

THE ROLE OF THE UNIVERSITY IN THE HUMAN RIGHTS MOVEMENT

An Interdisciplinary Discussion
held at Harvard Law School
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The Harvard Law School Human Rights Program, founded in 1984, fosters coursework; the participation of students in human rights activities through scholarly research and writing as well as practical engagement; and assistance to the worldwide human rights community. The Program forges cooperative links with human rights scholars, activists and organizations worldwide through its student summer internships, visiting fellows (scholars and activists), speakers, applied research and extensive clinical work. HRP also plans and directs roundtables and conferences on human rights issues and publishes the resulting reports and analyses. These publications, together with a description of HRP's many activities, its newsletter and other related documents, are available at the HRP website (indicated below) or upon request.

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent data collection practices and the use of advanced analytical techniques to derive meaningful insights from the data.

3. The third part of the document focuses on the role of technology in data management and analysis. It discusses how modern software solutions can streamline data collection, storage, and processing, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that the data remains reliable and secure throughout its lifecycle.

5. The fifth part of the document concludes by summarizing the key findings and recommendations. It stresses the importance of a data-driven approach in decision-making and the need for continuous monitoring and improvement of data management processes.

Preface

In developing this project, the Harvard Law School Human Rights Program sought to bring together for an interactive and interdisciplinary discussion a small number of people who had given sustained thought from different perspectives to issues concerning the role of the university in the human rights movement. The 23 participants noted in the Annex came from eighteen universities in nine countries, principally law faculties, and from research centers.

The format and process for this meeting at Harvard Law School followed the pattern of prior meetings arranged by the Human Rights Program. Edited readings on the subject of the discussion were prepared in advance by the Program and distributed to all participants. No formal papers were presented. The participants engaged in a roundtable discussion about the issues that were outlined in advance of the meeting.

Peter Rosenblum did most of the work in editing the transcript, while Henry Steiner participated in the editing. The published text considerably shortens the original transcript and occasionally revises the order of remarks, in order to present a readable and cogent exchange of ideas. Each participant had the opportunity to review and correct a draft of this publication, to be certain that its text accurately reflects the views expressed during the discussions.

The Human Rights Program provided the funds necessary for the roundtable and for this publication.

Henry J. Steiner
Director, Harvard Law School
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Introduction

As recently as three decades ago, systematic attention to international human rights within one or another university faculty was a genuine rarity. One found the occasional course or seminar taught by a faculty member with knowledge and interest in the field, but little more. It is true that universities in regions with their own human rights regimes gave more academic time and energy to study of those regional regimes, particularly in Europe, followed later by Latin America and much later by Africa.

This absence, indeed neglect, of the universal system was at least understandable. Despite the Universal Declaration of Human Rights, the European human rights regime, and the new UN institutions and debates, the post-World War II human rights movement—governmental, intergovernmental and nongovernmental—got off to a very slow start in most parts of the world. There were a few exceptions, principally the vast attention given to the racism of the apartheid regime. But normative development in the decades following the Universal Declaration was very cautious, particularly with respect to formal legal development through human rights treaties. The two major Covenants that first gave the universal system a strong legal foundation became effective only in 1976, while the great wave of specialized treaties followed over the next two decades.

Significant institutional innovation arrived even later, and more slowly. The UN Commission on Human Rights was well into its third decade before it assumed significant powers. Treaty bodies such as the Human Rights Committee increased only gradually in number and as gradually in making the most of their limited powers. Nongovernmental organizations, international and national, enjoyed their extraordinary growth and heightened effectiveness from the 1980s. And from the start, the universal human rights movement as a whole devoted an undue part of its attention to a few target countries like South Africa, ignoring vast tragedies and issues elsewhere. With the end of the Cold War, the stage was set for broader human rights debate and criticism. The fact, then, is that the universal movement is far younger in its reach, powers, and commitments than its formal half century of existence since the Universal Declaration might suggest.

It is not then surprising that universities' interest in human rights through courses, research, clinical work, programs and centers gathered momentum only as the movement expanded and grew in prominence, partly through the imbedding of human rights discourse in legal argument, moral debate, internal politics, diplomacy and international relations. The claims for inclusion of human rights in a university education and for scholarly and clinical attention became irresistible as more students and faculty members found the subject challenging and important. Regions differed, with Western countries taking the lead, though Africa, Asia and Latin America can now boast of many university centers in the field. Of course the possibility of uninhibited instruction and research plummeted in authoritarian regimes, under which academic human rights activity found itself charged with a very different mission to be realized through a very different strategy.

This interdisciplinary roundtable discussion analyzes such recent development within the universities over a period of about two decades, particularly but not exclusively within law faculties. It explores the challenging and serious questions that have arisen about the nature of universities' study of, research and instruction about, and often clinical and other engagement with the human rights movement. The discussion roams between starkly different views of the role of the university. Are the university's stance and approach toward human rights—or should they be—no different from those toward many other fields in the social sciences and humanities: distanced, descriptive, analytic, critical, examining policy alternatives, not explicitly propagating or advancing any one point of view as an institution, open to a great range of inquiries and perspectives? Or should the university rather be seen as part of the movement, advocacy-oriented and aiming at the transformative change that so many aspects of the movement seem to require for human rights ideals to be realized?

As significant an issue concerns what we indeed mean when we talk of the growth of human rights interest in the "university." Of course the university or one of its faculties can act as an institution, as a collective and authoritative voice—for example, in taking a position about free speech within the university, about diversity and affirmative action for students or faculty, or about the creation of and

provision of financial and other support for a human rights program or center. But much of what we associate with the university requires its disaggregation into different communities and indeed into individuals of different understandings and beliefs who participate in university life as teachers and students and administrators. What program or coherence could be brought to their varying perspectives on human rights? Perhaps a human rights program or center occupies a distinctive position, similar neither to a university's central administration nor to an individual teacher, and thus requires a different understanding of its possibilities and functions. All such complexity surely bears on what we may mean when we discuss a "university's" role—or perhaps roles—with respect to the human rights movement.

The discussions below include numerous other issues. For example, should the university as educator and critic include within its examination of the ideals and failures as well as achievements of the human rights movement that movement's internal contradictions and dilemmas, its cultural wars and gaps, its usefulness in achieving certain goals compared with the utility of other discourses and other political strategies and arguments? The questions proliferate.

The discussions examining these varied issues fall into several broad themes that are divided into three sessions: (1) the university as a participant in the human rights debate; (2) the relevance to the human rights movement of a university's human rights curriculum, scholarship and clinical engagement; and (3) the links between the university and the nongovernmental human rights movement.

Henry Steiner

First Session:

The University as a Participant in the Human Rights Debate

Henry Steiner (Chair)

I have asked Joe Oloka-Onyango and Tom Farer to introduce this session.

Joseph Oloka-Onyango

I come to this subject having occupied four different roles. For most of my life, I have been a student, teacher and activist. These roles I experienced both in the North and South. For the past couple of years, I have also been an administrator in a university in the South, where I have had to sort through the issues of this roundtable in a context of tremendous political and economic flux. I have broadly divided my reflections into three: the university as facilitator, as actor and as violator.

The role of facilitator is perhaps the most familiar and prominent, both in the North and South. It includes the university as teacher, and as a site of research. Although the university may engage in clinical programs, internships and the like, the facilitator is usually remote from the "real world." Teaching in human rights, for example, is distanced, although not completely isolated, from the internal social, political and economic context where the university is based.

But the university is also an actor. In many countries, it is impossible to maintain a neutral distance from local issues of human rights. It may be an overtly political act to declare that your university is beginning a program for the study of human rights. The issues in those countries are not about some distant "other", but about the self. The government concerned is "our" government and the question is the extent to which it has adhered to or departed from the norms and standards enshrined in international instruments and mechanisms. This has meant a much more activist role for the university that contemplates becoming involved in the study and teaching of human rights.

Activism has also come from within organized communities within the university—both academics and students. In many countries, academic associations have become very active in the

discussions about human rights. But most prominent have been the student movements that have been fundamental in so many countries and human rights struggles. In several instances students have been at the core of the human rights movement or of key mobilizing issues.

Finally, we have to consider the university as violator. This is particularly important in non-western contexts where the university played a part in the colonial enterprise. In many colonies the university was conceived as part of the apparatus of domination and discrimination. It was intended at first as an exclusive and elitist institution. The university produced the elites for a system intent on destroying existing systems and cultural practices that dared to run counter to the colonial design. In this context, the university as an institution emerged to destroy or at least seriously impede the cultural rights of indigenous expression, the social rights of family organization and political rights of assembly and association. In such a context the university represented the very negation of human rights as we know them.

The issue of language is a poignant example of the human rights violations wrought by the colonial university. In virtually all African colonial contexts, the language of the university was that of the colonial power (French, English, Portuguese or Spanish), serving to marginalize, "ethnicize" and diminish the development and consolidation of indigenous languages. While it is true that the elite educated in such universities took the frontline in the struggle against colonialism, there remained an acute sense of alienation and dispossession among many of them—most aptly captured by Frantz Fanon's description in *Black Faces, White Masks*. Until the mid to late 1960s, this elitist and colonial character of the African university remained intact, and was only overturned with the reemergence of notions of "Africaneity" and "negritude."

The university may also be a violator of rights within its own domain. Despite the many changes that have taken place in universities throughout the world, there are still considerable problems regarding, for example, the treatment of women and people of color as faculty and in student bodies. Questions such as sexual harassment need to be addressed comprehensively. We need to ask ourselves how friendly and sensitive we are—whether we have, for example, gender parity, but whether we include those who might speak against the grain.

That would include minority political groups, as well as persons with disabilities, and groups that are marginalized on account of ethnic, religious or cultural status.

It is also important to recall that in this era of globalization, there are winners and losers, even among universities. Unfortunately the pattern of winners and losers mirrors the international economy. Those developments have invariably given rise to universities and human rights movements in the North and South that reflect inordinate divisions of power and influence, shaping the color and character of universities and the human rights movement. This at a minimum raises certain questions about equity, participation and accountability of universities to the human rights movement and the general evolution of human rights struggles around the world.

Many universities in the South have been greatly influenced by policies of structural adjustment and liberalization that over-emphasize the market, rather than by socially-oriented approaches to development. Those policies also urge a diminished role for the state in the provision of social services. As the state increasingly reduces its role in the provision of resources for tertiary education, the burden falls all the more inordinately on the private citizen and on the university itself. The overall impact is decreased resources against a background of increased pressures for the provision of higher education. Furthermore, deteriorating economic conditions in the South have meant that the continued (and in some cases increased) movement of intellectuals ("brain drain") to the North has further depleted the human resources available.

Tom Farer

The university has a great deal to contribute to the human rights movement. There are major gaps, for example, in human rights policy analysis and assessment that cannot currently be filled by either the nongovernmental human rights organizations (NGOs) or intergovernmental organizations (IGOs) like the United Nations. How do we evaluate impending disasters? How do we work out alternatives for addressing the disaster?

These are the kinds of questions that scholars with an academic base are peculiarly well positioned to address, but typically do not. On the eve of the Carter Administration, I worked with a

group of country experts from universities and think tanks charged with identifying ways of applying external pressure in order to alleviate gross violations of human rights. Despite their ability and deep knowledge of the countries with which we were concerned, most of the papers they produced seemed to me rather mediocre and not very helpful to policy makers.

I was struck by the difficulty of the task—these were, after all, able people. The experience gave rise to four of my convictions (about which I did very little). One concerned the need for interdisciplinary teams of experts. People who had a good grasp of the political, economic, social and cultural dynamics of given societies were often not very sophisticated about the array of instruments available to outside parties or the policy processes within the U.S. Government that would influence the nature and sequencing of any effort to mitigate human rights violations. People who did know how to think strategically often had no country expertise and were inclined to generalize, to lay down strong presumptions that might well discourage or distort action in particular cases.

A second conviction was that government needed not simply a snap shot, a one-off policy paper, but rather an initial study followed by a continuing dialogue between experts and decision makers. The third was that the U.S. national security bureaucracy was not itself capable of acquiring or at least likely to acquire and maintain the necessary expertise within itself, and that even if it did develop or hire the necessary human resources, they would quickly be incorporated into quotidian bureaucratic concerns and thus dissipated. And a fourth was that scholars in universities had a large comparative advantage over those in think tanks, because the latter generally had to work on matters for which they or their home institution could secure financial support. Only university scholars had the economic security requisite for generating a continuous flow of useful policy recommendations, not only to a receptive U.S. government like that of President Carter, but also to the main human rights NGOs.

But while such recourse to university-based scholars might assist the human rights movement, is it appropriate for the university? There are those who would argue that the university should be a detached observer of all phenomena, including the human rights movement. Frankly, I see little risk that the university will lose its

critical distance through involvement in the implementation and enhancement of the human rights movement. Why? Because the incentive system in academia places such an emphasis on critical distancing and the work of individual academics, that no matter what position the university takes, the structure continues to urge professors to think critically and maintain distance.

[Neutrality, objectivity and "taking a stand" on human rights issues]

Claudio Grossman

Neutrality is an important asset for the university, but it does not require us to operate in an "ivory tower;" as if everything were possible. In my view, neutrality requires a commitment to free discussion, integrity, respect for different views and an openness to the possibility of changing your perspective.

I don't think you can make a strict division between activism and research. Human rights informs our work and orients our agenda to seek knowledge that may serve the activist. It is not, in my view, partisan to orient the research agenda of the university to elucidate problems of human rights.

Frederick Schauer

The independence of the university as a whole is its comparative advantage. For example, there are threats to that independence from close collaboration by faculties and universities with other organizations, even ones largely congenial to their goal. There is a recurring problem in "sponsored research" of losing control over what is being said and who determines what can be said.

But in order to address the issue of partisanship fully, we have to go beyond abstraction of the idea of the university and think of the university as composed of constituent parts and individuals engaged in particular activities. I do not think the independence of the university is inconsistent with some individuals taking strong and contrasting positions.

Kevin Boyle

Surely there is nothing incompatible between human rights and the purposes of a university. Nor could scholarship be put somehow at risk by having scholars speak firmly about equality, human dignity and the promotion of tolerance and understanding among all human beings. Universities should not be shy to say that, in a broad sense, they are engaged in the education of students for international citizenship and concerned with the international global realities that penetrate all their lives. That engagement involves major questions of social justice and development. There is nothing incompatible between that and the perspectives of particular disciplines.

Henry Steiner

My difficulty in what Kevin Boyle says lies in assuming a consensus over what we mean by such broad concepts as, say, “equality” and “social justice.” For example, do we mean equality in law or fact, and what would the latter signify? These are problematic and complex issues about which people differ; a firm university position seems as unlikely as it does unwise. Who speaks for the university on such issues—the President or governing boards, or a human rights program? And whom does the “university” speak for? The entire faculty? Do individual faculty members speak for the university, or just for themselves? How much of the human rights corpus should be articulated in an assumed authoritative manner by the “university” as such, speaking corporately?

Claudio Grossman

I think we have to establish criteria for determining when the university must take a stand on human rights issues. Essentially, universities all subscribe to the idea that they are engaging in research, teaching and service. Should the university take clear positions on human rights issues all the time? The value of its contribution would soon disappear. By the same token, I don't think the university can keep silent during the great tragedies of our time—genocides, for example. We have to take into account the societal expectation that intellectuals should take an informed stance on important issues facing society. There are times when remaining silent would create a problem for the university because it would amount to validating outrageous

behavior. Think, for example, about remaining silent with respect to the repressive measures taken against scholars in the Soviet Union, or in Pinochet's Chile.

