

## QUO VADIS: WHERE DOES THE HUMAN RIGHTS MOVEMENT GO FROM HERE?

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Thanks to the Director of the Dean Rusk International Center, Kathleen Doty, for her kind introduction and to all of you for being here. I am also grateful for Professor Diane Amann's presence here today, whose work I greatly respect. We first met over twenty years ago in Serbia and have crossed paths over the years.

I will be discussing the "human rights movement", by which I am broadly referring primarily to non-governmental groups (such as, e.g., Human Rights Watch (HRW), Amnesty International (AI)), and a myriad of smaller organizations across the planet) but also academics, practitioners, perhaps foundations and other supporters whose goal is the advancement and protection of human rights. These rights are established by international law. This body of law includes, e.g., the International Covenants on Civil and Political Rights (ICCPR)<sup>1</sup> and Economic, Social and Cultural Rights (ICESCR),<sup>2</sup> the Convention on the Prevention of All forms of Discrimination Against Women

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<sup>1</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

(CEDAW),<sup>3</sup> and the Convention on the Elimination of all forms of Racial Discrimination (CERD).<sup>4</sup> Moreover, there are important regional human rights conventions (e.g., the Inter-American Convention of Human Rights,<sup>5</sup> and the European Convention on Human Rights<sup>6</sup>) that codify human rights across a number of states parties.<sup>7</sup>

This movement, however defined, has clearly advanced the cause of human rights in an array of areas in past decades. On the normative level, it has incubated and supported a host of human rights treaties and legislation,<sup>8</sup> as well as effective campaigns on a long list of issues, bringing attention to a wide variety of abuses and violations across the globe. These include much greater attention and action on an array of violations, e.g., on gender-based crimes, women's rights, victims' rights, abuses of children (e.g., the child soldier phenomena), and torture.<sup>9</sup>

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<sup>3</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>4</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195.

<sup>5</sup> American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143.

<sup>6</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>7</sup> See generally *Human Rights: Handbook for Parliamentarians*, U.N. OFFICE OF THE HIGH COMM'R ON HUMAN RIGHTS [OHCHR] 79–86 (2016), <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>; *EU Accession to the European Convention on Human Rights*, EUROPEAN PARLIAMENT THINK TANK (July 6, 2017), [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI%282017%29607298](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282017%29607298).

<sup>8</sup> See e.g., Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85. See also *Human Rights Advocacy and the History of International Human Rights Standards*, GERALD R. FORD, SCH. OF PUB. POLICY, <http://humanrightshistory.umich.edu/policy-decisions/the-human-rights-movement/> (last visited Mar. 25, 2019).

<sup>9</sup> See e.g., Javier Treviño Rangel, *The Human Rights Movement and the Torture Debate*, 18 PEACE REV. 227 (2006); Beth Sherouse, *Domestic Violence Awareness and the LGBT Community*, HUMAN RIGHTS CAMPAIGN (Oct. 26, 2015), <https://www.hrc.org/blog/domestic-violence-awareness-and-the-lgbt-community>; Leading the Fight Against Torture, HUMAN RIGHTS FIRST (Dec. 23, 2013), <https://www.humanrightsfirst.org/resource/leading-fight-against-torture>; Ending the Use of Child Soldiers: One Step Forward, AMNESTY INT'L, <https://www.amnestyusa.org/ending-the-use-of-child-soldiers-one-step-forward/> (last visited Oct. 29, 2018).

Moreover, human rights organizations led the effort to establish the *ad hoc* Tribunals (and other criminal justice processes)<sup>10</sup> and the creation of the International Criminal Court (ICC).<sup>11</sup> Their work also has led to encouraging developments in terms of accountability for serious human rights violations, including transitional justice measures that evolved in Latin America, South Africa and then much more broadly (in more than forty countries).<sup>12</sup>

However, in recent years, as then UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein ("Zeid") said: "human rights are under great threat," noting, in particular, "that the greatest threat [to human rights] is the state of civil society . . . which is in collapse in many parts [of the world]."<sup>13</sup> Obviously, the election and administration in the United States under Donald Trump has been a major factor, with his disregard for international norms and strongman ways, but he is, in my view, simply the most powerful of a wide array of populists that threaten human rights. It is important to focus on the underlying causes of this phenomenon, not only those who take advantage of it.

