**Human Rights: From Practice to Policy**

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# Chapter 6

## Human Rights Scholars Respond:

## The Conversation Broadens

In a final session moderated by Carrie Booth Walling, human rights scholars Ann Marie Clark, Julie Mertus, and Kathryn Sikkink shared their reflections about the normative history of the human rights movement, as reflected in presentations by the practitioners. They identified themes that emerged across panels and drew attention to gaps and absences in our discussions. They asked probing questions about the conceptual content of human rights, the defining characteristics of the human rights movement and its collaborative relationships, and the tools of human rights change. Their observations sparked a lively conversation in much of the same spirit as the panel sessions that preceded them. A summary of the remarks is provided here.

**Julie Mertus**: The human rights movement should be understood as both evolutionary and revolutionary, but there is an urgent need for it to become more revolutionary. The human rights movement has the potential to be both an instigator and source of revolutionary ideas. Human rights are powerful because they change people from being an object in their own life to being a subject in their own life. It is a sign of the success of the human rights movement that cultures are changing such that people want to be seen as rights holders. During the panel discussions yesterday, we failed to talk about discrimination and identity in the context of human rights. We do not yet have a human rights culture that supports all parts of the population. The movement risks an intellectual incoherence if it doesn’t talk about and address identity rights.

**Ann Marie Clark:** There was a surprising consensus among participants about what Amnesty International (AI) does, how it does it, and how it gets results. Both law and people-pressure were identified as important for the work of Amnesty International, but less attention was devoted to describing how those two factors interact with one another. I suggest that AI operates under an information-principle dynamic. AI needs information about human rights violations. Then, AI mobilizes action around the principle that relates to that information. Finally, AI uses legal norms to press for state accountability. Questions were raised earlier about the necessity of law whether law is necessary and whether it serves as a useful tool all of the time. If new information can lead to the changing content of human rights, are legal norms necessary? Legal norms are helpful in consolidating human rights gains so that activists do not need to keep reinventing principles–they help complete the accountability cycle. Information and principles are what enable mobilization around human rights. Legal norms, then, are the reference point for that process.

Some questions remain. If success for the human rights movement lies partly in generating pressure, what kind of pressure is effective? And how much is necessary? Human rights scholars could ask better questions if they knew what human rights practitioners want to know about. What would you try to figure out if you had more time?

**Kathryn Sikkink**: During the three panel sessions several practitioners commented on the role of allies in the human rights movement. Nigel Rodley described the human rights movement as going through three phases. In the first phase the human rights movement was insecure and it surrounded itself with allies. In the second phase the human rights movement became aloof as it sought to establish its own identity. In the third phase when the human rights movement gained confidence it began to reach out once again to create new allies. José Zalaquett argued that human rights movement had allies at all levels: domestic, regional and international. These allies included informed public opinion as well as the media or press. Margo Picken identified church groups and labor unions as close allies in the early days of the movement but who became less central later. Instead, the primary relationships were among multiple human rights organizations, creating a division of labor within the movement. There also appears to be a revolving door within the human rights movement as practitioners moved from early organizations like Amnesty International to other human rights NGOs (non-governmental organizations) and then became involved in building institutions like the United Nations or had joined national governments and academia. And the content of the our discussions indicated that initially the human rights movement was intimately connected to victims of human rights violations but over time the distance between organizations and victims increased.

There are a number of questions I wish we’d had time to discuss. Should the success of the human rights movement be measured by its ability to set agendas, build institutions, create law, or change culture? How do we define and measure success and explain lack of success? The movement has not produced the kind of cultural change in the USA necessary for people to rise up and defeat calls for torture in the wake of September 11, for example. Statistics tell us that human rights violations are constant–that human rights performance remains flat–despite the existence of the human rights movement. If we accept those statistics, the human rights movement has not been successful because it did not change the behavior of governments. What is the sense of human rights practitioners? Is the world as bad today as when the movement started? Or is the movement a victim of its own success because it has drawn so much attention and human rights violations are now more recognized? The media plays an important role in the dissemination of information, mobilization of public opinion, and naming and shaming activities of the human rights movement. What does it mean for the future of the human rights movement if the press is increasingly fragmented or unreliable?