Tom Farer

The real issue is whether the university or its departments should expend its collective prestige or resources to advance a certain understanding about an important issue on the human rights agenda. The further we expand the agenda of human rights—for example, to include economic and social rights—the more likely we are to be investing the resources of the university on behalf of controversial positions. This is not good or bad. But can one justify on principle expending resources in this way?

My point is related to Henry Steiner's. We can't assume consensus. It seems that we would have to start off by asking, what is a good society? Do we have a common value-set about society? What role does, should, or can the university play in strengthening the good society? For example, if we say that a good society is one that is pluralistic and participatory, but if we also recognize that wealth and power tend to concentrate, then we might argue that the university should work to redress the imbalance. In pursuit of a shared consensus of the good society, it might be argued, the university ought to take these potentially controversial positions.

Like others, I think we need to distinguish between the role of the university in liberal-democratic countries where there is broad and well protected public space, and other countries where an intolerant authoritarian state or a weak state and an intolerant polity may make the university a privileged sanctuary for critical thinking, writing and speaking. In the latter, the university as an institution contributes by establishing and defending the sanctuary. In the former, the university can help by encouraging the kind of research I mentioned earlier, namely practical studies in human rights enforcement. One important form of encouragement is to treat such work as important scholarship for purposes of tenure and promotion and merit pay increases. The university can also contribute by helping to raise money to fund such projects.

Makau Mutua

It is important to understand the political and social context in which most universities in states of the South exist, and to distinguish such universities in this discussion. Usually, the most prominent universities in the South are state-owned. In societies where open political debate may not be fully accepted (as is the case in many states of the South), it is very difficult for state employees (and this includes academics at state universities in the South) to act independently, even in the classroom. There is a chill in the air because of the history of friction and tension between scholars and the state. This is particularly true for those involved in human rights.

Not long ago, one could not even teach a human rights course in many state universities. Although that is now changing, the culture of self-censorship and intimidation by administrators stills hangs in the air. This direct or indirect control of the academy by the state is not healthy for human rights. In my view, this is a reality that limits the importance of the university in the South to the human rights movement.

Ali Oumlil

It may be pertinent to debate the subtleties of academic freedom and the independence of the university in the United States or Europe. But in a university in an Arab country, where would you even find the professor who has a choice to engage in education, research or activism in human rights? There is no such choice. In those countries, it is first important to defend the identity of the university against the cultural atmosphere in which it functions. In light of the rise of Islamist movements, the possibility of teaching according to the norms of an independent university is slight. The challenge is to prevent the university from becoming a place of ideological indoctrination and intellectual violence.

Makau Mutua

I fully agree with Ali Oumlil but want to go a step further. There should be no place for intellectual tyranny in a university, but it exists. The ideology of the party, government or dominant culture prevents free debate and the pursuit of ideas. In such cases academics cannot be "neutral." They have to become politically active outside

the university to force political change. They have no luxury just to think and write tomes.

David Kretzmer

I do not like to divide human rights into different kinds of issues, but when we are talking about human rights violations that could particularly affect the university in terms of its mission, the university must take a stand. When a government is contemplating action that is likely to restrict freedom of research, then the university is bound to act. During the 1980's, the universities in Israel were free, but those in the Occupied Territories were being shut down by the military authorities. Many members of the Israeli universities took a stand against this. At the Hebrew University in Jerusalem we established a committee of six faculty members who examined the situation and were extremely critical of the closures. However, the universities, as institutions, were reluctant to take a position. It seems to me that this was a matter on which they should have taken a clear stand.

When it comes to other issues that are not connected to academic freedom, the question becomes far more difficult. I agree that it is important to maintain the independence of the university, and in a highly charged political situation, any position it takes is going to be controversial and potentially divisive. However, I do not think that this should necessarily prevent university human rights programs or centers from taking active positions on human rights issues. When should they do so? This is not a question to which one can give a general and universal answer. The answer will depend largely on the specific political and social context. I cannot make judgments as to how universities should act in other societies with which I am not familiar.

Henry Steiner

I find very useful David Kretzmer's distinction between concerns for academic freedom and other human rights issues in considering when the university as such should become involved. The debate I hear in my law school faculty begins at the point that the school as such is asked to take a position on an issue that goes *beyond* consensual principles about the university's internal life such as free inquiry and speech and related rights that form part of academic freedom.

The tendency at Harvard has been for individuals to speak out for themselves on such broader issues, rather than have the university or law school or even a human rights program take a position.

Stephen Marks

Following on Henry Steiner's point, I think it would help our discussion to disaggregate the university and consider the distinct roles that each component can play. I would distinguish between the role of the faculty as individuals and in their corporate structures, the role of the university as an institution, and the role of programs and centers. With respect to faculty, individual members should be free to act when and how they wish with respect to human rights, to take a strong position or "not give a hoot." Secondly, they should be free outside of their formal academic obligations to engage wholeheartedly in the human rights movement, as activists, counsel and advocates. Thirdly, inside and relevant to university structures, faculty should push for human rights outcomes on such issues as sexual harassment, hate speech, etc. Fourthly, there is a duty of those who engage in human rights education to do so in a manner that remains critical and not in a manner that is an over-simplified, propagandistic mode of expression.

A number of speakers have noted that the primary human rights role of the university as an institution should be to protect academic freedom. It also has a duty to ensure that human rights violations do not occur within the university community and that the university takes a position on matters affecting society where the university plays a role. For example, the university's investments as a shareholder in companies whose policies or practices may violate human rights (supporting apartheid in the past, or allowing discrimination in the workplace or sweatshop labor practices) should be reconsidered from the human rights perspective.

Human rights programs and centers must maintain academic rigor. They and their researchers should be ready to reach conclusions that contradict the initial impulse of most human rights activists and that do not make the activists comfortable. The program should be freer than the university to take a stand on controversial human rights issues. If a human rights research center took up the issue of human genetic manipulation and the research team concluded that many

forms of genetic manipulation did not violate current human rights norms—a conclusion that might disappoint activists—the head of the research team or the center director should feel no pressure to temper the conclusions to please the activists or the university administration. The university might have policy reasons to oppose the application of certain technologies like genetic manipulation, but the human rights center is free to reach its own conclusions, according to the principle that scientific integrity prevails over an activist agenda or university policy.

[*Academic freedom as a human rights issue*]

Frederick Schauer

Stephen Marks referred to academic freedom as a human rights issue. This is controversial. If a professor is imprisoned because of expressing an opinion, is it a violation of human rights particularly because of the professorial role or simply because the professor is a citizen? Treating academic freedom as a human right suggests, at least, that academics have a margin of freedom or activity wider than mere citizens. If that is true, then we have to explain what it is about the role of the university in society that justifies it. What is that role?

Tom Farer

Perhaps it is simply an instrumental formulation, but it seems to me that academics should have more opportunities—more of a margin—to express dissent because of the function and influence of the university in society. Why may the university have more of a margin? Because it adds value to human resources, a function the governmental and connected private-sector elites may wish to preserve and which may be impaired even by targeted repression, at least where all the units of the university—the departments of social sciences and humane studies as well as the professional schools—share a sense of community. Moreover, in an information-driven economy, repression may drive out of the country or suffocate the creative idiosyncratic minds so essential to such an economy. Where the university also houses research deemed valuable by the economic elite, its perceived importance and hence its relative immunity should increase.

Upendra Baxi

Why should academics be privileged when it comes to freedom of speech? The question is similar in relation to journalists. Academics represent forms of social power and the epistemic privileged power they have is perhaps justified on the ground that they speak in a fiduciary capacity for the rest of society. That would be the only moral justification—that one doesn't speak for oneself, but in a representative capacity, a fiduciary capacity, for those who are dispossessed, disadvantaged and repressed.

If one looks at the hard sciences, academic freedom is also the freedom of multinational corporations; the freedom of those who can pay for research. We all know that in life sciences, much basic research is supported in whole or in part by corporations. The free academic speaker in the humanities and social sciences is necessary, if only to provide a counterbalance to speech that is beholden to other interests.

The notion of "academic freedom" is already complex and one aggravates this complexity by relating it to other contested concepts like "fiduciary role." But the different conceptions of academic freedom (as freedom of the teacher to teach and of the learners to learn) stand always imbued by notions of social responsibility. This is evident in the discourse of the Lima Declaration, and subsequent UNESCO endeavors reconceptualizing academic freedom itself as a human right.

This doesn't answer the question of how academics fulfill their social responsibilities. Some believe that these are best performed by pursuit of excellence in teaching and research in ways that contribute to growth of human knowledge. In this view, serious and committed academics should not be "distracted" by practices of politics, of cruelty and human rights violations that are better left to those who have adopted the vocation of politics. What remains crucial from such a perspective is the production of "scientific" understanding of evil in society and state. At best, activist scholarship may bear witness to such violation, but it owes no other concrete or specific duties of social engagement.

This "Brahmanic" view was heavily pressed upon me during my tenure as the Vice Chancellor of Delhi University by many eminent colleagues in response to my position that university education

entails acts of engagement with violence sponsored by political and civil society. The notion of a fiduciary role that I elaborated sought to harness the universities, with their power, influence and prestige, to the cause of just and humane governance.

[*Critical inquiry, strategic objectives and the susceptibility of human rights scholars*]

Philip Alston

We need to examine the extent to which human rights is actually different from other disciplines within the university context. In my view, it is more different than we might readily acknowledge. I see two grounds for distinction. The first is normative: there are presumptions in human rights that are not subject to challenge. Leaving aside the obvious examples of *jus cogens* or peremptory norms such as the prohibition of genocide, we can go further and underscore the extent to which norms of non-discrimination and freedom from slavery and torture are not *per se* open to challenge, even if their interpretation in a given situation may be debatable.

The second concerns the independence of the human rights scholar. The great majority of these scholars are practically engaged in human rights work, whether as activists, experts, government advisers, members of the advisory or governing boards of nongovernmental organizations, and so on. This leads to a degree of self-selection that filters out at least some actual or potential critics and imposes limits on the degree of objectivity of those working in the field. In some respects it is of course similar in other fields, but strong critics of the mainstream positions will have difficulty gaining access to certain types of information, finding a job or gaining advancement in human rights organizations. Similarly, many appointments to intergovernmental bodies require the approval of the candidate's government and too often that comes with significant, if invisible, strings attached. Some of these "realities" are not necessarily bad things in themselves but they may be factors that are more relevant in the human rights field than in some other areas of scholarly pursuit.

David Weissbrodt

I don't necessarily agree with his conclusion, but Philip Alston raises an important point about potential conflicts between activism and scholarship. I have worked with both governmental and nongovernmental organizations; I have been both an insider and a scholar with respect to these organizations. I often wonder, for example, whether in my scholarship I should tell all that I know about the sometimes ugly insides of these institutions or whether I should follow a scholarly principle similar to a doctor's Hippocratic oath—in other words, “do no harm” to the organizations with which I have worked. I do not want to undermine the human rights discourse, which has so much to offer. “Telling all” may violate confidences or it may have political consequences, as Philip suggests. On the other hand, will my silence violate my commitment as a scholar to the truth? Will it deprive the human rights community of an opportunity to improve?

There are also the purely practical questions. If I make sensitive matters public, would I lose my access to inside information, and will that make it hard for me to be helpful to those organizations in the future? How can I establish a scholarly critical distance so that I can really help human rights organizations? Maybe as teachers we can be more open as there is less risk in the classroom. Nonetheless, it is too easy to say merely that we will maintain a scholarly distance. In fact, we are often not that distant.

Makau wa Mutua

The consequence of that dilemma is that once you spill the beans, you will be punished. The choice is difficult and perhaps the best option is to keep scholarship and activism separate. When you teach human rights you are under an obligation to reveal all that you know because you are training individuals who are going to be involved in the construction of society—even if revealing certain information may block access to given countries. Not divulging information is antithetical to the quest for knowledge and truth.

Henry Steiner

A major purpose of Harvard Law School's human rights program is to advance debate. This means exposing students to more than the

movement's ideals, norms or institutions. It means examining as well its hypocrisies and contradictions and of course compromises, its relationship to interests and the outcomes of its collisions with interests and power, and indeed whatever else helps students to develop a more realistic, deeper and critical understanding of the field. Open discussion will often bring students into the darker side of this project. Surely the greater risk is to portray the human rights world as one vast, coherent good—as our universal beacon. The jarring distance of that vision from the world we know makes the assertion less than credible, and in my view lowers rather than heightens students' grasp of, interest in and perhaps commitment to the field.

Mona Rishmawi

I think it is important to be critical about human rights work. Self-criticism is always good. But it is not enough to build an analysis that points out gaps and problems. The university has to show the way forward. There has to be an alternative. Students often see the human rights movement as expressed by the work of national NGOs, and to a lesser extent, international NGOs. Although well-established human rights groups operate in a growing number of countries, domestic NGOs are young and inexperienced in many others. The university has a special role to play in exploring basic values that make the human rights movement effective, in a deeper and more systematic way than most NGOs can achieve—for instance, exploring the movement's independence, building the know-how for applied research and documentation, recording and sharing the lessons learned, and analyzing and evaluating the utility of the work methods.

Claudio Grossman

In some sense, none of us is independent. A member of a governmental body obviously can't be independent. What about someone working in private enterprise? As a member of the Inter-American Commission on Human Rights, I have the opportunity to be independent, but I could face the retaliation of a particular government, maybe the one that nominated me. I may not be re-nominated. Still, compared with other countries where people lose their lives for taking a stand, that is a small sacrifice. It comes back to a question of individual integrity.

Whether, for example, a scholar should accept an appointment to an intergovernmental body—and whether that will affect his or her independence—must be an individual decision.

Makau wa Mutua

I think it very difficult, at that point, for your conscience to direct you. It is easy to be seduced. You become part of the problem. You are mired in the official bureaucracy and lose your independence without knowing it—that is the danger.

The kind of conflict that David Weissbrodt tags is important, but I think it serves to show the difficulty of balancing official appointments with the kind of freedom that an academic should enjoy. Clearly, academics should be able to join official bureaucracies, where their expertise and guidance is necessary. But academics should take care not to become “guardians” of such bodies because that creates an inherent conflict with the search for the truth, the central mission of the university. I think that academics have an obligation to talk openly—perhaps not in detail or with specific references—about knowledge acquired in the course of their official appointments. One can tell a lot without naming names. Perhaps then one can participate and also avoid “punishment,” that is, being denied access to information or future appointments.

Mona Rishmawi

I would like to reflect on the issue of independence. There is much influence of the state on the university in many developing countries. The state is often the funder, employer, police and security force at the university, and state ideology is often present in the university environment. So it is obviously difficult to pave an independent human rights path in that environment.

But the problem of academic independence is not limited to the developing world, and it is not simply a matter of funding or being directly dependent on some outside source. I am struck by the extent to which professors of international law and human rights in the developed world identify ideologically with their governments. Why is the link so close?

David Kretzmer

In Israel, the universities are autonomous institutions, not state universities. They are, however, dependent on government funding, which comes through a statutory Council for Higher Education. Although the government has no direct control over the funding allotted by this Council to any specific university, it does decide on the amount allotted to higher education overall. Thus a government that is antagonistic to the universities can cut the general funding. As faculty members are not state employees, they have total independence; many have been in the forefront of radical opposition groups. Most of the major human rights NGOs in Israel were founded by academics, who play a central role on their boards of directors.

On another point, I must say that I do have a problem with law professors appearing as practicing advocates before the courts. The problem arises on two levels: first, in the effect this has on critical writing about the case and second in the effect that anticipated cases might have on the academic. Can such a lawyer maintain the critical stance required in academic work, when he or she refers to the case? And won't the anticipation of appearing in a given case have an impact? Is there not a chance that the "academic" may be reticent in what he or she writes in order to cater to the interests of the "lawyer"?

