by women's movements both through domestic protests and litigation before international human rights courts (Kubal 2023). Similar developments have occurred in Honduras, where a 1980 constitutional assembly adopted a ban on abortion under any circumstances. In 2020, the constitution was amended to require a larger majority to lift the ban, including a clause that prevented altering this qualified majority, effectively entrenching the ban as a procedural "eternity clause" (García, Lozano et al. 2020; Joven, Lead et al. 2022).

The push to restrict abortion laws in both Poland and Honduras has been a long-term political agenda of nationalist parties, driven by a desire to reinforce national identity, often linked to religious values, and influenced by international exposure to progressive movements. In Poland, as in Russia, Hungary, Slovakia, and other countries in East Central Europe, national conservatives have identified the source of these influences as the generalized West, and more immediately, the European Union (Graff, Korolczuk 2022). In Honduras, the specific influence addressed in 2020 came from developments in Argentina, where abortion was legalized in December 2020 after a prolonged campaign, following a failed attempt in 2018 (Yamin, Michel 2023; Sutton, Borland 2019), as well as from other Latin American countries (de Oliveira Parente 2022: 47). Ironically, as a result of the 2023 presidential victory of Javier Milei in Argentina, the liberal abortion law in that country may face challenges and could be short-lived.

An important and increasingly discussed link between gender and democracy in recent scholarship concerns the changing definitions of gender and the growing importance of sexual orientation in rights-based discussions. Contestations of liberal abortion laws also impact LGBTQIA+ individuals, as do challenges to other reproductive rights, including access to assisted reproduction, contraception, sexual education, and adequate sexual health services. Research has shown that sexual minorities and individuals who do not fit into the "cis-gender matrix" of international human rights law are often marginalized (Duffy 2021). In post-transition countries—whether in Europe, Africa, or Latin America—the rights of LGBTQIA+ people, including reproductive rights, are systematically infringed upon. The jurisprudence of the European Court of Human Rights highlights this issue in Eastern and East Central Europe (Helfer 2021; Grabowska-Moroz, Wójcik 2021).

The common way to understand the double bind of gender and democracy is through two heuristics: lagging behind or backsliding. Lagging behind refers to maintaining legal frameworks that correspond to outdated gender regimes, relics of the past, which are no longer suitable for modern liberal democratic societies. In analyses of legal systems in African countries, the theme of lagging behind the modernization agenda persists, though this framing has long been contested. Explanations of reproductive rights in countries like Mozambique or Nigeria often highlight the persistence of patriarchal colonial laws and the intersectional aspects of gender inequality in traditional communities, which was compounded by colonial oppression and exploitation (Cunha 2019; Jaiyeola, Isaac 2020). For European post-socialist countries, especially those that joined the European Union during their transitions, the lagging behind heuristic was widely used in the 1990s. However, in the 2010s, following nationalist revivals in Russia, Belarus, Hungary, Poland, and Eastern parts of Germany, it was largely replaced by the concept of backsliding (Wolkenstein 2022).

Nationalism can be easily incorporated into both the lagging behind and backsliding heuristics by introducing the issue of identity. Gender regimes are closely tied not only to culture, race, and ethnicity but also to nation as an identity category (Hogan 2008). During transitions to liberal

democracy, existing social identities are tested for their ability to reformulate themselves. In this way, the double bind between gender regimes and democracy is solidified: A national identity centered on unequal gender regimes will likely reaffirm itself as an identity that may support democracy but oppose liberal protections for minorities and the equalization of their legal status. This is not because national identity is inherently conservative or illiberal, but because gender regimes, which are central to social life in most societies, tend to be conservative in nature. Therefore, there are strong reasons to expect liberal democratic transitions to result in illiberal democracies that are hostile to reproductive rights, especially as long as the nation remains a crucial identity category and gender regimes largely unchanged. This point has been consistently highlighted in feminist studies of democratic transitions (Waylen 2003).