There are also broad attacks on key institutions, and on the rule of law, by forces of illiberalism, populism and/or reaction. Professor Philip Alston, the UN Special Rapporteur on Extreme Poverty and Human Rights, says: "The world as we in the human rights movement have known it in recent years is no longer. . . [b]ut there has not been enough reflection by human rights advocates on the innovative thinking and creative strategizing that are urgently needed."<sup>14</sup>

This has been a gathering storm. Some years back, I posed the question: "Is the International Community Abandoning the Fight against Impunity?"<sup>15</sup>, arguing that the winds had turned against human rights. In an ensuing online

<sup>10</sup> See generally G.A. Res. 67/1, ¶ 22 (Nov. 30, 2012); see e.g., S.C. Res. 808, ¶ 1 (Feb. 22, 1993) (establishing an international tribunal for Former Yugoslavia); see, e.g., S.C. Res. 955, ¶ 1 (Nov. 8, 1994) (establishing an international tribunal for Rwanda).

<sup>11</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3.

<sup>12</sup> See e.g., Leslie Vinjamuri, *Lessons From Africa's Efforts at Transitional Justice*, N.Y. TIMES (Jan. 6, 2014), <https://www.nytimes.com/roomfordebate/2014/01/06/turning-away-from-painful-chapters/lessons-from-africas-efforts-at-transitional-justice>; David Smith et al., *Special Report: Truth, Justice and reconciliation*, THE GUARDIAN (June 24, 2014), <https://www.theguardian.com/world/2014/jun/24/truth-justice-reconciliation-civil-war-conflict>.

<sup>13</sup> UN High Commissioner: *What's The Greatest Threat to Human Rights?*, HARV. KENNEDY SCH. CARR CTR. FOR HUMAN RIGHTS POLICY, <https://carrcenter.hks.harvard.edu/file/702886> (last visited Oct. 30, 2018).

<sup>14</sup> Philip Alston, *The Populist Challenge to Human Rights*, 9 J. OF HUM. RTS. PRAC. 1, 1-2 (2017).

<sup>15</sup> See David Tolbert, *A Wrong Turn for Human Rights*, PROJECT SYNDICATE (Sept. 3, 2014), <https://www.project-syndicate.org/commentary/david-tolbert-warns-that-the-gains-made-since-the-end-of-the-cold-war-are-at-risk?barrier=accesspaylog>; David Tolbert, *A Debate Whose Time Has Come*, INT'L CTR. FOR TRANSNATIONAL JUSTICE (Feb. 9, 2015), <https://www.ictj.org/debate/impunity/opening-remarks>.

debate on the article with Michael Ignatieff and then High Commissioner Zeid, Ignatieff framed the issue: "Right now [in 2015], it would be fair to say that many activists believe we have not just lost momentum in the battle to end impunity and defend human rights, but gone backwards."<sup>16</sup> It is clear that we are a long way from the heady days of 1989 when the Berlin Wall fell and "The End of History."<sup>17</sup>

This blowback against human rights is fueled by a modern variation of populism or authoritarianism. The first signs of this modern version of populism or strong man rule arose in Eastern Europe, Turkey, in a somewhat different form in Russia, and now has obviously traveled to the Philippines and other shores.<sup>18</sup> As is clear, these tendencies have come to the fore in the United States as well, but we should bear in mind that this is a broader tendency or phenomenon that runs directly counter to the human rights movement.<sup>19</sup> As tempting as it is to place responsibility on one person or group of leaders, we should be aware that the human rights movement and human rights *per se* are under threat in many places across the globe.