I do not wish to propose any hard and fast rule on this issue, but I do suggest that there may be a certain tension between one's academic pursuits—critical research, teaching and writing—and involvement in the decision-making process of the very bodies one should examine critically.

[The influence of the political and cultural context in which the university functions.]

Henry Steiner

The last few remarks speak to a basic question that Joe Oloka-Onyango posed at the outset, namely, whether we should think differently about universities, university faculties, and their role in relation to human rights, depending on their political-geographical context. Are there different limits and even duties on the university in a society under repressive rule? Do both strategies and obligations

change with context, depending on the nature of civil society or democratic development? Or do those who advocate, say, a more detached posture of the university from active human rights work in order to spur a more critical approach, mean to speak in universal terms, no matter what the context?

Makau Mutua

The university in the South is a radically different institution from its counterpart in the North. Many universities in the South—and Africa in particular—are elite institutions. As such, their role is to prepare leaders, not just educate the citizenry. It is because of this elevated role that the human rights movement there will necessarily draw its leadership and actors from among the elites. But this reality removes the human rights movement from “ordinary” people. It is essential, therefore, that the university in the South be aware of its distance from society if it is going to produce activists and thinkers in human rights who are connected to the concerns of ordinary folk.

That said, we should not lose sight of the fact that the university in the South—or at least in Africa—has also been in steady decline over the last several decades. Many professors, for example, are not paid a living wage. Many take other jobs or consultancies outside the university in order to make a living. This greatly compromises research and scholarship. These resource and political constraints make it very difficult for universities to produce an informed and nuanced cadre of human rights activists and thinkers.

Upendra Baxi

I appreciate the direction of Henry Steiner’s earlier comment. Clearly, if one were to attach specific or general human rights responsibilities to university systems as a whole, one ought not “essentialize” these. The context of state failure to protect and promote human rights varies, as does the context of economic, social, cultural and political development, within which human rights struggles attain historic importance.

This having been said, we still need to understand the particular burdens that the university and scholar carry during volatile situations of social conflict, dissent and violence. And this understanding needs to extend to specifically “political” roles that

university systems played in many parts of the world during struggles for decolonization. In post-colonial transition, universities continue to serve similar political functions. In many universities, the staff, student and administrative trade unions remain affiliated to major political parties, even to the point of functioning as their appendages. Teachers, students, and administrative staff associations continue to identify themselves as party workers/ cadres, converting university administration into party-based political battlegrounds.

During my tenure as a Vice Chancellor of Delhi University, associations belonging to the Bharatiyata Janata Party now the ruling national coalition—actually participated in and endorsed the demolition of Babri Masjid [a mosque] in Ayodhya, together with the cruel India-wide “ethnic cleansing” of Muslim minorities that accompanied it. Until then, I was careful to preface my activist contributions to public discourse by saying that I spoke as a law professor and as a citizen of India. But the association’s overt role in the politics of communal violence led me to abandon this restraint, and I began to intervene in my representative role as the head of the university. This undoubtedly complicated my role and responsibilities, but there was no other way to steer the University to acknowledge a modicum of human rights responsibility. In times of violent social disorder and distress, universities may no longer remain nostalgic ivory towers, as if the global discourse concerning human rights were just an irritating cognitive datum.

In this context, one needs to compare the roles of campus-based intellectuals with the role that Neelan Tiruchelvam played for a quarter century of dedication to peace and human rights in Sri Lanka—not in a university context but a university-like context of an NGO committed to research and thought.

Henry Steiner

Beyond your own efforts, did any Indian universities, or their components like centers, programs or central administration, take positions on the Ayodhya episode or the riots and killings in Bombay? Or did they remain quiet on issues of public violence, and leave comment entirely to individual faculty members?

Upendra Baxi

Progressive students and faculty took positions against violence. On the other hand, the University Grants Commission opposed students and faculty who condemned the violence. Many universities took the position that they could not sit idly by when law, constitutionalism and secularism were threatened and anarchy prevailed.

Stephen Marks

When we consider the social and political environment of the university in relation to the human rights movement, I suggest that a distinction be made not so much between North and South, rich or poor, Muslim or non-Muslim, but rather between repressive or closed societies with authoritarian tendencies, on the one hand, and reasonably democratic societies, on the other.

Juan Mendez

I'm not sure whether we can fit the Latin American universities into either of the categories suggested by Steve Marks. The problems in Latin America raise yet another dimension. We are only recently democratic societies; we have had periods where universities were exclusivist, elitist and anti-democratic, as well as decades during which universities played a progressive role nurturing an open society. On the one hand, we are now in a far better position to deal with human rights problems than under periods of military dictatorship. On the other hand, our societies are increasingly divided by distinctions such as wealth and political participation. Large groups of underprivileged and marginalized people do not participate politically.

At this time, the universities are part of the problem. They are increasingly aloof from issues of public life and preoccupied with "academic excellence" as defined in purely technical terms. In the age of structural adjustment—international financial institutions imposing limits on public funding and encouraging privatization—the public university with an interest in popular equity has lost its place. Small elitist universities are springing up that have no interest in bridging income and participation gaps. They are not even interested in more openness.

The human rights courses that are taught at these universities are part of the same phenomenon. They are technical, abstract and

detached from the policy issues facing the region. For example, they will offer courses on the international instruments, without reference to how they apply at home, and with little, if any, reference to the jurisprudence of the organs of implementation of those instruments. Rather than contributions from the universities, it is the rise of a credible press and active NGOs that is challenging the monopoly of the government on policy formulation.

Philip Alston

In response to Juan Mendez, I wonder whether the human rights movement and university centers that focus on the movement are relevant to the major problems that are emerging in Latin America and elsewhere today. The figures on growing global inequality are dramatic. The reduced participation of the average person in political processes is becoming a symptom of many societies. And the whole realm of economic, social and cultural rights remains largely unaddressed by the human rights movement, which is fighting old battles to establish space for the formal rule of law.

Juan Mendez

I want to respond to Philip Alston. I did not mean to imply that the human rights movement has lost its relevance. The most dynamic organizations—those that were on the front-line of fighting repression some years ago—are now on the front-line thinking about broadening participation and making economic and social rights justiciable. Interestingly, the “rule of law” has not become irrelevant; rather the movement realized that the rule of law means more than just fair elections from time to time. It also means the day-to-day functioning of participatory institutions and the organization of civil society. The problem is that universities are not participating in this debate. Their absence creates an important intellectual void that NGOs are not in a position to fill.

Philip Alston

I suspect that this conversation about the human rights role of the university is far more centered on the United States experience than we are acknowledging. In many respects the possibilities, the functions, the approaches that we are discussing are hardly an option

in universities in many other parts of the world. The most obvious examples concern those working within repressive systems or those in universities with barely enough resources to stay afloat.

In Burma, for example, all universities have been closed for more than four years. There isn't much point in talking about what scholars might be able to do. But it is also important to bear in mind that the traditions are very different even in other wealthy developed countries. In France, for example, there are very few university-based human rights centers because the way in which the academy is structured and funded, the criteria on the basis of which academics are appointed and promoted, the relationship between the state and the universities and a range of other factors seem to be not at all conducive to the development of American-style human rights programs within the heart of the universities.

In a country like Australia, the increasing receptiveness of the legal system to human rights has led to the expansion of the human rights curriculum, but the virtual absence of substantial private foundations and the reluctance of sources in other wealthy countries to fund Australian institutions has meant that academically-based human rights centers that exist are usually rather dependent upon government money in one guise or another, thus significantly limiting the type and focus of activities undertaken.

Makau Mutua

I am not sure Philip Alston is right. We can, I believe, make general statements about particular regions or clusters of countries that share historical and political contexts in the relationship between the university and the state. I think this is largely true of Africa, Latin America and Europe. Asia may be a little different because of the diversity of historical, political and cultural contexts. But in general, most continents have a script when one talks about this issue. In Africa, in particular, one must understand that the university is beleaguered by the state and the decay of social institutions generally. This puts the academic at an acute disadvantage because the ground is flimsy and tricky. In a sense, these conditions heighten the importance of the academic as a social critic and political actor because the very salvation of society itself is at stake. There literally is no rest for the weary.

Christian Tomuschat

Universities are part of their society and, in most cases, no better. We might want them to rise above, but we should distinguish the reality from what "ought" to be. In a totally repressive society, it may be impossible to speak out without dire consequences. When the Nazis took over in 1933 they suppressed any kind of opposition within a few months; many university teachers joined their forces. Again under the system in the German Democratic Republic, no real opposition was possible; no personal opinions or scholarly examinations of human rights were allowed. No one escaped the pressures of the system: you joined it or suffered from it.

Upendra Baxi

I believe that we need to revisit, and learn from, the complicit figures of Martin Heidegger and Carl Schmitt. Every story of academic freedom has its "Heideggerian moment." Even today, academics are prone to it. There are abundant examples of academic justification for regimes that practice catastrophic cruelty, particularly in the Third World, where university-based scholarship often justifies such conduct in the name of "development" and "collective security." But this is indeed a recurrent situation and not the privileged estate of Third World scholarship.

Joseph Oloka-Onyango

There is a luxury of distance in the U.S. that we do not have in Africa. There, the issues arise in the context of conflict, and not simply within an intellectual environment. The degree of conflict is significantly debilitating for university work in contexts of outright war or anarchy like a Sierra Leone, Somalia or Rwanda, with both students and faculty forced to flee, and institutional operations coming to a halt. The detention, exile and even death of students and faculty for simply exercising their rights of expression or association are not rare occurrences.

David Weissbrodt

Human rights engagement by groups within the university is not without its risks, even in so-called "open" societies like the United States. There are groups in our state that think the Convention on the

Rights of the Child is the product of the devil. Issues arise on South Africa, El Salvador or Burma. There is controversy in much of what human rights groups do. We don't suffer the sanctions of a repressive state, but those opposing our positions exert pressure close to home.

Makau wa Mutua

The obligations of the university vary according to the levels of repression in the society. When other avenues for discussion are closed, it becomes incumbent on all sectors of society to participate in opening up a political space. In Uganda or South Africa, where those problems have been prominent, the university does not have the luxury to sit back and ignore the issues. Once it chooses to engage, however, it threatens to compromise the "objective" distance of the university.

Henry Steiner

In South Africa, as I understand it, university teachers played an active role in promoting the human rights movement as a transformative agent in society.

Christian Tomuschat

The fact that some universities in South Africa were moving forces in transforming society suggests that the control of the state did not monopolize intellectual life. In plural societies, there is another difficulty because of the contradictory positions represented in society. The university can't take a position on the borderline issues without upsetting some equilibrium. I therefore place my trust in the individual who is committed to the truth, teaches students about the delicate issues and tries to produce a good society. The emphasis should be not on the institution acting as such but on the individual teacher in forming critical minds.

[Teaching about "rights" in the U.S. universities and in other countries: distinctions in terminologies and approaches of substance in the U.S. approach to constitutional law]

Christian Tomuschat

I have always found odd the distinction between human rights and constitutional rights in the United States. The distinction is made as if they were two different elements altogether. For a foreign observer this is strange, even though in my country many lawyers expert in the German constitution are not very familiar with international law instruments. In substance, there is in fact, no real difference.

But in the United States, a large majority of people seem to consider human rights as something which comes from outside and which adversely affects the good old time-honored American traditions. Therefore, the concept of human rights is looked at with some suspicion. In Europe, the complementarity of basic human rights under national constitutions and human rights under the European Convention has been a reality for many decades. Nonetheless, many lawyers have not yet really grasped this great leap forward to a situation within which the community of States assumes responsibility for the protection of the human rights of everyone.

Henry Steiner

The "reality" about the human rights discourse in Europe to which Christian Tomuschat refers differs strikingly in the United States. Distinguishing between human rights and constitutional law has long been a familiar exercise for activists and academics. One of our leading NGOs is called the American Civil Liberties Union, not the American Human Rights Union. What many foreign states and citizens would refer to as "human rights issues" in the U.S. are here discussed as questions of civil rights and liberties, or as issues of the Bill of Rights, or simply as part of rights discourse and doctrinal argument about constitutional law. Our history, our sense of difference, our long legal and constitutional tradition, our belief that we export rather than import rights discourse across an ocean, all contribute to an explanation.

As a matter of convenience, the Harvard Law School human rights program defined its jurisdictional turf within the faculty as

addressing primarily international, foreign and comparative issues of rights, even though they are often very similar to domestic constitutional issues ranging from nondiscrimination norms to freedom of association or criminal due process. In addition, many students study not only constitutional law and criminal procedure, but also take courses on domestic issues of poverty, race, sexual orientation, gender or electoral forms and processes, all of which concern international human rights but are rarely discussed as such. A much smaller number of students take courses or do research on the international, foreign, and comparative dimensions of all these topics. The Program does make some incursions into U.S. law where the topic is inherently and necessarily international in character—refugee and asylum issues, for example.

Recently, several casebooks have been published that stress comparative dimensions of U.S. constitutional law with respect to rights issues, both through study of foreign court decisions and of decisions of international courts. Perhaps such comparative inquiry into national constitutional courts and the international system will become more significant in American legal education, and fuse our domestic constitutional law on rights with what other countries may simply call human rights law.

Frederick Schauer

Ever since the advent in this country of judicial review of the constitutionality of legislation, the U.S. has had quite an active domestic constitutional culture. By the time that human rights became an international discourse, U.S. constitutionalism was more than a century old. Perhaps the merger of discourses today would have been easier had it not been for this temporal entrenchment of a particular domestic conception of rights law. Among those nations where judicial review and constitutional rights consciousness emerged more recently, merger would be much more understandable.

Philip Alston

I have a problem with the distinction between domestic civil rights and international human rights in the United States. Whatever its origins, its effect is more than incidental. I am concerned that human rights programs as we know them are a force for externalization.

Within Harvard's curriculum, for example, we cannot claim that everyone teaching civil rights or civil liberties is teaching human rights. Courses on internal constitutional questions impinge heavily on human rights, but nonetheless have no human rights component as currently understood by their students and teachers. All this is odd, for human rights is about holding domestic practices accountable to a higher international level of normative requirements. So it is not enough to say that a state is attentive to human rights because it has not actually violated any international norm. Human rights is about bringing into a state the formal normative structure of the international community.

Henry Steiner

I disagree with Philip Alston. It doesn't matter whether a country acts consistently with international human rights because it is responding to its internal tradition, generally a constitutional tradition, or because it is self-consciously and directly responding to international norms that it may have internalized as such in its own legal-political system. The end result is the same, because of one or another normative pull. I would view such a state as observing human rights whether or not it refers to the international system.

To take an extreme case, a country that conducted fair trials fifty years ago and continues to do so today because of its internal tradition observes human rights even if it is not party to any human rights treaty and never refers to the customary law of human rights. Indeed, the evolution of human rights—in the sense of enlarging rights-based protection of individuals against governmental abuse—during Chief Justice Warren's period on the Supreme Court had little if anything to do with the international human rights movement as such. These were advances in human rights nonetheless.

This is not to belittle the transformative innovation of the international human rights movement: making treatment by states of their own populations a matter of international concern and indeed law, anchoring the new norms in international institutions, and encouraging states to internalize the international system and educate their populations about it.