Competition among the human rights organizations was one of the themes that emerged from our informal discussions (not the formal presentations). Can organizations within the human rights movement be simultaneously competitive and complementary? What is the cause of competition between organizations? Is it based on funding issues? Motivated by press coverage? Substantive differences?

### Discussion: The Conversation Broadens

In this final round of discussion, human rights practitioners respond to the summary observations and questions raised by the participating human rights scholars.

*The Role of Law and People Pressure in Human Rights Change*

* **José (Pepé) Zalaquett**: Law deals with what ought to be while human rights organizations are dealing with the reality of the actual crimes. We must realize that law follows real life changes rather than leading them. Human rights organizations and their practitioners often act according to the “law in the making.” Practitioners invoke human rights norms before they are fully crystallized. The emergence of new human rights law is the result of a process whereby activists (or norm entrepreneurs) gradually generate consensus in favor of a principle or value that has to be protected by the law. In general, human rights law is catching up belatedly with reality. This is similar to academic life, which also tends to trail behind practice.
* **Wilder Tayler**: Law tends to be at the center of every successful human rights campaign but human rights campaigns also push the development and application of law.
* **Nigel Rodley**: International law doctrine speaks not only established law, but also of law in the making. Customary international law may be *lex lata*–the law as it exists–or it may be *lex ferenda*–law in the making or what the law ought to crystallize into. It is important to think about what kinds of normative action may be appropriate in a given case. Treaty law is binding but only on the parties to the treaty. Declarations create standards which can be used to invoke and somewhat push norms forward. With an established international standard it is possible to hold states to it. Standards give human rights practitioners the ability to say these are your standards that we are seeking to hold you to, not ours. This cuts right across the cultural relativism argument.

*Advocacy Strategies and Effective Pressure*

* **Wilder Tayler**: Pressure and persuasion are both important tools for the human rights movement–they are necessary for success–but they are tools and techniques, not the goal itself. Pressure is related to public advocacy; it is the result of publicity generated by campaigning. Persuasion, on the other hand, is private advocacy. Sometimes human rights organizations put their arguments forward discreetly, not publicly, to secure a real commitment from the target actor. I recall once trying to explain the concept of enforced disappearance to a Japanese diplomat. We wanted Japan’s support on a UN measure, but the diplomat didn’t understand the concept. We drew diagrams on a paper and we passed it back and forth. It was humorous–but through this process Japan was *persuaded* to support the effort. Pressure and persuasion are the two main tools of the human rights movement. Apart from them there is not much more.

*Measuring the Success of the Human Rights Movement*

* **Wilder Tayler**: It is hard to say what the human rights movement has achieved, and even knowing what to talk about is difficult, because the definition of success is driven in part by the relationship between donors and human rights organizations. When human rights organizations ask for funding, they do not go to funders and say that they are changing cultural parameters through a process that will require decades of work. They would never be funded! Success must be measured in multiple ways by human rights organizations. In normative terms, I think that the human rights movement’s success with the issue of impunity has been real. On the issue of human rights defenders, we have primarily been successful with the concept.
* **Nigel Rodley**: The human rights movement has been successful in making torture unspeakable; but acts of torture continue. Human rights practitioners go into prisons and see it happening. It is true that after 9/11 a brutal administration used brutal rhetoric justifying torture, but the fight back started soon after. The accountability is not fully there but the norm is still there. The debate about torture revolves around innocent versus guilty victims; but Amnesty International made the death penalty retreat and it did so through the process of elite persuasion.

It is interesting to explore how far human rights NGOs are seeking to change culture and how far they are seeking to change elite behavior. Think of cases like the death penalty, sexual minorities and civil rights. There has been an explosion of freedom (expression, assembly, conscience) but is it a success of human rights? There are big forces at play but this includes a human rights consciousness.