Some critics would put the blame on the human rights movement itself. For example, David Reiff has argued that the leading human rights organizations have taken for granted that progress on human rights would continue and failed to understand or take account adequately of the political context.<sup>20</sup> In his view, two signature developments of the human rights movement, the International Criminal Court (ICC) and the Responsibility to Protect (R2P) doctrine, were constructed on shaky foundations that did not take account of political contexts, arguing:

[I]mplicit in the liberal human rights narrative is the idea that once binding legal norms are set, realities on the ground will eventually conform to them... [but supporters of human rights failed to understand that the law is] . . . inseparable from politics... [Thus], for the moment, at least, Brexit, Donald

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<sup>16</sup> See Michael Ignatieff, *Is History Still on the Side of Human Rights?*, INT'L CTR. FOR TRANSNATIONAL JUSTICE (Mar. 2, 2015), <https://www.ictj.org/debate/article/justice-interests-of-powerful-states>. <https://www.ictj.org/debate/article/history-still-side-human-rights>.

<sup>17</sup> FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (Simon & Schuster eds., 2006).

<sup>18</sup> See generally JAN-WERNER MÜLLER, *WHAT IS POPULISM?* (Univ. of Pennsylvania Press, 2016).

<sup>19</sup> See Flora Charner & Marcia Reverdosa, *Far-right Candidate Jair Bolsonaro Wins Presidential Election in Brazil*, CNN (Oct. 29, 2018), <https://www.cnn.com/2018/10/28/americas/brazil-election/index.html>; William Neuman & Nicholas Casey, *Venezuela Election Won by Maduro Amid Widespread Disillusionment*, N.Y. Times (May 20, 2018), <https://www.nytimes.com/2018/05/20/world/americas/venezuela-election.html>.

<sup>20</sup> David Reiff, *The End of Human Rights?*, FOREIGN POLICY (Apr. 9, 2018), <https://foreignpolicy.com/2018/04/09/the-end-of-human-rights-genocide-united-nations-r2p-terrorism/>.

Trump's presidency, and the steady rise of China have shattered the human rights movement's narrative that progress is inevitable.<sup>21</sup>

Reiff further contends that: "Both the ICC and R2P were, from the beginning, unworkable ideas for the world we live in, one in which authoritarianism is growing stronger."<sup>22</sup> He posits that the failure of human rights groups to take full account of politics led them to hitch their wagon to R2P and the ICC, which could not deliver in the real world.<sup>23</sup>

There is much more to the human rights movement and its agenda beyond R2P and the ICC. Moreover, while R2P does look to be dormant and unlikely to be implemented in the short term following the Libyan debacle,<sup>24</sup> that does not mean it is dead in the long term, nor does it show that human rights are somehow finished.

On the ICC, while it has hardly achieved what its supporters (like myself) would have wished, the question is the long-term effectiveness of the Court, and that question remains open. The ICC shot itself in the foot in its early days and has been ignored or attacked by powerful states.<sup>25</sup> U.S. National Security Adviser, John Bolton's recent attack on the ICC as unmoored as it was – is simply one more indication of the current American administration turning its back on human rights and accountability.<sup>26</sup> However, the ICC has moved on from some of the chaos of its early days, and recent steps by the Prosecutor may have put the Court on a better course. These include her, in my view, adroit handling of the peace agreement in Colombia;<sup>27</sup> the Prosecutor successfully seeking a referral to the ICC for the brutal attacks on the Rohingya on the grounds they have fled from Myanmar/Burma (a non-state party)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See *Responsibility to Protect: The Lessons of Libya*, THE ECONOMIST (May 19, 2011), <https://www.economist.com/international/2011/05/19/the-lessons-of-libya>; see also Justin Morris, *Libya and Syria: R2P and the Spectre of the Swinging Pendulum*, 89 INT'L AFFAIRS 1265, 1277-1280 (2013) (arguing that in light of the cases of Libya and Syria, states will be less likely to invoke R2P concept as a basis for intervention by force).

<sup>25</sup> See e.g., Thierry Cruvellier, *Can the International Criminal Court Be Saved From Itself?*, N.Y. TIMES (Dec. 17, 2017), <https://www.nytimes.com/2017/12/17/opinion/icc-symbolic-migrants-europe.html>.

<sup>26</sup> See John Bolton, Nat'l Sec. Advisor, Address Before the Federalist Society (Sept. 10, 2018), <https://www.aljazeera.com/news/2018/09/full-text-john-bolton-speech-federalist-society-180910172828633.html>.