Makau Mutua

I also disagree with Philip but with a somewhat different spin. While the psychological and historical reasons for American exceptionalism—and its manufactured distinction between civil and human rights—should be excavated, that debate is not as meaningful or as fundamental as Philip would have us believe. It is clear to me that Western constitutional jurisprudence is the ancestor of the modern concept of human rights, and that, in fact, what the human rights movement has sought to do is to make a democratic political order of non-Western, illiberal or totalitarian regimes. In other words, the human rights project at its base seeks the transformation of non-liberal societies into the liberal proto-type. This view is critical in understanding what human rights—as officially defined and encoded by the United Nations—are all about. It makes no sense to pretend otherwise.

Now, whether that makes official human rights parochial or universal is an entirely different question. What is important is the substance of the rights a society protects, cherishes and promotes. From that point of view, many of the normative edifices of the human rights movement have formally been part of the American legal landscape for decades. It does not matter to me whether they are called civil or human rights. Without American—and Western European jurisprudence—the current human rights corpus would not be possible. It is a culturally-biased corpus, one which, in my view, is at its base fundamentally Eurocentric.

Kevin Boyle

I agree with Philip Alston that international accountability lies at the core. State obligations run to an international order and an international project. The United Nations tries to realize its project of promoting universalization of human rights, social justice, and economic and social development. I think you abandon that project if you look in the U.S., say, for nothing more than functional equivalents of international human rights in the American constitution.

Louis Henkin

I think Henry Steiner is right in suggesting that human rights are national. The international system is designed to make national

human rights work. If all national systems were perfect, we could abolish international law. International accountability is preferable, but not essential and perhaps not even plausible. The U.S. case is exceptional. In the current political environment, we are not likely to ratify the Covenant on Economic, Social and Cultural Rights; when we do ratify treaties, like the Covenant on Civil and Political Rights, we fill them with reservations and make them non-self-executing. So we have no choice but to draw on our domestic internal forces for support for individual rights. If you can bring international force to bear, all the better. But in the U.S. you can't.

Juan Mendez

The distinction between teaching human rights as international human rights and teaching internal constitutional rights is not so much of a problem in Latin America, as most countries acknowledge the superiority of international law and almost every country signs and ratifies almost every document you can imagine. In Peruvian universities there are few, if any, international human rights courses (as of 1999), and it's a sad fact that the constitutional law courses are not gathering a lot of interest or importance either. I identify that with a state of consciousness or public opinion that affects universities with respect to all these issues. Under President Fujimori, the government succeeded in generating a sense of distrust, even hostility, to human rights in large segments of the population. The universities not only failed to act as the moral conscience of society, they actually contributed to societal disinterest and hostility.

Upendra Baxi

In this period of globalization, the strength of the national system for protection of human rights in the United States contributes to enfeeblement of other national systems. Take the entire area of rights recognized to corporations—for example, the area of the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights and the aggressiveness of the United States in claiming such rights. We have to explore the linkage between the rights enshrined and enforced in national constitutions and treaties, and global capitalism as a permanent threat to the achievement of universal human rights.

[Interdisciplinary work and the dominance of the law faculty in human rights studies]

Henry Steiner

Human rights studies in American universities are found principally within law faculties. Was that an accident? Could such studies have started elsewhere? Perhaps if they had first been instituted in the divinity or public health faculties, economic and social rights would have received greater attention than civil and political rights. Had they begun in public policy faculties, perhaps universities would have been engaged in more empirical work and would have earlier considered issues like the efficacy of sanctions rather than focus on normative and institutional development of human rights, or internal dilemmas like cultural relativism.

Alicia Ely Yamin

As a lawyer teaching at a faculty of public health, I have noted several differences in the way we approach human rights. For example, most of my students immediately accept the right to health in all of its complexity. Their attitude reflects why they are studying public health. We don't need to spend much time questioning the legitimacy of economic and social rights, or their character as rights. The lack of justiciability is seen as a practical obstacle rather than an indication of whether they are "real" rights. Students generally are critical of the U.S. for not ratifying the International Covenant on Economic, Social and Cultural Rights. They also readily grasp the necessarily interdisciplinary nature of human rights work, particularly in the promotion of economic and social rights such as health.

Another difference is that students in public health schools do not aspire to do human rights work full-time. Therefore much of the teaching has to do with how human rights will affect their work as health professionals. We look at the role of health practitioners not only as promoters and protectors of human rights, but also as potential violators, and not just in the obvious sense of participating in torture and medical experimentation. For example, women's rights groups in Peru recently documented a systematic campaign of involuntary sterilization of mostly rural indigenous women in public health facilities. But we also look more closely at violations of the right to

health, problems in accessibility and discrimination in treatment. For example there is more and more attention to racial disparities in U.S. health care.

Finally, there is a different attitude on the part of students and the institution with respect to service and fieldwork. My department takes service seriously on several levels. We fund six service clinics in six junior high schools and one public high school in Washington Heights in Manhattan. That service orientation is built into the courses. As a faculty member, my service-oriented work is seen as a logical extension of my academic work; the fact that I am now on a salaried, multi-year assignment in Peru speaks to a different incentive structure and perception of the role of the faculty in the field.

Frederick Schauer

The very notion of rights may differ when viewed through different disciplines. What is of primary importance: how varied disciplines comprehend human rights or whether human rights can be correctly comprehended only through certain disciplines? What Alicia Yamin said is very suggestive. Her students are not concerned about justiciability. Naturally that is not the case at a law school. Presumably, a conception of human rights designed at the outset by lawyers would focus on rights that are justiciable, susceptible to a legal remedy. Whether that is a precondition to the very idea of a right is much more debatable. Presumably other disciplines—physicians, public health specialists, and environmentalists—would have different preconditions. We shouldn't limit ourselves to the responses of other disciplines to the lawyer-created concept of human rights, but rather consider what human rights would be like if lawyers, law schools and judges had been less involved from the outset.

Henry Steiner

What Fred Schauer said seems right, except that I wouldn't view the concept of human rights as lawyer-created. Over two centuries, and even after World War II, lawyers have joined statesmen, moralists, revolutionaries and philosophers among others, in shaping and reshaping the concept. To be sure, lawyers have given it a particular cast, and surely a grand achievement of post-war human

rights has been to inform the notion of rights with legal form and institutionalization.

Kevin Boyle

In the real world there is no dominant discipline in human rights work. Indeed the university should bring the different discourses together, and its work in the field should not be locked inside any one discipline.

Tom Farer

I disagree fundamentally with what Kevin Boyle said. As Philip Alston earlier suggested, human rights is inevitably, logically, conceptually and analytically normative. The issues of social justice go back thousands of years, but they have nothing to do with it. Human rights is a very modern and peculiar discourse. It is a discourse of absolutes. It is a particular way of discussing moral issues. It is a normative way and therefore it is not accidental, fortuitous or a function of history that human rights has become centered in lawyers.

Philip Alston

We have to distinguish between the need for a legal framework and the need for that framework to be adopted by other disciplines. A conflict can arise if lawyers insist that the manner in which other disciplines or sectors approach human rights must be formulated in terms of legal norms, when such formulations mean little in those contexts and, without careful adaptation and translation, seem quite alien. These problems are exacerbated because the current framework dominated by lawyers has hegemonic tendencies and tries to squeeze out the other disciplines and their potential contributions. On the other hand, if the legal framework is excluded, I'm not sure that we can still have a human rights program.

The big advance of human rights has been to move beyond general discussions of morals and ethics, and to insist on a fixed normative formulation of different rights—to insist that it be reflected in law, that there exist means of redress and accountability. If we leave that framework behind, it is not clear that we are still talking about human rights as known to our post-1945 movement.

That means that we have difficulties when it comes to interdisciplinary work. Lawyers, because of their dominance in the field, have tended to distort the mechanisms and processes that are used. They analogize interdisciplinary work to what they have always been doing. If something does not fit, like the right to health, then they may throw it out very quickly.

But it is important to recognize the problems on the other side. Alicia Yamin said that students in public health do not worry about justiciability. That reminds me of my experience as one of the founders of Physicians for Human Rights. I was the only lawyer in the group and I kept asking whether they wanted to know anything about human rights. Most of the doctors responded by saying that they know what human rights are about and that they would recognize problems as they arose. They showed great resistance to the organization of their analyses and recommendations in terms of the legal obligations assumed by governments. As a result, there was a blurring of the lines between what they subjectively assumed was unacceptable and what could be shown objectively to lie outside the limits of the law.

Alicia Ely Yamin

I concur with Philip Alston and Tom Farer. I spend some time at the outset of a course emphasizing that there is a body of norms, institutions and procedures and that human rights are more than a set of moral or ethical values. What I meant by the point on justiciability is that public health students, unlike U.S. law students, are not trapped in such distinctions as “positive” and “negative” rights, nor overcome with a prejudice against those rights that create difficulties for elaboration by the kind of judiciary associated with the liberal tradition. They tend to be more open and receptive.

Kevin Boyle

I don't think that what has been said conflicts in any way with my position. Human rights was an outgrowth of international law. It could have been a development of political science or sociology. There is a dominant discipline—the law. In our teaching, a part of the corpus of knowledge to be communicated is the eighteenth century language of rights and international law, the nature of state obligation and responsibility. I have no difficulty with that, although

I don't think that this emphasis in teaching of itself makes human rights an exclusively legal affair. Surely we must go beyond that. There is ample room, for example, for a sociology of human rights or a medical discourse of human rights. Traditional legal scholarship has exhausted the analysis and we have to seek new disciplines to elucidate what human rights mean in practice.

Frederick Schauer

There is a big difference between the notion that there is room for other disciplines within a conceptual framework created by lawyers, on the one hand, and the notion that the field itself could have originated in other disciplines, on the other.

Henry Steiner

But rights often begin outside any formal process, let alone an academic discipline, as social demands or bases for mobilization in the streets. Prominent examples include such familiar institutions as social security or unemployment compensation. As such claims gathered momentum and political force, who would have thought that they would become legal and popular rights? A program of social relief, or even an extension to another group of such traditional rights as equal protection, may gain recognition out of social and political pressure emphasizing the need or reasons for change coupled with a developing sense of the need to repair an injustice.

At the start of such a process, few may use rights rhetoric, let alone legal rights rhetoric. As a social-political program takes on a certain permanence and achieves great importance in many minds, rights rhetoric may grow around it and displace or at least complement the initial utilitarian justifications. Formal legal recognition of the right may follow, in constitutional documents or court decisions. Even under an American constitution shy of provision for social and economic rights, the middle class comes to view such cornerstone programs as social security or Medicare as their right as Americans. Government can expand or contract these programs in the give-and-take of elections, but to some extent they have become politically inviolable. Try to take them away and you see how bound up they now are with a sense of justice and rights, with people's basic expectations about how their society will treat them. This is part of the whole

expansive dynamic of rights rhetoric, even when that rhetoric at the start has no formal legal foundation.

Tom Farer

Of course, human rights emerged outside the academy—from the French and American Revolutions. But I don't quite agree with Henry Steiner's proposition that all these New Deal reforms are conceived of uniformly as human rights. In fact, they aren't. There is a strong conservative movement in this country, and in other parts of the West, which denies that the state has this obligation. That is still contested territory.

In any event, we seem to be assuming that law is the only culprit when it comes to circumscribing rights. But it is not the peculiarity of the legal profession to limit the realm of rights. So it is not a peculiarity of the legal profession to seek to limit the realm of human rights.

Henry Steiner

There is a broad tendency among lawyers and others to imagine the human rights movement only as a legal movement and to comprehend it principally through the tools of lawyering. The basis for this view lies in the wealth of treaties, the number of international institutions engaged in one or another form of dispute resolution, and the spread of constitutionalism to many states. Such kinds of evidence nourish the view that we are moving towards an international rule of law. All this is very convenient for law students who want a manageable legal discipline of international human rights to which they can apply the professional techniques learned through classes in common, civil, regulatory or constitutional law. Authoritative texts, judicial opinions: this is the basic stuff, the raw material, of legal education. It is not then surprising that so many students concerned with human rights seem particularly attracted to work in the relatively rare court-centric fields like the universal or regional international tribunals, or litigation under the U.S. Alien Tort Statute.

But we can envision the whole panorama of rights, its significance and effects over the last half-century, in a very different way, particularly when teaching addresses the international regime rather than, say, focuses on national law or comparative constitutional

law or the European system. Only rarely is such international study court-centric. From the start, it must draw the student into serious inquiries and bodies of knowledge that are generally marginal to classes on domestic law based on analysis of statutes and judicial opinions.

Both within law faculties and through resort to other university faculties, study of international human rights law must include some attention to fields as diverse as international relations, moral theory, developmental economics, religious dogma, public health, or cultural studies that for most students are not natural or sustained companions to the study of law. It must examine young international institutions of unfamiliar design and functions that moreover experience rapid change. Raw political process, lobbying and political pressures, traditional practices and culture, geopolitical shifts, ethnic struggles and extreme poverty often displace court opinions as the vital objects of study to explore the foundations to grave human rights violations and ways of arresting them. I fear that the case-oriented and doctrinal conception of legal education is permeating universities even in the developing countries in fields like human rights, under the inspiration of powerful Western models including the casebook.

Stefanie Grant

I think what you are describing is a need to define the context in which students would act if they were engaged in the human rights struggle. In a country without a meaningful constitutional and judicial tradition, the wider scope for understanding of civil rights probably would not need to be taught to the students, because they would come to legal study with an understanding of it.

Andrew Clapham

In my teaching in Geneva, I have not encountered resistance to learning about UN processes or mechanisms. But the resistance I have encountered is to political science. The students come to class to learn how to be human rights lawyers, and if you emphasize the political science approach, they think they should go off and do something else. This is particularly frustrating because, technically, all three degrees in the Graduate Institute of International Studies are degrees in international relations or moral philosophy. Many students

studying human rights in Geneva have come to the issue without years of legal study. Unlike students in U.S. law schools, these students are hungry for a legal approach based on international law. An approach which stresses the political is not always welcomed, even by the political scientists.

Makau Mutua

My experience of teaching human rights in the United States is virtually the opposite of Andrew Clapham's. Surely, law students find it difficult to work outside the discipline because of the case orientation in legal education. But even in the context of the international criminal tribunals, case law does not really get to the core human rights issues. At some point, we have to delve into the foundational bases for violations: deeply entrenched cleavages of race, religion, culture, economic deprivation, gender, ethnicity, and so on. It is these facets of human rights that bring teaching in the subject to life. And so a law professor teaching human rights in the U.S. must learn to think across disciplines—law, political science, economics, sociology, and so on. Human rights lawyers cannot simply be legal mechanics; they have to go beyond abstract legal norms.

Tom Farer

I am not persuaded by Henry Steiner's argument that the nature of the legal discipline leads to a reluctance to move into moral philosophy, political science and the like. Rather, I think it is a desire to discover values that are not subject to exception or deep limitation. As long as we talk about the core of human rights, whether defined by lawyers, philosophers, or by God—as long as we talk about absolute claims—we are talking about something that transcends politics. But as we move into peripheral areas such as economic and social rights, we move into areas that are softer, more subject to manipulation and excuse by people in politics. That is why people cling to the core, not because of some professional logic or professional culture.

Stephen Marks

The dominance of the legal perspective on human rights might be due in part to the role played by Hersch Lauterpacht, whose early courses at the Hague Academy carved out human rights as a branch

of international law. Nevertheless, multidisciplinary approaches to human rights predate the current age of "mainstreaming." Just before the Universal Declaration of Human Rights in 1947, Jacques Maritain pulled together a collection of reflections around the Declaration. That volume has served as a rich source of interdisciplinary reflection for over 50 years.

At the level of the university in the United States, there is an obvious distinction between professional schools and the liberal arts when it comes to addressing human rights. In arts and sciences, the causes, foundations and relations of human rights to the history of ideas and social processes are of intellectual interest. However, in the professional fields, the main issue is implementation.