Nationalist revivals as the rise of new biopolitical regimes

Ivan Krastev and Stephen Holmes (2019) famously asserted that the driving force of our age is the demographic imagination. They, along with many other scholars, have identified nationalist revivals as reactions to demographic challenges faced by societies undergoing rapid democratic transitions. Importantly, demographic decline is not limited to post-transitional societies: decreasing birth rates and fertility rates have been observed or projected in all regions globally (Vollset et al. 2020). While exploring the various explanations for this trend lies beyond the scope of this article, the perceptions of demographic decline have a direct and significant impact on reproductive rights.

The first connection highlighted in the literature ties demographic imagination to another highly divisive biopolitical issue of our time: migration. Demographic imagination engages directly with both outward and inward migration, influencing perceptions of domestic population numbers and their composition in terms of ethnicity, race, language, and culture. Rising numbers of migrants pose significant challenges to legal and organizational adaptability in many jurisdictions, while the human rights of migrants present a broader challenge to the international human rights framework (Haider 2007).

Closely related is the precarious situation of asylum seekers and refugees, driven to mobility by war, environmental destruction, climate change, and internal persecution (WHO 2022). These issues have direct and far-reaching implications for human rights. Studies of migrant populations reveal the intersectionality of race, gender, age, disability, and the status of a migrant or a refugee in matters of sexual and reproductive health (Alarcão et al. 2021). In recent years, the human rights of migrants and refugees in Europe have faced significant threats, particularly at the borders of the Schengen Area, increasingly including those policed by former socialist countries (Harasimowicz 2022). In particular, Russian invasion of Ukraine led to a number of studies documenting barriers in access to abortion of refugee victims of rape (Cioffi et al. 2022), underscoring the importance of a comprehensive revision of international law approach to access to abortion for war victims (Cerulli 2024).

In Latin America, migration patterns have shifted, as highlighted in a recent report by the Inter-American Development Bank (IDB) and OECD, showing decreased immigration from outside the region and increased intra-regional migration. This trend is largely attributed to political crises in certain countries, most notably the protracted crisis in Venezuela since 2010 (IDB & OECD 2021). Mass migration in Latin America significantly impacts the reproductive rights of individuals in transit, especially those in dire economic circumstances. Migrant women, in particular, face heightened risks of human rights violations, often struggling to access basic healthcare or medical services. These challenges persist both during their journeys and upon arrival in destination countries, where their legal status may be uncertain or unregulated (Peroni 2018). Within Latin American intra-regional migrations, systematic violations of migrant and asylum-seeker rights have

been documented in both transit and destination countries. Nations such as Colombia, Ecuador, and Peru have received the largest share of irregular migrants, placing significant strain on their welfare and healthcare systems. Reports from human rights NGOs have highlighted increased risks of sexual exploitation, gender-based violence, and obstetric violence among migrant populations (Profamilia & IPPF 2019; Mogollón 2024). Such issues have also been addressed in constitutional jurisprudence, notably by the Colombian Constitutional Court (Angeleri 2022).

In Africa, economic migration and mass refugee movements caused by civil wars have long shaped the demographic landscape of many countries. However, with welfare and healthcare systems in many regions unable to meet the demand, combined with widespread political instability, the reproductive rights of migrant and refugee populations are under severe threat. Issues such as inadequate access to maternal healthcare and exposure to gender-based violence are prevalent (Kwankye, Richter et al. 2021; Musuka, Chingombe et al. 2024). These challenges underline the urgent need for stronger protections and support for migrant and refugee populations.

The demographic imagination, with its focus on birth and fertility rates as well as the proportion of migrants within nation-state populations, has proven to be a potent catalyst for nationalist revivals. In 2006, Arjun Appadurai introduced the concept of the “anxiety of incompleteness,” describing the unease that democratic societies experience in their search for identity. He argued that majorities, fearing the loss of the purity and integrity of the nation, may turn against minorities. While Appadurai's analysis centers on migration and minority exclusion as drivers of contemporary nationalism, his framework can also be applied to the inward gaze of majorities grappling with anxieties within their own ranks. This internal examination, fueled by the catastrophic demographic imagination, perceives declining birth rates due to contraception or abortion as equally existential threats to the nation as migration or war.