<sup>27</sup> See Office of the Prosecutor, *Statement of ICC Prosecutor, Fatou Bensouda, on the Conclusion of the Peace Negotiations Between the Government of Colombia and the Revolutionary Armed Forces of Colombia—People's Army*, INT'L CRIMINAL COURT (Sept. 1, 2016), <https://www.icc-cpi.int/Pages/item.aspx?name=160901-otp-stat-colombia>.

to Bangladesh (a state ICC party)<sup>28</sup>; and the al-Mahdi case on prosecution for destruction of cultural monuments in Libya.<sup>29</sup>

While these are relatively modest steps, the ICC is hardly the dead letter that Reiff paints. Nonetheless, for the time being, big projects such as the ICC and R2P are not possible politically, and the focus should turn to building on the movement's core strengths.

Reiff also argues that the human rights movement is naïve and fails to consider politics adequately in its work.<sup>30</sup> There is no doubt that politics play a central role in what human rights activists can and cannot achieve. However, most of us in the human rights movement are well aware of the political dynamics and take account of these factors in our work; assessing the political context is the first step toward trying to make a difference in a country or on an issue. The first order of business when I was President of the International Center for Transitional Justice (ICTJ) was understanding the political context and determining how we might assist. Nonetheless, human rights activists have yet to adjust to the new realities imposed by the rise of populism, authoritarianism, and even darker forces. It raises a larger question that deserves discussion of whether we need to re-think and address the question of justice and politics.

Another critic who has gained much attention of late is Samuel Moyn, currently a professor at Yale University, along with his recent book "Not Enough: Human Rights in an Unequal World."<sup>31</sup> In his view, the human rights movement has utterly failed to address issues of economic inequality.<sup>32</sup> He argues that the movement has haphazardly given limited rhetorical support to economic subsistence efforts but left economic equality off the agenda entirely.<sup>33</sup> He also asks the question (perhaps implies is more accurate) of whether the human rights movement is linked to the rise of neo-liberal economics or what

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<sup>28</sup> See *ICC Prosecutor Seeks to Open Rohingya Deportation Probe*, AL JAZEERA (Apr. 10, 2018), <https://www.aljazeera.com/news/2018/04/icc-prosecutor-seeks-open-rohingya-deportation-probe-180410073634453.html>; Toby Sterling, *International Criminal Court Says It Has Jurisdiction Over Alleged Crimes Against Rohingya*, REUTERS (Sep. 6, 2018), <https://www.reuters.com/article/us-myanmar-rohingya-icc/international-criminal-court-says-it-has-jurisdiction-over-alleged-crimes-against-rohingya-idUSKCN1LM23H>.

<sup>29</sup> See Mark Kersten, *Will the International Criminal Court's Latest Target in Libya be Brought to Justice?*, WASH. POST (Aug. 31, 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/31/will-the-international-criminal-courts-latest-target-in-libya-be-brought-to-justice/?utm\\_term=.a06e4827df82](https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/31/will-the-international-criminal-courts-latest-target-in-libya-be-brought-to-justice/?utm_term=.a06e4827df82); see also Jason Burke, *ICC Ruling for Timbuktu Destruction "Should be Deterrent for Others,"* THE GUARDIAN (Sept. 27, 2016), <https://www.theguardian.com/world/2016/sep/27/timbuktu-shrines-icc-sentences-islamic-militant-nine-years-destruction-ahmad-al-faqi-al-mahdi>.

<sup>30</sup> Reiff, *supra* note 20.

<sup>31</sup> SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (Harv. Univ. Press, 2018).

<sup>32</sup> *Id.* at 3-10.