Good lawyers do draw upon other disciplines. This very roundtable offers numerous examples of people who come from the discipline of law, but have embraced a variety of different disciplines. We also observe that lawyers are able to introduce international legal concepts in ways that can be useful to, for example, the anthropologist dealing with indigenous peoples. It can be useful to the divinity student who wants to introduce human rights concepts.

Louis Henkin

Our discussion has thus far centered around why human rights discourse began in the law, rather than some other discipline. My question is: why did it not begin in the law sooner? Why is it that even today there are very few law schools that teach human rights? Why did this discipline lag behind? Twenty years ago when Columbia Law School began a program, people of different disciplines expressed interest, but nothing happened. And today we do not get more than ten per cent of our students taking human rights courses.

In contrast, human rights is now a fundamental part of current political thinking. Twenty years ago it was difficult to get newspaper space to discuss human rights issues. Today human rights issues take up a great deal of the paper. Consider the coverage of Kosovo today compared to the lack of coverage of Cambodia twenty years ago or even Rwanda six years ago. What has caused the modern interest in human rights?

I view the university and the universality of human rights holistically. I tell students if they want to learn about the law of

human rights then they have to learn about what is going on in the world around them. If the UN did not exist, something still would have happened in countries where great abuses occur. The fact that the UN was there meant that it could not sit by and do nothing in response to the crises of Kosovo and East Timor.

What the university does is take the concept of human rights, define it, and plant it as a discourse. But when does it begin to become real? Universities are under an obligation to study when it became real, why it became real and what continues to make it real today. That raises the problem of interdisciplinarity. If human rights is a universal idea then you have to have a universal basis. That is why it seems to me that the obligation of the university is to disentangle it, focus on it, promote and support it.

Upendra Baxi

We do not have a historiography, let alone a history of global human rights. We do not have a social theory of human rights or a comparative sociology of human rights cultures. Therefore we do not have an understanding of human rights as a process of innovation or inertia in human history.

When Lou Henkin raises a question about why the media were not covering human rights violations 20 years ago, the question is important. But the approach to answers is also important. The romantic answer is that the world has somehow become conscious of human rights. The less romantic answer would be that human rights and suffering have become a mass media commodity that serve a function in the growth of capitalistic mass media throughout the world.

Tom Farer

Several university faculties other than law schools now show considerable interest in human rights, as in the schools of public health and international policy studies at the University of Denver. Indeed the level of interest there is not very different from what we would find in a law school.

We see a new trend among doctoral students reflecting on human rights. They are deeply influenced by realism and neo-realism. For them, human rights is simply one of the many issues on

the international agenda. The interesting question is how you work it into some schema for the organization of international politics, in terms of explaining how states behave. Many students tend to explain human rights conveniently as one of the forms of legitimation now available to states to advance their purposes. From a U.S. point of view, for example, they scrutinize human rights for how they serve U.S. purposes in this unipolar moment in history.

David Weissbrodt

At the University of Minnesota we have a center that is based in the law school. From the beginning, we tried to involve other parts of the university. We succeeded with political science, international relations, sociology and history. In each of those disciplines there is a course on human rights. But the only people who are truly interdisciplinary are the students, because the incentives for academic advancement keep you within one discipline. We try to overcome this informally; visiting each other's classes, for example. Both my students and I have tended to learn most from our interaction with political science.

Louis Henkin

Someone said to me that at Columbia there is no university; we are a conglomeration of independent satrapies; this is not merely financial, but structural. The Center for the Study of Human Rights at Columbia tried to break that down. The Center was run by a lawyer, a philosopher and a social worker. We wanted to include someone from the college and the business school but we never succeeded.

Kevin Boyle

At Essex, we found that the conjunction among human rights, democracy, development, and environment would provide the really interesting intellectual basis for engaging students and crossing the lines in the university. That is where you can bring together different departments and even reshape, in part, the law school curriculum. The proposal at Essex is to introduce an undergraduate program in human rights, democracy and citizenship.

Christian Tomuschat

I would challenge the proposition put forward by Henry Steiner that human rights has a distinctive position in its need to reach beyond the discipline of law. I think that all legal disciplines have a context that students must be aware of. Take something as trivial or important as competition law. If you train someone in competition law without giving that person a broader perspective of the mechanisms of the economy—what this all means and how competition guarantees your freedom—the lawyer would be a technician but not really understand the whole function of competitive law.

As far as the interdisciplinary approach is concerned, I find that very often lawyers tend to focus on individual cases. It is the litigation approach which dominates their thinking, but lawyers also have to study structural elements of their societies. For instance, distribution of wealth in a given society is an important element in understanding the underpinnings of human rights. Race and wealth are relevant to life expectancy and therefore of concern to the student of public health. This normally would not come to the mind of a lawyer who is case-oriented. The structural elements of society are important for human rights lawyers.

Henry Steiner

I don't disagree with these observations of Christian Tomuschat about domestic fields like competition law. My point is that interdisciplinary work about human rights in legal education, whether within or outside law faculties, must often move to the forefront, whereas in much domestic law, such work may inform and complement a rich body of case law that remains central to most legal education. That creates, I think, a special problem for how to teach international human rights, particularly with respect to many intergovernmental organizations that lack a formal process for dispute resolution, as well as with respect to states that are the world's worst violators where courts are generally marginal and manipulated organs of government. The growth of constitutionalism and ongoing internalization of treaties encourages more traditional case-centered analysis in much of the developed world and a few developing countries.

Stephen Marks

It is critical to my role as director of a human rights center at the Harvard School of Public Health that I draw on the interdisciplinary insights concerning human rights developed throughout the university. There are essentially two incentives that determine the success of a center that works across faculties: money and genuine intellectual challenge. An outstanding academic will be attracted to join with colleagues from other disciplines in breaking new ground if funding sources are available and the research environment is stimulating.

Philip Alston

If I were in Stephen Marks' situation I would not be thinking about an interdisciplinary program, but would consider myself to be a public health person who is an expert in human rights and start from within that discipline. As soon as you reach out and call on others to come in and be interdisciplinary, you risk losing your public health constituency.

David Kretzmer

In my mind, it is difficult to direct interdisciplinary research on an institutional level. One has a better chance of success when such research is initiated on the individual level—finding specific individuals from different disciplines who are committed to working with each other. At the Hebrew University we made an attempt to institutionalize the interdisciplinary nature of human rights work. We founded the Human Rights Center as an interdisciplinary center, established by the Law School and the Truman Center for the Advancement of Peace, the members of which come from many disciplines, especially the social sciences. My experience has shown that the successful pieces of interdisciplinary research were those initiated by people who had established a common interest and approached us for funding. One can sometimes encourage people to think of interdisciplinary projects if one has money to wave in front of them, but Stephen Marks is correct in saying that this is not the decisive factor.

Ali Oumlil

As we end this discussion, I am reminded of Philip Alston's provocative statement regarding the relevance of these issues for the world outside the United States. The discussion we have been pursuing perhaps concerns the American and European university. From my Moroccan perspective, I ask which faculty is in the best position to elaborate human rights norms. I note that there are two levels to that question: first, the role of a center or institute to advance the discussion and arrive at some consensus, and second, spreading the culture of human rights.

The latter concerns us in countries like mine. The discussion of justice is interesting and enriching for us. I believe that the great mass of our students should have a certain minimum knowledge of human rights. So I look at my question about the appropriate faculty, and conclude that the principal hope lies in education faculties for the training of teachers. Only two percent of students in Morocco can get to a university. The masses are elsewhere. We at this roundtable are having a very interesting discussion, but what is important to me is to find a way of reaching the masses to enable them to develop a culture of human rights.

Louis Henkin

I think that is entirely right. We had the same problem in the U.S. in relation to constitutional rights. Now we have programs for high school students. So what creates the culture or how does the culture create such programs? There, I think the university has a key role.

Second Session:

Relevance of Human Rights Curriculum and Research

Philip Alston (chair)

I have asked Rebecca Cook and Claudio Grossman to introduce this session.

Rebecca Cook

I want to address the two challenges that Joe Oloka-Onyango and Philip Alston laid on the table in the first session. Joe explained that universities have been part and parcel of the destruction of culture, not inadvertently but intentionally. He went so far to say that they have been designed to destroy cultures, or at least the cultures of countries under colonial domination. Philip challenged us in terms of the sterility of our human rights thought. What can universities do to address some of these challenges? There are a variety of ways that universities can generate respect for different cultures, and the knowledge necessary to improve our understanding of the causes and consequences of human rights violations. The university can remain neutral as to outcome as it enables research by diverse and pluralistic groups in the protection and promotion of human rights.

For example, the UN Inter-Agency Program to promote safe motherhood has worked for over ten years to reduce the number of the approximately 500,000 women who die each year during pregnancy and childbirth. The tragedy is not only that these women die, but also that most of the deaths are preventable. After ten years of medical, epidemiological, and health-system research to determine the best health interventions to reduce pregnancy-related death, the number did not decrease; sadly, it increased. Clearly a health intervention approach was not the only answer to this problem.

It was thought that knowledge of underlying social and economic causes of women's lack of status and empowerment would add a needed dimension. Pursuing the following kinds of research questions would help:

- how do different cultures socialize women into early and risky child bearing (if women could delay marriage and child-bearing until the age of 18, many pregnancy-related deaths could be prevented);

- how can feminist research on women's identities in different cultures and groups be used to understand why women are deterred from seeking skilled care during pregnancy and child birth (many women do not seek care during pregnancy and childbirth);
- how can the philosophical research on communitarianism and the collective nature of rights ensure greater understanding of how the right to health care might be applied in the context of essential health care, such as maternity care? (Many national constitutions and international and regional human rights treaties have provisions on the right to health, but few have been applied.)

Universities are well positioned to facilitate inter-disciplinary research that would assist in understanding the causes and consequences of human rights violations, particularly violations that involve multiple causes and consequences. The ways and means that universities might promote more creative research in human rights include:

1. Designated scholarship in particular areas of pressing human rights need might be considered, such as human rights scholarship in the area of indigenous rights or in the interface between gender, race and class.
2. A university human rights research council, perhaps modeled on social science research councils, might be helpful. In the medical field, scientific research generally tends to follow the market. What role does the university have in ensuring that research is undertaken in areas where there is an extreme social need? The market is not going to do this for us. In the area of women's rights, for example, how might research dollars be allocated to facilitate interdisciplinary research of the kind that is discussed above with regard to safe motherhood? How would universities set the criteria for allocating research funds?
3. There must be efforts to foster better collaboration among faculties and departments. There are important individual faculty initiatives, but are they enough to address the underlying causes of complex human rights violations? Are programmatic centers the answer? How can university-based

programmatic centers, perhaps with a clinical component, be designed to bring together the kind of expertise that is necessary to address complex human rights violations?

Claudio Grossman

When we talk about practical, experiential learning, we should be clear about what we mean. There are consequences that result from the incorporation of human rights into the enterprise of law. We promote, for example, certain kinds of experiential learning and not others. We don't train students in the techniques of torture or ask for student volunteers to be tortured. Clinical programs are oriented towards servicing the poor, weak or the elderly, but not the rich, though they certainly have problems too. If someone offered the school a grant to serve the needs of clients with more than 30 million dollars, I would not feel compelled to accept.

Experiential learning exposes students to live clients or associated workers, such as an asylum applicant or NGO. It teaches students about how law is made. To a certain extent, the clinical practice also allows us to play a role in shaping the field and paving new ground. Some may perceive this as crossing the line beyond neutrality. However, I think it is consistent with our role as human rights educators.

Let me give a couple of examples based on our experience at American University. Our clinic took the case of Fausia Kasinga. She was going to be deported because her fear of facing female genital mutilation was insufficient ground on which to obtain political asylum. Eventually, she was offered asylum and the law moved towards a greater understanding of the particular threats faced by women. Was that a proper enterprise for a university engaged in teaching human rights, not just educating as if the law were static, but pushing the frontiers of the law itself?

There are many other examples of involving students, such as exploring the rights of individuals to participate in proceedings before international courts. A group of students under faculty direction participated in cases before the Inter-American judicial system that resulted in broadening the scope of the field and promoting human rights. Or consider our War Crimes Tribunal Project that engages about thirty students in research for the current international criminal

tribunals. I would suggest that the nature of human rights lends itself to these kinds of activity, and that a strict dichotomy between the scholar and the activist is somehow challenged because of this.

[Designing a research agenda for the university: practical and philosophical concerns]

Alicia Ely Yamin

It is difficult to discuss an agenda for human rights policy research or even the role of the university in isolation from what is going on in the international movement or any given regional or national human rights movement. I was recently a rapporteur at a regional conference of Latin American NGOs discussing challenges they now face. Three themes emerged, each describing a gap that a university could fill.

The first is judicial reform; there are projects all over Latin America, some of which are funded by development banks and most of which fail to incorporate human rights concerns. NGOs often don't have knowledge about or research skills in comparative law, for example, nor is it in their interest to develop such capacity. The legal expertise of universities, however, could be extremely useful in developing conceptual frameworks.

The second subject is individual security, a major emerging area for Latin American NGOs. Many countries in Latin America are facing an exponential rise in crime. But though the regimes have changed, many are left with the same repressive policing that existed under the old regimes. NGOs are expert in denouncing and exposing police abuses, but are unfamiliar with how police institutions should be run. A local university could provide a neutral space for various local parties to meet, just as experts on national security and security institutions have indeed done at the Kennedy School of Government.

Third, Latin American NGOs recognize that if they do not incorporate economic and social rights into their work, they will become increasingly marginal to the people whom they most want to serve. The same thing could be said about universities, whose human rights programs—where they exist—could similarly become less relevant to the movement. If we're talking about creating human

rights programs in local universities, they clearly have to address the gross disparities and socio-economic realities of the countries in which they are located.

Makau Mutua

A university in the “non-West” cannot be blind to its problematic relationship to human rights. Much of the non-West labors mightily under the conceptual domination of the West in virtually all areas of human endeavor. In fact, I will go so far as to say that non-Western cultures are at risk of decimation—total destruction—by the seductions of Western hegemonic thought and popular culture. And this clearly includes human rights.

So a university in the South has an obligation to excavate the philosophies and traditions of the people in the construction of modern societies. In human rights, I think it is incumbent upon academics in the South to rewrite human rights, where necessary, to make them universal. But this will not be possible unless these academics understand their own cultures. Therefore human rights curricula in the non-West cannot simply mimic their counterparts in the North.

Philip Alston

To what extent should university programs reach outside the university to the society at large? There is a certain appeal to changing the world rather than training judges at home, but isn't there a risk that human rights programs—whether it be Harvard Law School or the University of Peru—will content themselves with making token contributions on a small scale, focused inevitably on projects that attract funding or publicity, rather than tackling issues which are more deeply rooted and will ultimately bring greater and more enduring rewards in human rights terms? There are, for example, university programs which have made great capital out of working on issues of “peoples' rights” in the abstract when it might have been far more meaningful and productive to have singled out a particular issue area in which they have the expertise and the capacity to influence or bring about real change.

Alicia Ely Yamin

I think there is room for both expanding and deepening the curriculum, on the one hand, and working on specific projects, on the other.

Frederick Schauer

Before we craft a new role for the U.S. university, we should realistically understand the incentive structures of that university. It is unlikely that American law schools will go far towards changing their curriculum or developing outwardly oriented programs that respond to the needs of the developing world. The overwhelming number of law graduates leave to work at large, private law firms. This is a sub-optimal diversion of talent, but it is a fact of life and a constraint on the realistic possibilities of change within the law school. Among other things, it suggests that outward oriented activities will be viewed, practically, as a kind of cross-subsidy to support the environment in which most graduates will work.