*Collaboration between Scholars and Practitioners*

* **José (Pepé) Zalaquett**: In answer to a question about how to help human rights scholars ask better questions and produce more useful research: Human rights scholars need to go directly to practitioners and activists and talk to them about their needs. Some academics are really trying to be relevant to practitioners but there is also a danger that some academics are drifting too far afield.

*Allies of the Human Rights Movement*

* **Margo Picken**: Churches continue to play an important role in the human rights movement domestically in countries where they have the courage and power to promote and protect human rights. But internationally, they are not as active as they once were. Moreover, governments have become incredibly sophisticated in advancing arguments to protect themselves; the human rights movement needs to be far more strategic. The spirit of the times is such that the United Nations is not conducive to pushing human rights forward, and the real dynamic is at the domestic level. International organizations still have an important role, however.

*Evolution of Human Rights Concepts and the Human Rights Movement*

* **Susan Waltz:** Kathyrn’s observations about academic research on human rights performance raise questions about the *definition* and *content* of human rights. Who owns the conceptual definition of human rights and how has that definition changed over time? The answer to that question has implications for whether you see things improving, worsening, or staying the same. In the early days of the human rights movement, the content and focus of human rights problems were defined from within the movement itself-- prisoners of conscience, torture, disappearances. More recently, the human rights definitions and the human rights agenda have been shaped by ideas that originate from outside the human rights movement–from academics, to the experiences of women, to actors in the corporate world.

I think it’s important to recognize that what we’re seeing and defining as a human rights problem has not remained constant over time. There is a temporal dimension to the *idea* of human rights as well as the *practice* of human rights. We may want to consider not only what kinds of human rights violations have emerged, but whether any have started to disappear. Why, for example, is Amnesty International producing fewer prisoner cases than it used to? What is the relevant dynamic here?

* **Michael McClintock:** Susan alludes to the premise of success–the claim by some that Amnesty International’s work on prisoners of conscience was so good that it led to increases in “disappearance.” This is not necessarily the case–it seems far more likely that in many cases the “disappearances” and outright murders were always there, but went unrecorded. It was in any case easier to respond to the cases of acknowledged prisoners, where there was no question of who did what to whom–and AI’s original mandate expressly limited our work to these cases. The countries in which massive shifts to these secret and illegal methods occurred *since* the 1960s are not, in any case, the countries in which AI’s work for individual prisoners of conscience achieved the greatest resonance. The global reduction in prisoners of conscience responded to many factors, not least the improvement of global communications and the internationalization of human rights standards. These made it more costly for governments openly to imprison their critics on spurious grounds. AI’s efforts on their behalf were one dimension of this trend. In this regard, it’s hard to think of a country with large scale political imprisonment that shifted to murder and “disappearance” in which the political cost of that imprisonment was a significant factor.

Today’s need for work for prisoners of conscience should not be understated—there are probably more than we think, albeit in a far smaller group of countries. Amnesty’s work in this area today, however, probably requires greater resources than in the past, if only because the dangers of being wrong have increased. Human rights organizations are under a microscope–they have to be right when they say that a particular individual does not belong in jail.

* **Margo Picken**: The membership component of Amnesty International is absolutely crucial. Individual adoption (local) groups are important and so is building solidarity with a constituency. What distinguishes Amnesty is that it has always had to bring its membership along with it as its purpose and activities have evolved. Process is important as a means to get to the end. The means that are used do matter and I worry that the professionalization of the human rights movement is leaving the victims and public behind. That is a problem.
* **Nigel Rodley**: I believe in professionalization. It is better to do human rights work by knowing what you are doing. Professionalism is good but careerism is a concern. As human rights become more prominent it attracts people who are interested in the political prominence that goes with it. I prefer the discipline of professionalization to the emergence of careerism.

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