<sup>33</sup> *Id.*

he calls the “neo-liberal maelstrom” (sometimes drawing the link between human rights and neo-liberal economics in stronger formulas and at other times more as a question).<sup>34</sup>

While I do not agree with a number of Moyn’s claims (particularly on the supposed link between neo-liberalism economics and the human rights movement), I do think he is broadly right in his charge that the human rights movement has not addressed economic rights sufficiently. This is glaringly obvious in the context of the United States, particularly compared to, e.g., countries in Latin America, for example.<sup>35</sup> While criticizing Moyn on other points, Alston argues: “Mainstream human rights advocacy addresses economic rights in a tokenistic manner at best, and the issue of inequality almost not at all,” calling for “a renewed focus on social rights and on diminishing inequality [as]... part of a new human rights agenda.”<sup>36</sup>

In my view, a new approach to economic, social and cultural rights (ESC), particularly on inequality is essential. The Ford Foundation, which a few years ago re-focused its strategy on inequality,<sup>37</sup> was ahead of the curve, but most human rights organizations, particularly in the United States, give little more than lip service to ESC rights. I would also posit that economic inequality plays into the hands of authoritarians. These politicians play on economic resentment that turns into anger against the most vulnerable. ESC rights give human rights activists the tools to address these issues, and it borders on malpractice not to use them.

Obviously, given the many fronts that human rights groups are fighting on, e.g., Syria, there must be some care taken in this recalibration. Nonetheless, finding ways to support the right to a minimum income, the right to food, the

<sup>34</sup> See generally *Id.*, at ch. 7.

<sup>35</sup> While Jimmy Carter signed the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) in 1977, the United States has yet to ratify the Covenant. The United States is therefore not bound by the Covenant. For more in depth understanding of the United States’ position on economic, social and cultural rights, see generally William Mozdzierz, *U.S. Explanation of Position on the Realization of Economic, Social and Cultural Rights*, U.S. MISSION TO INT’L ORGS. IN GENEVA (Mar. 23, 2017), <https://geneva.us-mission.gov/2017/03/23/u-s-explanation-of-position-on-the-realization-of-economic-social-and-cultural-rights/>. But cf. *How do we make economic, social and cultural rights a reality in Latin America?*, ECSR-NET (Mar. 5, 2013), <https://www.escr-net.org/news/2013/how-do-we-make-economic-social-and-cultural-rights-reality-latin-america> (stating that “the judicial enforcement of [economic, social and cultural] rights has advanced considerably in Latin America...”).

<sup>36</sup> Alston, *supra* note 14, at 269.

<sup>37</sup> See Darren Walker, *Moving the Ford Foundation Forward*, FORD FOUND. EQUALS CHANGE BLOG (Nov. 8, 2015), <https://www.fordfoundation.org/ideas/equals-change-blog/posts/moving-the-ford-foundation-forward/>.

right to employment, and other economic needs is a strategy that is morally called for and potentially important to addressing the populist surge.<sup>38</sup>

Aryeh Neier in his debate with Moyn argued otherwise, positing there were insufficient resources to pursue both their current work on civil and political rights as well as ESC rights – that is, human rights groups cannot do both their traditional work and work on economic issues.<sup>39</sup> I would say that we have to find partnerships and approaches that address these issues or the human rights movement may find itself less and less relevant.<sup>40</sup>

A very different perspective comes from Kathryn Sikkink in her relatively new book, “Evidence for Hope: Making Human Rights Work in the 20<sup>th</sup> Century”<sup>41</sup> and her previous, influential book “The Justice Cascade.”<sup>42</sup> She sharply disagrees with Moyn and argues that the picture is not as bad as others imply.<sup>43</sup> She points to many changes and much broader respect for human rights, particularly in Latin America.<sup>44</sup> While deeply concerned about the rise of Trump and other populists, she argues that, “[h]uman rights will continue to be a discourse that can mobilize both domestic and international publics.”<sup>45</sup> She marshals considerable evidence to support her arguments. Essentially, she points to a great deal of human rights innovation and research that show human rights efforts have actually had a significant impact across a broad range of countries.<sup>46</sup> This is not a proposition I would disagree with, but she also goes on to argue:

The two biggest factors correlated with human rights violations in the world are war and authoritarianism and we have seen both of these factors declining globally. Still, after a number of years of decline, the number of intrastate conflicts increased again in 2014 and 2015 and the number of democracies has not increased since 2000... Impunity for past human rights violations is another trigger for future violations. Although we are still awash in impunity, the rise of domestic and

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<sup>38</sup> See generally International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>39</sup> See *Is the Human Rights Movement in Crisis?*, OPEN SOC’Y FOUNDS. (July 11, 2018), <https://www.opensocietyfoundations.org/events/human-rights-movement-crisis>.