Upendra Baxi

It may be interesting to view the present situation as a conflict between accountability to one's immediate community—one's institutional and professional context—on the one hand, and the global human rights community, on the other. This is the international analogy to the problematic of the intellectual and society. One general critique suggests that the definition of the problem and the construction of the research agenda cannot be the prerogative solely of the specialized intellect. These have to emerge from grassroots participation and from the *organic intellectuals* (as opposed to *erudite intellectuals*) who can better point to constructing ways ahead.

On the global plane, how do we reverse the terms of trade between the erudite intellectual and the organic intellectual in the construction of human rights research? I think it is important to understand the level of development of human rights education in the U.S., and to raise the question of the accountability of those we might view as the hegemonic human rights educators—the ways in which the entire field is constructed, the kinds of issues acknowledged or ignored—and see whether we can learn something as a result of this interaction.

Alicia Ely Yamin

The problem is that the universities, even in the developing world, are unprepared to take on certain roles. It has been the NGOs, for example, that have documented the problems with the judiciary in Latin America. Currently, there are not even any human rights courses in Peruvian law schools.

Philip Alston

But if we look at this as a North–South issue, as Upendra Baxi is suggesting in part, then it is not clear whether it is even appropriate for human rights centers in the North to engage in activities such as teaching in schools in the South.

Similarly, what message are we sending when universities in the North dispatch large numbers of interns to the South each year? In my view, it may reinforce and exacerbate negative cultural stereotypes and the perception of imposed values rather than strengthen the domestic capacity of the South to do its work.

Kevin Boyle

This is an issue that we have faced at the University of Essex. We realized a couple of years ago that we were engaged in projects in every part of the world except our own, so we set out to develop a curriculum that would focus on human rights in Britain.

[Field testing ideas in human rights: evaluating the resonance of norms, building a grass roots role into the elaboration of norms]

Philip Alston

Are field-testing and accountability—ideas that come out of the scientific tradition—transferable to human rights and the law school?

Rebecca Cook

One way of addressing Philip Alston’s question is to focus on the applied forms of human rights research. Do human rights researchers have responsibilities to field-test their research in such a way as to ensure that social problems are solved in a manner consistent with human rights norms? How are questions about “the effectiveness” of

remedies addressed? How do we know that particular remedies are effective in addressing human rights violations?

Do law schools have a responsibility to ensure that clinical work—including internships—is actually effective in addressing the problems, or should law schools be satisfied that they are providing a learning opportunity for their students? If legal researchers are concerned with the effectiveness of ideas, should they field-test the recommendations before they publish them? Sticking with the safe motherhood scenario, it is known that in many countries adolescent girls marry under the legal age, and thus bear children too early to be able to sustain the pregnancy. How can it be determined which strategy would best work to give efficacy to the legal age of marriage? Will law enforcement alone address this problem or would a mixture of law enforcement and economic and social incentives be more effective?

Frederick Schauer

It strikes me as odd from the perspective of a policy school like the Kennedy School, where I have taught for nine years, that field-testing would be viewed as alien. But from the perspective of a law school, where I earlier taught for 16 years, I can understand it. Perhaps the problem, while not exclusive to law schools, is concentrated there. Law schools are not generally concerned with implementation. There is no particular concern, for example, for what the consequences might be of a lawyer winning a particular case. But while the question of whether doctrine has changed the nature of the world is not generally asked at the law school, it is hardly alien to other disciplines. What is true of the Kennedy School would also be true of public health, business schools and some social science departments.

Henry Steiner

I wonder just what would be included within the empirical fieldwork that Rebecca Cook suggests, and how such work would bear on many issues that I consider important to human rights today.

Rebecca Cook

There are a variety of different ways of thinking about field-testing. One way is to think of it in terms of communication: we have to

make sure when speaking another disciplinary language that we do it in ways that are understood. Field-testing with the other discipline might help to do this.

But human rights work requires us to recognize how norms of human dignity evolve and begin to make a difference in people's lives. Field-testing, understood as direct engagement with those who apply human rights, can also help with this. One can field-test methodologies. One can also field-test perceptions in order to better understand the ways in which human rights are understood and applied in a particular context.

With regard to methodology, I was recently required to field test a report on "Advancing Safe Motherhood through Human Rights" that I wrote with others for the World Health Organization. The purpose of the report was to explore how different human rights might be used in this health care context. The responses from the field-testing helped us reshape the report in ways that made it more useful. As lawyers we framed the report in the adversarial human rights language of holding governments accountable through courts. Those who read it, and will ultimately use the report in training, explained that this adversarial language was not helpful, that they usually solve their disputes through negotiation and mediation. They asked us to explore how a negotiation and mediation approach could be used to address infringements of human rights, which we gladly did.

With regard to human rights standards in the health care context, we wanted to understand how rights relating to health were applied in one country. In this country, no jurisprudence and no scholarship existed on the application of the right to health. There were some interesting protocols developed by the ministry of health. In addition, there were some impressive guidelines developed by one of the associations of health professionals. But it was hard to understand if and how these protocols and guidelines were applied. As a result, in the field test we asked a variety of different questions about how norms on the right to health care are framed and conceptualized, how they are developed and through what forums. We also asked which norms are more effective and why in securing the right to health. The answers to these questions helped us in framing a discussion on the right to health care that will, hopefully, be more useful.

Philip Alston

We are still talking about a small range of issues and areas. If we take Fred Schauer on free speech, what does field-testing imply? Is Fred going to field test his conceptions about how one should define free speech, and come up with the solution that in a particular country, free speech means being hit over the head only three times when you speak out?

Stephen Marks

The possibilities are broader than Philip Alston implies. The kind of fieldwork that Rebecca Cook and others are developing enables us to analyze with precision and rigor the consequences of the normative and institutional work on which the movement has thus far focused. We have tended until now to make wild generalizations about impacts of policies on populations. But we need to have a better sense of impact other than our vague hunch and speculation about what is good for the population. There are means of analyzing the before and after of certain policies that go well beyond mortality and morbidity issues.

Even in the case of freedom of speech, I suspect that we could determine whether a particular approach to human rights policy would be misguided because of the results it is likely to produce. The methods of analysis used in public health could here be extraordinarily helpful. Thus far, we have followed the idea articulated by Jonathan Mann: concern for developing those health policies that maximize the human rights outcomes. But we haven't yet gone to the next stage of applying tools of analysis for estimating the impact on populations and assessing those impacts. That's critical to achieving an effective linkage between health and human rights in the coming decades.

Upendra Baxi

What is exciting about Rebecca Cook's methodology is that it reverses the learning process that has characterized human rights. The assumption that human rights people, because they have certain mantras, or a certain degree of martyrdom, can define the problem and the solution—this top-down thinking—is totally wrong. It's anti-human rights. A participatory process is built into the idea of doing

research by field-testing. It is a methodological innovation in the understanding of human rights. That is quite germinal, to my mind.

Philip Alston

I wonder whether this rejection of top-down approaches has negative implications for human rights at the university? At the university we start with certain normative assumptions. We then go out, and, without necessarily proselytizing as such, we provide information. We don't really do what Upendra Baxi has suggested, which is to start from the grassroots, expose ourselves to different perceptions and then reformulate our ideas based on what we are told.

Upendra Baxi

There is space for a methodological partnership. The university intellectual has access to a normative understanding of rights at the global level. But the "organic intellectuals"—the people working on the ground—have their own experiential wisdom to provide. The partnership would not diminish the contribution of the university. It creates a new process of social communication and understanding, which is what I thought human rights was all about. Most activists I've met throughout the world tell us the human rights ideology in one sentence. It is simply this: to make governments more just, power more accountable, and the state more moral. That grand statement is generally understood by people on the ground. We must then use all the circuits and networks of intellectual solidarity and new coalitions to generate a sense of partnership.

Tom Farer

How far are we willing to follow the results of empirical inquiry? Suppose it could be demonstrated that a frank discussion of IQ rates within different ethnic communities would have a dangerously corrosive effect on the rights of those groups. Would that in any way affect our interpretation of the right to free speech, or is it completely irrelevant? Suppose we could demonstrate, after careful field-testing, that preventing the grosser forms of female circumcision would have destructive effects on the established culture of an indigenous group. Should that be decisive in deciding whether or not female circumcision amounts to torture or other human rights violations?

If the answer to those questions is “no,” then there is a large area of human rights activity that is analytical and conceptual but has nothing at all to do with field testing.

Henry Steiner

I agree with Tom Farer’s remarks, but I think there are other cases where our knowledge about likely outcomes has actually contributed to definition or protection of the right. Against the background of the holocaust, the International Covenant on Civil and Political Rights requires states to prohibit certain types of hate speech that were understood to create bitter division and provoke violence. Whatever the arguments for unregulated speech, the risk of permitting hate speech was seen as too severe to bear. In fact, we know that rights are often justified, at least in part, within a utilitarian framework—for example, the assumed effect on police conduct of the American exclusionary rule in criminal proceedings for testimony coerced by state officials, the proven effects on economic development of government-provided education for women on equal terms with men, or the effect of provision of health care on productivity and political participation.

Fred Schauer

I would add to what Henry Steiner has said. There are some rights that are primary, non-instrumental, and others that we treat as rights precisely because of their empirical, instrumental relationship to something else. Freedom of the press may be the best example. It does not concern the intrinsic human rights of reporters; it is about the empirical relationship between press freedom and the polity. Without that empirical relationship—of the kind that Amartya Sen has most eloquently demonstrated in the case of famine—the right is hard to justify. We ought to recognize that some rights hinge on empirical relationships and were it otherwise, the justification for the right would disappear no matter what the philosophical argument.

Philip Alston

In my view, Fred Schauer’s approach is highly contestable. As soon as we start applying an empirical instrumentalist approach to determine which rights are primary and which are not we get ourselves into

an exercise which is very difficult to reconcile with the premises of international human rights law. I would classify freedom of speech as a primary right regardless of the instrumentalist role that it might play. It goes directly to a particular conception of human dignity, and not only to whether the exercise of such a right can reinforce some other value such as eliminating conditions which are conducive to the politically inspired maintenance of famine conditions or the more effective functioning of markets.

[The distinction between academic research and policy research]

Robert Archer

Our institute, the International Council on Human Rights Policy, was founded on the understanding that there are inherent limits to the ability of universities to fulfill the research needs of the human rights movement. Thus far in this discussion we have been looking primarily at issues and priorities within and set by the university. Even the discussion of field-testing presumes that university research determines the questions and the process of testing. But a whole set of interesting and complex issues concerns research that is not university-driven. The contribution of university specialists, whether empirical or normative, may be of enormous value to practitioners and activists, but it may not respond to their needs. Who defines the issues and who is charge of the consultation process and result bears directly on the value of the research.

One way of addressing the gap between human rights institutions and universities is through partnership and exchange. Many people working in other institutions would value enormously the chance to take some time off to stay at a university. But the needs do not necessarily match. The cultures themselves may not match. It is very difficult to fit the university curriculum and tradition with what is going on in other institutions.

Claudio Grossman

The questions Robert Archer asked do not have an easy answer. The boundary between the university and other research centers is breaking down. The World Bank sponsors a vast amount of research in universities and on its own. Can we say the World Bank is

partisan and the university is pure? I don't think that reflects reality anymore.

Mona Rishmawi

When we talk about policy research, it is very important to think about who will benefit. Who is the target audience? We haven't mentioned the United Nations. There are a number of places within the UN that could benefit from university research—for example, aiding the Special Rapporteurs in their missions. There are good examples from the recent past. A number of thematic rapporteurs took advantage of university research. The best example is, perhaps, Francis Deng, whose work on internal displacement has moved an entire area of law forward in a significant way. I don't think he could have done that so effectively without the Brookings Institution and the universities that supported him.

There are currently thematic rapporteurs whose work could greatly benefit from university research. I was recently involved in a study for the High Commissioner for Human Rights, Mary Robinson, where she actually identified 20 studies being carried out. Better links between the universities and the Office of the High Commissioner, the Rapporteurs and the Sub-commission on Human Rights, for example, could greatly enhance the opportunities. Governments who are normally hesitant about the perceived imposition of Western values might subscribe to UN-sponsored research. And the university, as a neutral place, could be ideal for this kind of research.

Stephen Marks

I agree that policy oriented research to backstop UN regional procedures and the work of special rapporteurs is a key area in which universities should contribute, both through research and field testing. In this room, I can identify at least four people who have conducted funded research at their universities that is directly related to a special rapporteur or to special procedures. American University currently has a project to support the work of the International Criminal Court. The University of Lund is supporting Katarina Tomasevski on her report on the right to education. I would like to think that the same thing can happen with an eventual special rapporteur on health-related rights. We are contemplating hosting the special rapporteur

on the right to development to try to provide a research base for his work, and perhaps also the means for field-testing the proposals that emerge.

Alicia Ely Yamin

In Latin America, there is an emerging research and policy agenda driven by the NGOs to which universities could make a genuine contribution. Philip Alston has questioned the appropriateness of students or researchers from universities in the North parachuting in and out. I think that it is a legitimate issue, but there can be a balance. NGOs in Latin America have begun to realize that their work on issues like judicial reform must include international alliances. Some of the most important work has been done with international NGOs, like the Lawyers Committee for Human Rights. To exclude universities from being part of those alliances with local NGOs or universities in the South is, I think, unnecessary. They can play a very important role.

Kevin Boyle

Speaking autobiographically, it is difficult to balance fundamental, abstract research with policy research, and that can be very problematic for the university. Policy research is about someone else's policy. A university that eschews fundamental research cannot survive. In Britain, for example, the Department for International Development (DFID) has the goal of eliminating poverty. Let's say it wants you to work on a project that links poverty eradication to access to justice. What they really want is to square a circle. They don't want you to say, "You can't eliminate poverty," or ask, "Should you eliminate poverty?" They give you money to do the work and you can't ignore those demands completely.

Stefanie Grant

I'm perhaps the only person in this room who is really outside a university. I feel caught between two very distinctive realities. One is the existence of well-funded universities searching for new topics and open to a next generation of human rights. That seems to be the assumption here. The other—far less in evidence here but most familiar to me—is the extraordinary set of research challenges

unleashed by the expanding reach of international human rights, which need to be addressed by the academic world.

The need is not being met. Over the last decade, everyone involved in an international human rights operation has faced the frustration of limited resources for research. When it came to international criminal justice, the universities responded very well and we can see the results. This has led to a broad academic debate that reaches beyond the lawyers to include, for example, anthropologists and customary law. But research is needed in a variety of areas. One that immediately comes to mind concerns women's rights and the interrelationship of custom and culture, national law and international law in different countries.

These are areas where thinking and analysis are better done by universities than by operational groups. But as Robert Archer and Andrew Clapham have noted, we lack processes whereby an issue can be defined by those who need an answer in a way that will fit into an academic agenda. It is important that these issues are catalysts for academic work. I will give an example. In Rwanda, the criminal justice system does not have the capacity to prosecute the thousands of genocide suspects now in detention. The government is therefore turning to traditional and customary dispute resolution procedures about which the human rights community knows little. It would be helpful for us to have access to academic experts, such as anthropologists, who have studied these procedures.

***Third Session:
The University and the Nongovernmental
Human Rights Movement***

Stefanie Grant (chair)

Many of the people in this room have double identities. They have worked as academics and as active participants in NGOs. In this discussion, I hope that we can draw on both identities to provide perspectives on what universities and NGOs have to offer to each other. It would be a mistake to assume that the importance that some universities or faculties place on a relationship with an NGO is common throughout the university community.