In this context, racism, ethnocentrism, and xenophobia find significant reinforcements in misogyny, homophobia, and transphobia. These forms of prejudice become interconnected, further amplifying nationalist fears of demographic “erosion” and intensifying exclusionary and regressive attitudes toward reproductive and sexual rights. This confluence of anxieties underscores the multifaceted nature of demographic politics and its central role in modern nationalist revivals.

The result is a broad spectrum of biopolitical initiatives aimed at regulating reproductive rights and shaping demographic outcomes. Beyond restricting abortion, emergency contraception, and contraception more broadly, as well as curtailing sexual education, additional measures have been proposed or implemented. These include introducing procedural barriers to accessing legal abortion, such as Hungary's controversial “heartbeat law” (see Stánicz, Kussinszky 2023), monitoring pregnancies through centralized medical registries (Holt 2022), and even resorting to forced abortions or sterilizations that had been consistently used to target minority and indigenous groups (Alaattinoğlu 2023; Robles-Moreno 2023).

The connection between biopolitical agendas and nationalism is rooted in notions of national purity, homogeneity, and numerical strength. Nationalist movements often instrumentalize conservative agendas, using them as tools to address the “anxiety of incompleteness,” which frames demographic changes as existential threats. In post-transition societies, this anxiety is particularly pronounced, as it is exacerbated by the transformative effects of democratization processes. These transitions often coincide with significant population changes, further fueling nationalist concerns about identity, stability, and sovereignty. Thus, the demographic shifts of democratization become a fertile ground for nationalist biopolitical strategies.

[Projections of internal tensions within the human rights project](#)

Human rights frameworks were invariably critical references during democratic transitions. One key reason for this was the ubiquitous hypocrisy of authoritarian regimes, which often attempted to maintain the appearance of compliance with international human rights law. This provided proponents of democratization with an opportunity to use human rights as a powerful critique against regimes that flagrantly violated first-generation human rights, such as political freedoms and civil liberties. This strategic focus led to alliances that may seem extraordinary in hindsight. For instance, in Poland, the secular anti-Communist opposition collaborated with the Catholic Church (Grabowska 2016). Similarly, opposition movements against authoritarian regimes in Chile and El Salvador found common cause with elements of the Catholic Church (Nepstad 2019). By emphasizing basic democratic political rights, these coalitions unified disparate groups in their fight against common authoritarian adversaries. However, this approach often obscured the internal differences among human rights defenders and downplayed the inherent tensions within the broader human rights project (Xu, Wilson 2006). These tensions would later resurface, particularly as debates expanded to include second- and third-generation rights, such as social, economic, and cultural rights, challenging the initial solidarity forged during transitional periods.

With the emergence and global expansion of international human rights law, existing tensions within the human rights system were amplified, highlighting its inherent centrifugal forces (Bucholtz 2024). Critical debates emerged that led to calls for revision or even conditional rejection of the human rights project in various parts of the world (see Langford 2018). These debates centered on several key issues. First, critics highlighted the colonial and imperial underpinnings of the human rights framework, arguing that it often served as a tool for the imposition of Western values under the guise of universal norms. The second issue was the dominance of Eurocentric perspectives that resulted in insensitivity to the lived realities of many societies, particularly traditional communities and indigenous peoples. Finally, the framework has been critiqued for its failure to address problems that gained prominence in the latter half of the 20th century, such as the consequences of extractive practices, outsourcing of environmental risks, and the resulting ecological degradation in specific regions (Hancock 2019). Moreover, feminist legal scholarship contributed significantly to this critical discourse, challenging the human rights framework's initial neglect of gendered dimensions and its failure to adequately address the needs and rights of women and marginalized gender groups (Bunting 1993). This multifaceted critique underscores the complexity and evolving nature of the human rights project in the face of diverse global realities.