<sup>40</sup> *Id.*

<sup>41</sup> KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21<sup>ST</sup> CENTURY (Harv. Univ. Press, 2017).

<sup>42</sup> KATHRYN SIKKINK, THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS (W.W. Norton, 2011).

<sup>43</sup> SIKKINK, *supra* note 41, at 41-43.

<sup>44</sup> *Id.* at 227-230.

<sup>45</sup> See SIKKINK, *supra* note 41, at 244.

<sup>46</sup> *Id.*, at 235-40.



international processes and effective truth commissions has gradually begun to combat this as well.<sup>47</sup>

While I agree with Sikkink that it is important to keep up the fight against impunity and that progress has been made, I find it difficult to agree that impunity is being substantially negated by transitional justice measures at the moment. There are areas of progress (e.g., Colombia), and there is much wisdom in the experiences described in her book. However, we cannot turn our eyes from the death of the Arab Spring, the catastrophe in Syria, the slippage of democracy and human rights in Eastern Europe, the rise of China and its disregard of human rights and the American administration's roll back of human rights at home (and at the border) and abroad. Thus, I think we cannot rest on past achievements.

Finally, I turn briefly to Zeid, former UN High Commissioner for Human Rights, writing a final farewell note in *The Economist*, arguing for moral courage for his successor and tipping his cap to an array of civil society actors. His final comment posits a partnership between civil society and business leaders to address the current crisis:

What if this coordinated, focused, human-rights movement had the backing of business leaders? There are business leaders who are also real leaders, and who have thought seriously about human rights [mentioning the heads of Blackrock, Unilever, Microsoft and Deepmind]. This has never been done before; but if we did do it, it might just deliver a sort of shock therapy to those dangerous or useless politicians who now threaten humanity. Maybe, just maybe, it would be enough to stop the rot, so that when a fool tips that first domino or strikes the tripwire they hurt no one but themselves, and we can hope that the injury is only a slight one.<sup>48</sup>

It is an interesting proposition and one worth exploring. I am a bit skeptical about the lords of industry helping deal with issues of justice and inequality. Nonetheless, human rights groups already rely a great deal on philanthropy, and we do see even the most progressive democracies cutting their support back in an era of austerity<sup>49</sup> (and a number of leading human rights groups (e.g., HRW) do not accept any government funds in any event). An interesting

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<sup>47</sup> *Id.* at 247-48.

<sup>48</sup> Zeid Ra'ad Al Hussein *Grassroots Leaders Provide the Best Hope to a Troubled World*, *THE ECONOMIST* (Aug. 30, 2018), <https://www.economist.com/open-future/2018/08/30/grassroots-leaders-provide-the-best-hope-to-a-troubled-world>.

<sup>49</sup> See e.g., Dimitrina Petrova, *Human Rights NGOs Should Learn Funding Lessons from Service Providers*, *OPEN GLOB. RIGHTS*. (Aug. 7, 2018), <https://www.openglobal-rights.org/human-rights-ngos-should-learn-funding-lessons-from-service-providers/>.

model to consider is awarding public funds via a competitive process, through something like the Dutch Postcode lottery: the funds are public but the selection is competitive and awards are given to charities and civil society actors.<sup>50</sup>

As we look towards the future of the human rights movement, staying on its current course is probably a slow suicide. There seems, to me, to be a number of steps that can, and should, be taken to address this crisis.

Build on the energy of younger activists. The Me Too movement has demonstrated in recent years and months the power of grassroots mobilization, as has Black Lives Matter in the United States.<sup>51</sup> I can think of a myriad of actors in other countries that are just as effective. In some cases, these will be shorter-term limited issue groups, but on some issues, these movements with the proper support may be the models for a new kind of activism that directly confronts the new authoritarianism. It is time for major funders to support strongly these nimbler actors, who seem to have the technological expertise and savvy to take on this new populism.