If you worked in a mathematics or applied science faculty, nobody would mention the word NGO. The social sciences are different. There is a set of assumptions that govern the NGO-university relationship. It would be helpful to spell these out and see how they can be logically developed to meet the new situation where the NGO movement is no longer dominated by an ethic of monitoring, but is moving into much broader and technically complicated areas of economic and social rights and the environment, which require a knowledge of development economics and environmental science.

The introductory speakers for this session are Juan Mendez, who will comment on NGOs and universities in Latin America, and Makau Mutua, who will make some critiques of NGOs.

Juan Mendez

There is a mushrooming interest in human rights matters in universities throughout most of Latin America. But this is not necessarily an entirely positive phenomenon. It could be rather a fashion trend. Human rights NGOs and the human rights movement, in general, have acquired a legitimacy that was absent during the period of dictatorships.

Suddenly, everyone has something to say about human rights. Much of it is improvisation. There is a tendency, for example, to start at the top and do everything at once. So universities that never even mentioned human rights suddenly have masters programs in the field. At the same time, such universities do not yet have a single

good human rights course as part of the more general curriculum. There are some exceptions, of course, but this is the trend.

In the meantime, NGOs have begun to move beyond the traditional role of monitors and critics, and to engage in human rights education. Peru is an excellent example. The human rights organizations there may be the best in Latin America in terms of grassroots human rights education. This usually takes the form of informal, adult education and basic literacy training that includes human rights.

In a number of countries in Latin America, NGOs are also working with ministries of education and schools at the primary and secondary level, but they have not yet made a dent at the university level. Not surprisingly, when they have taken up human rights teaching, the universities have not particularly relied on or reached out to NGOs. There is a bias against activism in Latin America as in many other places, and a sense that people who are committed and politically active are probably not scholarly enough. I think this is unfortunate.

The Inter-American Institute on Human Rights (IIHR), which I directed until recently, has been carrying the brunt of the burden for minimum training in human rights over the past 17 years. The IIHR is an international organization affiliated with the Inter-American Court of Human Rights and, like the Court, is based in San José, Costa Rica. It is the educational arm of the inter-American human rights system. What we provided is by no means a university level course, but it has become the point of passage for people who are interested in human rights education. Most of those teaching human rights in Latin America have taken our course. Now, as university programs expand, the IIHR is getting many requests from universities for assistance with developing curricula, training teachers and developing bibliographies and methodologies. While I was there, we were trying to determine a role for ourselves. Although some requested us to initiate our own masters program, we focused on promoting programs in other universities and continuing our assistance in development and evaluation, as well as providing models of curricula.

In our advisory role, we worked with several universities, including the Rafael Landivar Jesuit University in Guatemala, which has introduced an interdisciplinary masters program. We conducted

a larger study with a new association of Jesuit universities on the state of higher human rights education in all of Latin America. That is the starting point from which an institute can contribute to higher education.

The NGOs, as I mentioned, have a relatively limited role in this picture. Some NGO figures have taught at universities, but this is often unsustainable for consecutive years. There are interesting exceptions where NGOs are beginning to engage the university at an institutional level, particularly CELS [El Centro de Estudios Legales y Sociales] in Argentina and the Mexican Academy of Human Rights in Mexico. Not only are their people teaching, but the organizations are lending themselves to internship experiments and clinical training as well.

Another element to consider is student activism. Human rights activism remains strong on many campuses in Latin America, particularly Mexico. Whether that energy can be converted into more structurally and institutionally supported human rights work is an important question that each institution will have to decide by itself. In the meantime there is an important move in that direction.

Many of the people doing human rights work in Latin America have come from U.S. schools. This reflects the poverty of resources available in Latin America, but also has the effect of pushing universities towards more active engagement. In the end, when they take on their own responsibilities, the human rights programs will be different, more "indigenous," but will still copy what is good in U.S. universities. In my view, this is imitation in the good sense of the word.

Makau wa Mutua

I consider myself to be an insider-outsider to the human rights movement. I do not take the view that the human rights corpus is an unqualified good. It is rather an ideological experiment. There have been other ideologies—good and bad—including racism, apartheid and colonialism that held sway in their time. Human rights is a particular historical and cultural avenue for the protection of human dignity. What disturbs me is the prevailing view at universities and at the international level, which appears to treat the human rights text as somewhat sacred and beyond reproach. Law schools assert a

kind of fiduciary relationship to the corpus, privileging themselves as spokespersons for the rest of humankind about the good society. It is extremely presumptuous to create a corpus, give it religious dimension and then appoint ourselves as the guardians of that corpus.

The human rights text lays out a set of norms, a conceptual scheme and institutional arrangements for a particular global society. It presumes certain universal truths. Once we begin advocating human rights we have made a choice about the kind of political society that we want. The university, on the other hand, is expected to be skeptical about all assertions of truth. Today, universities that embrace human rights do so not as a discipline of inquiry, but as a cause. Universities embraced some terrible ideologies in the past. For example, in South Africa the universities embraced apartheid as an ideology. What will they embrace one hundred years from now? In my view the university cannot act as the cheerleader for human rights.

When it comes to NGOs, we have to start by asking what they are. Human rights NGOs are a recent phenomenon. The prominent ones are based in the West and have played an influential role in setting the agenda of the human rights movement as a whole—defining goals and strategies. They inspire copycat organizations in the South.

As promoters of human rights, NGOs proceed from a perspective of moral certainty that, for them, is reflected in the human rights corpus itself. In fact they project themselves as the moral guardians of that corpus. With this in mind I want to identify several relationships that I think universities should have with NGOs.

A fundamental task of the universities should be to systematize the text of human rights—to critically examine the corpus, to identify conceptual gaps and inconsistencies, to clarify and expand the scope of the text, and to critique institutions that participate in the production and promotion of human rights norms.

A second role the university should play is that of a distant skeptic of the NGO community. The universities should constitute the “thinking core” of the human rights movement. In NGOs, people are too busy trying to implement the norms themselves. That gap in reflection and thinking is appropriately left to the university.

The university should be the funnel through which we train individuals who wish to work in the human rights movement. This

training should be the training of a more questioning advocate, an advocate skilled in the complexities of the corpus itself and challenged to think about these complexities. The university should not be directly involved in advocacy, except to act as a forum for clinical hands-on training for students.

[Authentic or cloned: nationality, ideology and NGOs]

Juan Mendez

I agree with all of Makau Mutua's recommendations, but disagree with his grounds for making them. Firstly, I do not think that human rights are only about ideology and politics. We do have a legitimate claim to universality, but most organizations agree with the view of Abdullahi An-Na'im that universality is a construct and we have to build on it and make human rights truly universal. We are also always pushing the envelope on new norms.

Most human rights NGOs that I know recognize that they have a dual responsibility: to enforce existing norms and create new ones. They are also very ready to accept criticism. Therefore, there is no need to merge the NGOs and the universities. There are discrete roles for each. The Inter-American Institute of Human Rights operates on what we call a model of change—we look at what is wrong with Latin America and try to change it. We at least try to provide the intellectual impetus behind change. That is all that universities should attempt to do.

Certainly NGOs are in need of reform, but compared to other institutions concerned with human rights, they are relatively strong and functional. Organizing a human rights program around what is wrong with NGOs would be a mistake. Some academics I know in Latin America who are critical of the operations of NGOs think that they themselves are observing and evaluating what goes on while remaining a certain distance from NGOs and activism in order to serve better as critics. And some criticism directed to NGOs by some observers amounts to thinly disguised authoritarianism; the critics do not like human rights and that is why they are criticizing it and NGOs.

Alicia Ely Yamin

I would like to respond to some of the things Makau Mutua said. Much of my response again comes from the context of Latin America. I do not see the NGOs in Latin America as being clones of U.S. or international NGOs at all. I think U.S. NGOs have a lot to learn from Latin American NGOs. For example, I think that more than U.S. NGOs, they are moving away from traditional strategies that depend almost exclusively on exposing and denouncing violations. Increasingly, Latin American NGOs are actively engaged with different levels of the government and other organizations in proactive proposals and in the development of programs—whether to train police about domestic violence or to implement rights-centered health programs. I also think Latin American NGOs tend to be more reflective in some ways than U.S. NGOs precisely because there is not such a strict division between intellectual/academic and advocacy roles.

I also don't think Latin American NGOs lack time for reflection. In Peru some of the most astute political and social analysis is in a magazine published by a human rights group. In Mexico, a group I work with sets up an annual retreat for reflection and analysis of long term strategies and trends affecting the human rights movement.

Christian Tomuschat

I agree with Makau Mutua about the sensitivity of cultural factors in the human rights movement. It is certainly detrimental if NGOs are viewed as institutions of the capitalist world or if Third World countries feel patronized. It would be preferable in all instances to have local NGOs that spring up from the nation itself as an expression of self-determination. But from my own experience in Guatemala, I also have to recognize the essential role that such national human rights organizations are playing in transforming their own country, often through the pressure they exert on international NGOs or UN mechanisms.

There were two organizations that I encountered as UN Special Rapporteur that had far more influence and impact than any foreign NGO. The first was Grupo de Apoyo Mutuo (GAM). The other was the Myrna Mack Foundation. These organizations were both founded by women who had greatly suffered under military regimes; in both

cases, loved ones had been killed. Thus, the founders and most of the members had an unchallengeable moral authority. And their demands were simple, though of great political weight: on the one hand, that the past should be clarified and that the persons bearing the main responsibility should be made accountable; on the other hand, that the rule of law should be introduced and strengthened for the benefit of all citizens. Just to canvass these demands originally required a great deal of personal courage since any criticism of the prevailing power structures was seen as a "subversive" act. The regime reacted by not only making death threats, but by murdering many members of GAM. However, the organizations could not be intimidated. Their steadfastness played a significant role in helping to build a climate of open discussion where even the wielders of political power are subject to unfettered public criticism.

Upendra Baxi

There is a lot of cloning of constitutions in transitional societies. The cloning of NGOs is also going on. Isn't the deeper question how we relate patterns of creativity and mimesis in the making of the history of human rights? We need to understand patterns of creativity that are based in the histories of resistance to power at the grassroots level.

We should also examine NGOs in the broad economic context. There is a lot of donor dependency. How do we describe this phenomenon? Who is sitting inside your head when you are doing human rights? I suggest for consideration the analysis of the NGO/human rights relation in terms of the market. There is an investment rationality by the foundations and the managers and there is a consumer orientation. How many market players are there? Why are there crises in investor confidence when they walk away? Are there cycles of crisis?

One may illustrate this variously. For example, overseas development assistance has yet to reach the minimum level (as a percentage of GDP) proposed in UN resolutions; multinational corporations vote with their feet, as it were, threatening capital flight when "developing" countries invoke a modicum of labor or environmental standards; the World Bank and the IMF shape the flows of international assistance through convenient human right conditionalities; and human rights priorities stand as conveniently

abandoned in the prose of WTO and the aborted Multilateral Agreement on Investment.

Finally, the study of NGOs does not exhaust the human rights movement. Just as human rights are incredibly diverse, so are communities of resistance. Only some of them take the form of NGOs.

Fred Schauer

An enormous amount of what Makau Mutua said resonates with me on a theoretical level. But I wonder if there is implicit in what he is saying the expectation that relationships between universities and human rights NGOs should be different from the relationships between universities and numerous other organizations. In the ideal world, we would not have universities receiving incredible research funding from oil companies, pharmaceutical companies, wealthy governments, and so on. Sponsored research, with the emphasis on "sponsored" rather than "research," dominates numerous parts of numerous universities. Can the relationship with NGOs be altogether different?

Perhaps we should conceive of the relationship with NGOs in terms of an exchange. We might ask what empirical studies or historical analyses they want done. And in that context, we can ask them whether, in exchange for getting what they want, they are willing to be studied and, for their own purposes, to be evaluated. Is there room within the human rights movement for internal evaluation and criticism in order to enable NGOs to improve the work that they do?

Makau Mutua

I think the relationship between universities and human rights NGOs is complicated, and ought to be so. Human rights scholars cannot afford simply to be the "other half" of the human rights movement. We must understand that the movement carries a religious zeal and a "clubbiness", both of which are extremely unhealthy. When scholars get sucked into this vortex of self-righteousness, they lose their sense of studied distance and skepticism. Needless to say, that is detrimental to the purpose of a university. How can you be critical of those whose approval and legitimation you seek? That is why I advocate a distance,

a space that makes it impossible for the academic to be beholden to the human rights zealot, the activist. Academics will get on well with activists if activists maintain this distance to allow academics to call them as they see them, in a manner of speaking.

Kevin Boyle

Perhaps we should make a better effort to put the relationship into context. Are there precedents for the present relationships between NGOs and the university? Historically, what has been the relationship between universities and autonomous organizations in society as a whole—humanitarian organizations or religious organizations, for example? How do universities support domestic and international action? Further, what are the differences between, on the one hand, the links between universities and environmental NGOs and, on the other hand, peace NGOs and human rights NGOs?

I don't sense that there is a two-way relationship between the NGO sector and universities. There is much more of a relationship between the governmental sector and universities. Research foci come out of government—the foreign office or the international aid office. Occasionally the NGOs will ask for particular work. For example, an NGO may ask a university department to assist in the preparation of a brief. But it will be an advocacy paper and not a research paper, and so not identified directly with the university. But I do feel that there is greater potential for cooperation.

[The practical interaction of NGOs and the university: Institutional exchanges, curriculum and clinical programs]

Claudio Grossman

I would like to emphasize another point raised by Juan Mendez: There is still considerable distance and suspicion between NGOs and the university. How many NGO advocates sit on the board of major institutions? I have been in meetings of universities that remind me of intergovernmental meetings of the OAS. The mere mention of NGOs drives them crazy.

I think strategically we should push the role of the NGO and promote connections with the university. There are research proposals coming from the NGO community on women's rights, or due process.

We can strengthen the credibility of NGOs by providing them with skills to be more neutral in their reporting. Business schools can train them in searching for funds. We can provide sabbaticals for members of NGOs to spend some time in academia. We can strengthen their ability to do good lawyering.

There are too many constraints on a university becoming an NGO. The question in my view is the marginalization and exclusion of the NGO in the teaching of human rights.

Mona Rishmawi

Many NGOs—the International Commission of Jurists, Lawyers Committee for Human Rights or Human Rights Watch, for example—have academics on their boards who help to shape policy and are very much part of NGOs' missions, trial observations and daily activities. NGOs should therefore perhaps have some representation on the governing bodies of universities.

From the point of view of the NGO, there is a relationship between the student body and the university in terms of training of students who may later work in NGOs. Internships are a very useful way for students to acquaint themselves with the reality on the ground. Internships give a student an insight into what a human rights career would look like. That experience creates aspirations and hopes that there are jobs available for all interns. So there are a lot of people who would wish to work in the field, but there are not enough jobs to accommodate them.

A third problem is funding. While U.S. universities have funds for their students to go abroad, universities in other countries do not. So we end up with a disproportionate number of interns from the U.S. and not many from other parts of the world. In the end, we feel as though we are not training as broad a range of students as we should.

There is also the question of how interns can be used. Unless you have a program that is focused and well-structured, interns tend to do trivial work and do not get a good idea about what it is like to be a human rights professional. Unless you can ensure constant supervision and focus, students really do not get much out of the relationship. Therefore, academics need to push NGOs to focus on the students' substantive needs. Timing is also an issue. There are a

lot of students coming through the system in the summer, which is not always opportune. At the UN they will miss out on the Commission on Human Rights and human rights committees that do not sit during the summer. One solution to this problem is to give internships credit so that they can be taken during the academic year.