Scientific responses to these tensions vary widely, shaped by the positionalities of the researchers engaging with them. However, one crucial particularity stands out regarding post-transition societies' role in human rights history: regardless of the degree to which human rights were realized under their prior non-democratic regimes, these societies became fully exposed to the tensions within the international human rights system during their democratic transitions. This exposure coincided with the second half of the 20th century, a period marked by evolving critical interpretations of human rights. This dynamic proved pivotal for the trajectory of reproductive rights in post-transition societies, as these rights often became a focal point for broader societal and ideological struggles within the newly integrated human rights frameworks.

The advancement of reproductive rights as human rights revealed significant political challenges, particularly in reconciling certain first-generation rights such as the right to life, freedom of religion, and freedom from torture (Hunt 2021). It also highlighted the asynchronous adoption of reproductive rights across various regional human rights systems and the reluctance of many post-transition societies to fully commit to these rights.

A compelling example is the history of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol. Adopted by the African Union in 2003, the Maputo Protocol was groundbreaking as the first human rights

document to explicitly recognize the right to abortion as a human right. Article 14(2)(c) mandates state parties to authorize medical abortion in cases of sexual assault, rape, incest, or where a pregnancy endangers the physical or mental health of the mother or the life of the mother or fetus. Despite its progressive provisions, the Maputo Protocol has had limited impact. Comparative scholarship consistently highlights the challenges in implementing women's rights, including abortion rights, in the signatory states (Mutamberese, Budoo-Scholtz, Murden 2023). The protocol has largely remained "law in the books"—aspirational rather than operational—due to the disconnect between international human rights standards, state willingness to enforce them, and prevailing societal practices (Makamase 2023; Geng 2019; d'Orsi 2021). This progressive yet underutilized instrument, while groundbreaking in its provisions, emerged from a regional human rights system that remains relatively weak in institutionalization and influence compared to the European or Inter-American systems. Consequently, the Maputo Protocol has received limited attention in international law scholarship outside the African context.

Discrepancies among African, Latin American, and European approaches to human rights, including reproductive rights, highlight the enduring tension generated by critiques of the colonial and imperialist legacies of human rights law. As Makau Mutua observed, "Colonialism was driven by ignoble motives while the human rights movement was inspired by the noblest of human ideals. However, both streams of historical moment are part of the Western push to transform non-European peoples" (Mutua 2002: 33). Notably, human rights also formed part of a broader initiative to reshape European societies deemed peripheral or culturally distinct from the Western core.

This dynamic has, at times, fueled backlash, with critics leveraging postcolonial arguments to oppose human rights frameworks, portraying them as tools of neo-imperialism. For example, in Poland and Hungary, the conflict over the rule of law demonstrates how anti-imperialist rhetoric has been co-opted to resist perceived external pressures from the European Union. In these cases, national pride became a rallying point against what was framed as the EU's colonial-like hegemony over newly democratized member states (Kalmar 2022). Tensions have also surfaced within the Council of Europe. The European Court of Human Rights (ECtHR) has issued multiple judgments against Poland and Hungary for violating the right to a fair and public hearing by an independent and impartial tribunal. These rulings tied the defense of the rule of law directly to the human rights system, prompting resistance from both governments. This opposition, though differing in intensity, was often justified on grounds of national sovereignty (Kos 2023). Thus, the clash between human rights enforcement and claims of sovereign independence underscores the ongoing struggle to reconcile universal human rights with particularisms of national identity and autonomy.