While there has been, in recent times, considerably more integration of women into the human rights movement, much more needs to be done to give women a larger voice and leadership in the movement. For example, the women participating in the Tunisian Truth and Dignity Commission as well as women's participation in Tunisian civil society have made a tremendous contribution to the country and through many parts of the MENA region.<sup>52</sup> This is just one example on why we need to push for the participation and empowerment of women.

Take ESC rights seriously. As I have discussed, addressing ESC is imperative if human rights are to have real impact on people's lives, rather than be a largely theoretical construct. This will not only begin to alleviate the suffering of those deeply impoverished but will also show the working classes and those with limited resources that human rights apply to them. Without some

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<sup>50</sup> See *Dutch Postcode Lottery Increases Grant*, HUMAN RIGHTS WATCH (Feb. 16, 2018), <https://www.hrw.org/news/2018/02/16/dutch-postcode-lottery-increases-grant>. The Dutch Postcode Lottery, established in 1989, is the largest charity lottery in the Netherlands. Around 50 percent of the lottery's annual turnover goes to charity. For more information, see e.g., *About us*, POSTCODE LOTTERY: GREEN CHALLENGE, <https://www.green-challenge.info/about> (last visited Oct. 30, 2018).

<sup>51</sup> See generally *History & Vision*, ME TOO, <https://metoomvmt.org/about/> (last visited Oct. 30, 2018); see also *About*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/> (last visited Oct. 30, 2018).

<sup>52</sup> See, e.g., Olfa Belhassine, *Women Victims Step up as Tunisia Truth Commission Deadline Nears*, JUSTINFO.NET (June 9, 2016), <https://www.justiceinfo.net/en/truth-commissions/27798-women-victims-step-up-as-tunisia-truth-commission-deadline-nears.html>; see also *Women's Participation in the Tunisian Transitional Justice Process*, INT'L CTR. FOR TRANSITIONAL JUSTICE (Mar. 16, 2017), <https://www.ictj.org/event/womens-participation-tunisian-transitional-justice-process> (stating that "[t]he [Truth and Dignity Commission] codified this commitment to women's inclusion when it adopted bylaws for an official Women's Committee five months into its operations.").

move towards economic equality, human rights will seem a highly theoretical exercise. We are well past the date when human rights should have ESC rights high on the agenda.

The key foundations and donors in the human rights field should invest in organizations where populism is on the rise, particularly supporting educational efforts.

Protect and nurture democracy. If we do not have functioning democratic systems, then there will be little protection of human rights.<sup>53</sup> Protecting democracy is a key element to ensure that the human rights movement can flourish. Non-democratic regimes are not friends of human rights.

Support local initiatives. To take one example: a groundbreaking report on extraordinary renditions out of Johnston County, North Carolina was issued by a citizens' commission during the preparation of this speech.<sup>54</sup> In 2013, the state of Maine reached an agreement with tribal leaders to establish a truth commission regarding discrimination against Native Americans in that state; it issued its report in 2015.<sup>55</sup> In 2006 in Greensboro, North Carolina,<sup>56</sup> a Truth and Reconciliation Commission (TRC), established by local citizens, issued a report and recommendations on a racial massacre that occurred in the city in 1979.<sup>57</sup> In Canada, a national TRC addressed enforced schooling and other abuses of First Canadians (native Canadians), releasing a report and recommendations in 2015.<sup>58</sup> Such steps can provide some accountability for gross violations of human rights without needing an unsupportive government or, as in the case of the TRC in Canada, a focused approach to a specific set of violations.

Before I close, I wanted to acknowledge that here at [the Dean Rusk International Law Center] many of you are from other parts of the world and may only spend a limited amount of time in the United States. I do think it is important to think about the difficult and troubled political climate in the United States. We could use your help and insights. While there is a great deal of activism and drive regarding accountability in this country, the United States

<sup>53</sup> See Alston, *supra* note 14, at 4.