Joseph Oloka-Onyango

At Makerere University in Uganda, we have developed a program that integrates teaching, research and internships. The main intention of the internships is to expose students to the activities of human rights organizations, which we define in the broadest possible sense. There is no formal training process, so in a sense, students are thrown into the deep end. This is limiting and enriching at the same time. Coming from different disciplines, we do not want to push them into the law framework. On the other hand, we want them to draw from their own disciplines and reach out to apply their learning to human rights.

From our discussions with the NGOs, it appears that they also benefit. I would agree with Makau Mutua that NGO activists rarely have time for reflection. What they find useful are the perspectives that the students bring, often forcing them to stop and think about their own work.

My last point relates to a comment of Upendra Baxi. With a shrinking funding base where foreign donors play the preeminent role, NGOs are often forced to follow the flavor of the month, as determined by the funder. Many NGO ideas are abandoned because they differ radically from the accepted agenda. For a long time, donors were reluctant to fund activities that focused on economic, social and cultural rights (issues such as shelter, food and health care), having bought into the conceptual paradigm that such rights were not "human rights." The same dynamic affects the relationship of the university to NGOs—the possibilities are dependent on the pocket. The ability to innovate is necessarily constrained and traditional lines are followed.

David Kretzmer

It becomes quite clear from this discussion that there are some things that universities can do that NGOs cannot and should not, and vice

versa. As I see it, the function of NGOs is to present an alternative view. There are large forces in society that violate human rights and NGOs are there to create pressures in favor of upholding human rights. They may have to take "simplistic" positions or exclude certain kinds of discussions. Consider the issue of measures against terrorism. It is not necessarily for the NGOs to present all the pros and cons of such measures. Their task is first and foremost to challenge the legitimacy of measures that violate human rights. At a university discussion on such measures, on the other hand, I would expect presentation of the views of those in government or the military who favor such measures, alongside the views of their critics. The university can provide an essential forum for discussion of human rights issues from different viewpoints, including those of people whose orientation is more government-minded than rights-minded.

David Weissbrodt

I see three primary links between NGOs and universities: First, the NGOs are a subject of study. Second, they generate issues of interest that can be examined in greater detail in the university environment. Third, they can be assisted in "applied research" by students. NGOs offer students clinical opportunities that involve placement, research and practical experience.

Philip Alston

This brings us back to the question of who sets the agenda. Is the purpose of NGO-university links to serve the NGO or the university? I suspect that U.S. universities have gone into something of a groove in terms of the countries, issues and clinical projects they are willing to undertake. In other words, they will send an intern to Ecuador or South Africa whereas the equally valuable approach might be to undertake a major research problem for a Peruvian NGO that requires someone to sit in the library at Harvard for three months. But that does not fit into the clinical program and does not provide the sort of on-the-spot experience that the interns want.

Claudio Grossman

I think Philip Alston's concern is largely overstated. I don't know many centers of human rights that are unleashing law students in Peru

or Guatemala, or sending them to Colombia. This is an exception. In our case, the War Crimes Tribunal Project has thirty-five students doing research in Washington. We also have a gender project to train women in Latin American.

Andrew Clapham

There is still a major issue that arises from the fact that most human rights programs are based in the United States. If an NGO goes to a U.S. university on a topic—whether it is military intervention or female genital mutilation—the proposals become tainted with a U.S. perspective, however scientific and academic they are.

I think we should also acknowledge the other constraints on what the university can provide. Students are not simply free to work on research projects. It is not feasible for a student, for example, to pursue a doctorate on an NGO problem. The project has to provide a certain level of scientific interest and I have not found a way out of this. There are several NGOs in Geneva with issues that demand serious research. There are also dozens of students looking for thesis topics for masters and doctorates. But particularly in an interdisciplinary institution, people still want a law degree and do not want to do an interdisciplinary study on the latest problem that an NGO such as the International Commission of Jurists has presented. They need to make a contribution to legal “science.”

What academics can produce within their own careers is not always what an NGO needs in terms of its advocacy. There are many interns in Geneva and they, on the whole, do not find it as stimulating as being at a university. However enthusiastic they are to work in the “real world,” this enthusiasm wears off fairly quickly when they realize that the level of debate is less stimulating than that in the classroom.

I have found it very successful for professors in Geneva to develop educational programs that are tailor-made for the needs of NGOs. There are a number of courses that are run specifically for humanitarian NGOs by the law faculty, medical faculty, and so on. If a professor steps down from teaching the normal coursework, and commits substantial time to developing an educational program for human rights field work, it can work very well. It is a completely

different way of teaching, for it is closer to training and requires a much greater commitment to constantly refine one's methods.

Paul Martin

I would like to comment on educational programs for human rights advocates. In the last eleven years we brought people from third world countries to Columbia University for a formal program. Initially, we conceived of the program in terms of training. But we have found that their presence at the university has an important impact that goes well beyond that. We bring activists who come primarily from NGOs and put them in courses with regular students. In a sense, what happens in the courses is that NGOs are communicating directly with students. This is one of the most useful services of the Human Rights Center. What comes out of this is research, for example, on the international oil companies in Nigeria. The NGOs needed a theoretical model to deal with what was going on in the region and the academics responded.

Stephen Marks

Paul Martin also runs a course on grant proposal writing and a course on human rights reporting for human rights advocates. The interaction between NGOs and the universities is reinforced through those types of courses that are practical, draw upon NGOs and prepare the NGO advocates to go home to their institutions with a grant already awarded.

[The impact of scholarly criticism]

Henry Steiner

This discussion has focused primarily on satisfying the needs of NGOs through university research or clinical programs. I would like to explore the role of critical scholarship of the kind that academics typically produce; scholarship that takes advantage of the academic's distance from the fray. How much of such scholarship will be read and how seriously will it be taken? What effect if any will it have on the activities or conduct of NGOs?

Academics write critically all the time. The question is whether NGOs listen to them. Does it depend on the kind of work

that NGOs are engaged in—traditional monitoring and investigative work on the one hand, or research into new areas of human rights application like the developing human rights policy of the World Bank, on the other? Or do academics speak only to other academics rather than to the NGOs and IGOs relevant to their work?

Claudio Grossman

Some listen and some do not. But I think the real question is what do we do in order to increase the influence of critical thinking on their operations. I have recently noticed the enhanced critical abilities of NGOs. This has come as a response to reality, not because of an academic discussion. Without being melodramatic, they could lose their lives if they make a mistake.

Andrew Clapham

My experience is that academics and NGOs read articles in completely different ways. An academic will pick up an article and look through the footnotes (sometimes just to see how many times he or she is mentioned). An NGO looks through the article to find the concrete recommendation that is suitable for it. My experience in giving academic articles to NGOs is that they cannot see those recommendations. It is just not written in an NGO-friendly way. So if you are asking how to reach NGOs I do not think it is only a question of dissemination. It is also a question of writing for NGOs' purposes.

Claudio Grossman

I am not convinced that NGOs are so academia-blind or that there is such a strict separation between academia and activists. Many human rights activists teach at universities in the U.S. The same is true of other countries like the Netherlands or the U.K., where there are strong relations between academic institutions and activist groups.

Peter Rosenblum

I tend to think of the relationship as far more ambivalent. There are only two avenues of legitimacy for a human rights academic beyond the university itself—one involves governments, as we have discussed, and the other is NGOs. There is opportunism in the relationship with

NGOs as there is with governments. Even the critics like Makau Mutua derive their legitimacy at least in part from their personal history of relationships with NGOs. When I worked at a human rights NGO, however, we tended to view academics with suspicion; they wanted us to take their students or send them on missions. (Now, of course, I know how much they enjoy having me along.)

Secondly, I agree with Andrew Clapham that there is a divide between scholarly writing and NGOs. In preparing materials for this roundtable, I talked informally to many people in the activist world about articles that influenced them. The bottom line is that they don't read the critical literature, not even the table of contents from *Human Rights Quarterly* or the current literature that is about them.

Finally, I don't think we have adequately explored the profound influence that academics and the academy exercise through more subtle channels, particularly in the North-South dynamic. U.S. and European Universities have a cachet that, at times, is more influential in the South than the North. Harvard can give credibility to an activist or an issue in Ghana. A fellowship at Columbia or a professorship in the United Kingdom may bring credibility or protection to an individual and the larger issues that he or she represents. The impact may be positive or negative depending on your point of view, but it is not always a reflection of the worst in hegemonic impulses, unless we are to discount the careers of many of those around this table.

Philip Alston

My sense is that the human rights movement has undergone significant transition to the point where the role of intellectuals will become more important than it has been. The NGOs have gone through a period of proselytizing and advocacy. Now, as communities start to probe the meaning of a particular norm, there is enormous scope for intellectual reflection.

My second point is that we are focusing too narrowly on the concrete relationships between NGOs and the intellectual community. The processes of influence and the transfer of knowledge are much more complex than Peter Rosenblum's comment implies. There are many other ways in which we influence one another and create certain assumptions and shared consensus. It is not necessarily through some

tedious law review article that the academic influences the NGO and vice versa.

Mona Rishmawi

The main issue is relevance, and not really what NGOs read and do not read. They read what is relevant at the time. They research a point when that point comes to their particular attention at that particular time. Andrew Clapham is correct; when you look at an article you look for something to support your position. You are an advocate. You do not look for a major analysis of the situation. In a way it is not very different from lawyers in a law firm.

Rebecca Cook

Just a brief point about terminology. I think you really have to meet the NGOs where they are. If they are dealing with women who are using the language of empowerment, then you really cannot talk about human rights, but must use the language of empowerment. With health NGOs you may get much further with a bioethics language. The ability of universities to abstract human rights principles in different ways- languages and epistemologies -is important and goes beyond the issue of nomenclature.

Robert Archer

I think there has been significant change over the last decade in the readiness of NGOs to open themselves up, partly because they faced very grave difficulties in holding to their previous analyses in a number of issues. There has been an internal questioning. Organizations have been forced internally to seek a new language or new approaches to problems.

Returning to the question of NGO research needs, we should also think about the differing needs of different NGOs. The big NGOs have their own people thinking about policy issues in a consistent way. But the vast majority are really quite small and without research capacity. Perhaps the university is less important for the large NGOs and therefore universities should pay more attention to the smaller ones.

On critical research, I had experience working in the development field before I came to human rights. Every few months

we would see an analysis of development work in one form or another. Judging from that experience, one of the reasons NGOs are not particularly attentive to academic analyses is because those analyses are not always particularly good. Very often they do not get to the heart of the problem, and tend to do internal and institutional analysis at a level of simplicity that is embarrassing to the practitioner. When the analysis is penetrating and decisive, it does attract attention.

Annex:
Participants

All biographical information is as of the time of the roundtable unless otherwise noted.

Philip Alston is currently Professor of Law at New York University and directs the recently established NYU Center for Human Rights and Global Justice. At the time of the Conference, he was Professor of International Law, European University Institute, Florence. He chaired the United Nations Committee on Economic, Social and Cultural Rights for eight years until 1998.

Robert Archer is the Director of the International Council on Human Rights Policy, Geneva.

Upendra Baxi is Professor of Law at the University of Warwick School of Law and former Vice Chancellor, University of Delhi. He is also a Visiting Professor at New York University School of Law.

Kevin Boyle is Professor of Law at the University of Essex and Director of its Human Rights Centre. He has served as the Dean of the Faculty of Law at the National University of Ireland, Galway, and as founding Director of *Article 19, the Global Campaign Against Censorship*.

Andrew Clapham is a Professor of International Law at the Graduate Institute of International Studies, Geneva and a former Director of the Amnesty International Office at the United Nations in New York.

Rebecca J. Cook is Professor and Faculty Chair in International Human Rights, and Co-Director of the International Programme on Reproductive and Sexual Health Law in the Faculty of Law at the University of Toronto.

Tom Farer is Dean of the Graduate School of International Studies at the University of Denver and is the former President of the Inter-

American Commission on Human Rights of the Organization of American States.

Stefanie Grant is currently Chief of the Research and Right to Development Branch at the Office of the High Commissioner for Human Rights. At the time of the conference, she was Director of Program and Policy at the Lawyers Committee for Human Rights.

Claudio Grossman is Dean of the Washington College of Law at American University and Professor of Law. Grossman has served as President of the Inter-American Commission of Human Rights and in 2004 he became a member of the United Nations Committee Against Torture.

Louis Henkin is University Professor Emeritus and Special Service Professor at Columbia University, Chairman of the Directorate at the Center for the Study of Human Rights and Director of the Columbia University Law School Institute for Human Rights.

David Kretzmer is the Bruce W. Wayne Professor of International Law for the Faculty of Law at the Hebrew University of Jerusalem. He was a member of the United Nations Human Rights Committee from 1995-2002.

Stephen Marks is François-Xavier Bagnoud Professor of Health and Human Rights at the Harvard School of Public Health. He is also the director of the François-Xavier Bagnoud Center for Health and Human Rights.

Juan Méndez is currently the Executive Director of the International Center on Transitional Justice in New York. Previously he was Professor of Law and Director of the Center for Civil and Human Rights at Notre Dame Law School, and served as member and president of the Inter-American Commission on Human Rights of the Organization of American States.

Makau Mutua is Professor of Law and Director of the Human Rights Center at The State University of New York at Buffalo School of Law

where he teaches international human rights, international business transactions and international law. He served as the Chairman of the Kenya Human Rights Commission and is the author of *Human Rights: A Political and Cultural Critique*.

Joseph Oloka-Onyango is Dean of Law and Associate Professor at the Human Rights & Peace Centre (HURIPEC) for the Faculty of Law at Makerere University in Kampala, Uganda. He is a member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights and Special Rapporteur on Globalization and Human Rights.

Ali Oumlil is Professor of Law at the University of Mohamed V in Rabat, Morocco. He is the former president of the Moroccan Association for Human Rights and served as the president of the Arab Organization of Human Rights from 1991-1992.

Mona Rishmawi is an international lawyer of Palestinian background who has defended and litigated numerous human rights cases in military and civil courts. She has worked for the International Commission of Jurists and has held a variety of positions with the United Nations.

Peter Rosenblum was at the time of the Roundtable Projects Director of the Harvard Law School Human Rights Program. He was formerly Program Director for the International Human Rights Law Group and Human Rights Officer for the United Nations Centre for Human Rights. Rosenblum is now Associate Clinical Professor of Human Rights Law at Columbia Law School.

Frederick Schauer is Frank Stanton Professor of the First Amendment at the John F. Kennedy School of Government at Harvard University where he served as Academic Dean from 1997-2002. His teaching and research focuses on constitutional law, freedom of speech and press, international legal development, and the philosophical dimensions of law and rules.

Henry Steiner is Jeremiah Smith, Jr. Professor of Law at Harvard Law School. He is the founder and director of the Human Rights Program, has written on a range of human rights topics, and taught and lectured on human rights in over 20 countries.

Christian Tomuschat is Professor of Law at the Humboldt University of Berlin on the faculty of the Institute of International and European Law. He has served with the United Nations in several posts including as member of the International Law Commission, and as an independent expert on the situation of human rights in Guatemala.

David Weissbrodt is Professor of Law at the University of Minnesota. He serves on the board of several nongovernmental organizations including Amnesty International and the International League of Human Rights and has served as a Member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

Alicia Ely Yamin was Assistant Professor at the Mailman School of Public Health at Columbia University and a Staff Attorney for the Law and Policy Project. She has spent several years in Montevideo, Uruguay consulting on health and human rights issues. She is a member of the Board of Directors of Physicians for Human Rights.