The impact of the political convergence between postcolonial critiques and the debunking of international human rights organizations as instruments of neo-imperialism was symbolically highlighted in the ECtHR judgment in *M.L. v. Poland* on 14 December 2023. In this case, the Court refrained from addressing the abortion ban in Poland from a human rights perspective. Instead, it based its decision on the fact that the restriction had been imposed by a Constitutional Court that did not meet the rule of law standard of independence and impartiality (Tongue 2024; Kocemba 2023). This decision underscored the direct connection between the illiberal national conservatives' contestation of reproductive rights and their manipulation of the rule of law. As argued by Krygier (2021), the Polish government's actions involved using the rule of law as a façade to legitimize policies that undermined fundamental rights. As a result, the near-total abortion ban was not framed as a violation of the human rights of pregnant individuals but rather as a failure to adhere to the rule of law standard—something the national-conservative government had long dismissed as an imposition of Western European neo-colonialism or a relic of the post-communist democratic transition (Bucholc 2022b). Despite a change in government majority in October 2023, the legal system in Poland has yet to incorporate this ruling. The facts of the *M.L.* case demonstrates how the politicization of human rights and rule of law principles, framed within a postcolonial discourse,

can shape both legal arguments and the broader political contestation of rights in post-transition societies.

Capture and hijacking of human rights and their memory frames

The recurring use of postcolonial and anti-imperialist critiques of human rights law and institutions during national revivals represents an appropriation of an argumentative mode that has not traditionally been used by the right until relatively recently. This shift can be seen as part of the broader proliferation of postcolonial discourses in East and Central European social sciences over the past few decades (Wawrzyniak, Głowacka-Grajper 2024).

A parallel process of appropriation is often referred to as the "capture" or "hijacking" of human rights by political forces that have historically been skeptical of or hostile to human rights, including national conservatives. This misappropriation reflects a strategic use of human rights tools, which were once the purview of progressive movements, to advance political agendas that may be antithetical to the original intent of human rights frameworks. By co-opting these strategies, national conservatives can frame their actions as being in alignment with international human rights standards, even when these actions undermine the very principles of equality and justice that human rights are meant to protect.

The hijacking of human rights primarily involves the strategic adoption of its language. National conservatives are by no means the first to engage in this tactic. It has been argued that human rights have been appropriated in various ways: to protect the interests of the wealthy at the expense of the poor (Farmer 2003), by states to secure their own power (Burke 2018), by neoliberal forces to justify exploitative business practices (Slaughter 2018), and by the progressive left to challenge the Christian roots of the human rights project (Koren, Coleman 2019). While some of these earlier hijackings have been seen as undermining national self-determination, the appropriation of human rights by national conservatives, aimed at reinforcing national identity, highlights the tension between the universalizing aspirations of human rights and their selective application in service of specific political agendas.

The concept of hijacking, capture, or misappropriation of human rights can also be extended to the appropriation of practices traditionally associated with progressive actors. These practices include filing complaints with ombudspersons, submitting applications to both domestic courts and international human rights bodies, seeking opportunities for strategic litigation, presenting amicus briefs in international human rights proceedings, lobbying human rights organizations, and monitoring and reporting on events qualified as human rights violations (Peñas Defago, Faúndes 2014; Faúndes, Peñas Defago 2016). Scholars have documented the proliferation of such activities undertaken by political leaders, NGOs, and GONGOs (Government-Organized Non-Governmental Organizations). A symposium recently edited by Gráinne de Búrca and Katharine G. Young (2023) highlighted well-chosen examples of the misappropriation of human rights, with a disproportionate focus on sexual and reproductive rights in various countries, including several in Africa, Russia, and Brazil.

Erdman and Bergallo (2024) have demonstrated that the very construction and language of rights, particularly in issues like abortion, makes them vulnerable to capture by anti-progressive forces. The hijacking of human rights by the national right serves as a key example: by exploiting internal tensions within the human rights system and pitting certain rights against others, national conservatives create a discourse of human rights that selectively embraces individualism while simultaneously emphasizing collectivity and community—a theme that has become prominent in contemporary human rights debates, especially in discussions of women's and minority rights

(Luna 2020). Although reproductive rights, due to their feminist origins and historical ties to gender equality movements, are generally less prone to hijacking by national conservatives than first-generation human rights, they are not entirely immune to it. The literature reveals unexpected conceptual alliances that contribute to nationalist, anti-progressive revisions of reproductive rights, with conservatives highlighting the relational nature of reproductive decisions as well as expressing concern over the potential harm to the sexual health of children and young adults through sexual education, which they claim may promote risky sexual behaviors (see Bialystok et al. 2020; Jarkovská 2019).