<sup>54</sup> NORTH CAROLINA COMM'N OF INQUIRY ON TORTURE, TORTURE FLIGHTS: NORTH CAROLINA'S ROLE IN THE CIA RENDITION AND TORTURE PROGRAM (Sept. 2018), available at <http://www.nctorturereport.org/>.

<sup>55</sup> MAINE WABANAKI-STATE CHILD WELFARE TRUTH AND RECONCILIATION COMMISSION, BEYOND THE MANDATE: CONTINUING THE CONVERSATION (June 14, 2015), available at <http://www.mainewabanakitrc.org/>.

<sup>56</sup> LISA MAGARRELL & JOYA WESLEY, LEARNING FROM GREENSBORO: TRUTH AND RECONCILIATION IN THE UNITED STATES (2008).

<sup>57</sup> See GREENSBORO TRUTH AND RECONCILIATION COMM'N, GREENSBORO TRUTH AND RECONCILIATION COMM'N FINAL REPORT, 200 (2006) available at <http://www.greensboro-trc.org/>.

<sup>58</sup> TRUTH AND RECONCILIATION COMM'N OF CANADA: TRUTH AND RECONCILIATION COMM'N OF CANADA: CALLS TO ACTION (2015) available at [http://www.trc.ca/websites/trc\\_institution/index.php?p=3](http://www.trc.ca/websites/trc_institution/index.php?p=3).

has failed to address its past on a wide range of gross abuses of human rights on a number of fronts. Obviously, we have had unaddressed systematic violations with respect to race and gender: African Americans, Native Americans, women (as we are seeing before our eyes once again),<sup>59</sup> and a range of minorities.

Although the issues differ from place to place, the Me Too Movement and Black Lives Matter certainly remind me of movements abroad. While one can argue about whether transitional justice processes would be useful in the United States, my view is that many of the elements of transitional justice are applicable at least in part in the United States. This includes memorialization but also taking down monuments to those who have committed human rights abuses as was done in New Orleans,<sup>60</sup> truth telling (as in Greensboro and Maine TRCs) and criminal justice reforms (e.g., ending mass incarceration of African-Americans). It also means that we should be open to lessons from abroad – which the citizens' commission on extraordinary renditions in North Carolina drew from.

If you are interested, I moderated a discussion with Sherrilynn Ifill, the Executive Director of the NAACP Defense Fund and the author of an important book on lynching in the Eastern Shore of Maryland – “On the Courthouse Lawn”<sup>61</sup> – and Darren Walker, the President of the Ford Foundation on “Reckoning with Racial Injustice”.<sup>62</sup> In this dialogue, we addressed how transitional justice measures might be useful to addressing racial justice in the United States. I hope this dialogue will open the doors to further discussion.

Thank you.

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<sup>59</sup> See, e.g., Emily Tillet *Christine Blasey Ford Concludes Testimony, “100 percent” Sure Kavanaugh Assaulted Her*, CBS NEWS (Sept. 27, 2018), <https://www.cbsnews.com/live-news/brett-kavanaugh-hearing-confirmation-today-christine-blasey-ford-sexual-assault-allegations-live/>; see also, e.g., Travis Andersen, John R. Ellement & Danny McDonald, *Here's What Legal Experts Had to Say about Ford's Testimony*, BOSTON GLOBE (Sept. 27, 2018), <https://www.bostonglobe.com/metro/2018/09/27/legal-experts-say-christine-blasey-ford-testimony-credible-and-genuine/JILd8WjTDa2vUYJX6YtbpJ/story.html>.

<sup>60</sup> See Tegan Wendland, *With Lee Statue's Removal, Another Battle of New Orleans Comes to a Close*, NPR (May 20, 2017), <https://www.npr.org/2017/05/20/529232823/with-lee-statues-removal-another-battle-of-new-orleans-comes-to-a-close>.

<sup>61</sup> SHERRILYN A. IFILL, *ON THE COURTHOUSE LAWN* (Beacon Press 2007).

<sup>62</sup> See ITCJ Video, *Reckoning with Racial Injustice: 2017 Emillo Mignone Lecture*, YOUTUBE (Nov. 27, 2017), <https://www.youtube.com/watch?v=B5uF8NEucPADhk>.