The most recent analyses of hijacking human rights concern the LGBTQIA+ rights. While advocates of same-sex marriage and registered partnership, recognition of non-binary gender, adoption for same-sex couples, access to abortion, as well as gender affirming surgeries, have been routinely invoking human rights as a crucial basis for their claims, this has recently met with human-rights based opposition which forms a part of a broader backlash, especially conspicuous in Latin-America which had been rapidly progressing towards equal rights for LGBTQIA+ persons (Corrales 2020). When arguing against alleged impositions of human rights of gender and sexual minorities on the majorities, the national right routinely invokes the rights of minorities as well as the individualist argument implied by the language of rights.

Distinguishing between the nationalist and conservative dimensions of the hijacking of human rights is difficult, as the two are closely intertwined. In post-transition societies, nationalism complicates how democratic transitions shape nationalist views on reproductive rights. The mechanisms of hijacking appear similar worldwide. A key connection in the literature is the role of collective memories or traumas from the transition. From this view, democratic transition can be seen as imposing an incomplete understanding of human rights. The concept of "narratives of return" has been applied to post-transitional East-Central European societies (Zaharijević, Wawrzyniak, Dohotariu 2024; Wawrzyniak, Sikorska 2024). These returns refer to a shift back to a time when different configurations of rights existed. This concept is multifaceted and serves various political purposes. Wawrzyniak and Sikorska show that narratives of return can be used in both feminist and conservative discourses to frame restrictions on reproductive rights as a restoration of a "legitimate" social order.

Conclusion: the three-fold concept of justice

The themes identified in the scholarship discussed in this article offer an overview of the global and local contestations of reproductive rights within the context of national revivals. To integrate nationalism, transitional experience, and reproductive human rights, it can be useful to conclude this overview by pointing to the interplay of three types of justice in post-transitional societies: transitional justice, reproductive justice, and historical justice. Post-transitional societies are socio-legal spaces where these three types of justice collide.

Transitional justice is defined as a means to preserve justice during a period of transition that involves a shift in the foundational rules of a legal order. As Ruti Teitel (2002) wrote, "Transitions imply paradigm shifts in the conception of justice; thus, law's function is deeply and inherently paradoxical." This paradox is not limited to domestic laws; reproductive rights can also be affected by the paradigm shift brought on by transition, with its legitimacy challenged, inefficiencies exposed, and its appeal compromised. Reproductive justice, a social-justice movement related to the law-focused reproductive rights movement (Luna & Luker, 2013), can face significant impediments when reproductive rights are framed by post-transitional nationalist revivals that focus more on nationhood and national belonging than on issues like gender, sexual orientation, class, race, ethnicity, disability, migration, refugee status, or age. Within this framework, reproductive rights may be viewed as harmful to national reproduction and undermining gender regimes centered

around nationhood. Historical justice, which aims to redress historical wrongs and restore an adequate memory of the past (Neumann & Thompson, 2015), often frames the experience of transition in nationalist revivals. In this view, reproductive rights may be seen as a distortion of human rights, requiring defense against external impositions that undermine their true meaning. This conception of historical justice limits the application of transitional justice agendas that could support progressive views of society, such as those aligned with reproductive justice.

The threefold concept of justice is caught in a web of contradictions, fueling contestations of human rights. Despite local differences, these tensions contribute to a global contestation paradigm with a shared family resemblance, continuing to generate socio-legal dynamics specific to societies that have undergone democratic transitions.

I am very grateful to Robert van Krieken for his encouragement to work on this paper and to Marta Gospodarczyk for her invaluable assistance. The work on this article was funded by the European Union (ERC Consolidator, Abortion Figurations, 101044421). Views and opinions expressed are, however, those of the author only and do not necessarily reflect those of the European Union or the European Research Council. Neither the European Union nor the granting authority can be held responsible for them.

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