

A MOVEMENT FOR HUMAN RIGHTS IN THE UNITED STATES: REASONS FOR HOPE

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It is a testimony to the power of human rights that the *Columbia Human Rights Law Review* is publishing a special issue on human rights in the United States. It has been sixty years, this year, since the governments of the United Nations, including the United States, approved the Universal Declaration of Human Rights (UDHR).¹ In so doing they recognized and defined the inalienable rights that are rooted not in constitutions, treaties, or legislative acts, but in our very structures as human beings. According to the Declaration, these rights are universal because they are “indispensable for . . . [the] dignity and the free development of . . . [human] personality.”² They are rights that every government, from the weakest to the most powerful, is legally and morally bound to respect, protect, and fulfill.

Thus, for the second time in its history the United States issued a revolutionary declaration, one that its former first lady played a leadership role in drafting. In spite of this, the United States spent the next decades doing all in its power to ensure that the human rights declared in Paris could not be applied in Boston, New York, Cleveland, Dallas, or Los Angeles, and especially not in Birmingham, Jackson, Memphis, or New Orleans. As Carol Anderson has documented so well in her ground-breaking work, *Eyes Off The Prize: The United Nations and the African American Struggle for*

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1. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter *UDHR*].

2. *Id.* at art. XXII.

Human Rights, 1944–1955, American political leaders, mainly but not only Southern Democrats and conservative Republicans, were very aware and deeply alarmed that the human rights proclaimed in the UDHR could and would be used to attack the U.S. system of racial apartheid as well as the relative weakness of American protections of social and economic security.

The price of the United States' acceptance of the revolutionary words in the UDHR, it turns out, would be not just the assurance but the demonstration that these words were to have no real power within its borders. And so U.S. delegates worked to strip U.N. human rights bodies of any real enforcement powers. For example, delegates opposed a complaint by India against the treatment of Indians in South Africa because of fears this could set a precedent for a U.N. investigation of the treatment of blacks in the South.³ U.S. delegates used a key clause in the U.N. Charter stating that nothing in the Charter could be used to intervene on matters "which are essentially within the domestic jurisdiction of the state concerned."⁴ This clause was inserted at the insistence of U.S. Secretary of State John Foster Dulles, who anticipated the danger that human rights posed to U.S. practices.

Seeking even more protection from international scrutiny, the United States would eventually pledge not to ratify any of the human rights treaties it had helped to create, even the one on genocide,⁵ which arguably could have initiated anti-lynching legislation.⁶ When after forty years the United States finally ratified several of these human rights treaties, it was on the explicit condition that, absent implementing legislation, nothing in them could be enforced in domestic courts. The United States also deliberately distorted the meaning of many of the human rights it had declared, turning its back on its own history by, for example, largely denying the very existence of economic and social rights.⁷ By

3. Carol Anderson, *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955*, at 86–88 (2003).

4. *Id.* at 48–50.

5. Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, art. 3, 102 Stat. 3045, 3045, 78 U.N.T.S. 277, 280 (entered into force Jan. 12, 1951) [hereinafter Genocide Convention].

6. *Id.* at 228–29.

7. See Catherine Albisa, *Economic and Social Rights in the United States: Six Rights, One Promise*, in 2 *Bringing Human Rights Home* 25 (Cynthia Soohoo, Catherine Albisa, & Martha Davis eds., 2007); David Weisbrodt, *International*

both word and deed the United States promulgated the myth that while human rights are important in other countries, particularly those of our ideological foes, they are irrelevant to this country, which because of its constitution and democratic institutions has no domestic need of them. The UDHR and the treaties and mechanisms that stem from it appear to be of no interest to the American people.

There is nothing unique about this U.S. effort to shield itself from accountability for fulfillment of its commitments on human rights—many if not most governments have done the same. What is remarkable is how successful these efforts have been. Today the public and the media are largely unaware that the United States has made specific promises on human rights that extend beyond our own Bill of Rights. Even those organizations and individuals most committed to advancing rights and social justice have often accepted the dominant U.S. narrative on human rights that undermines their fight.

The most prominent human rights organizations, including Amnesty International, for some time acted in ways that reinforced the idea that international human rights were primarily just that—of importance internationally but not domestically. This was also true in the funding world. When I first began working at the Ford Foundation in 1995, the Human Rights Program Officer was located in the International Affairs Department and had little contact with the Rights and Social Justice Department, which is where the domestic work was done. When I, along with my comrade in arms, Dorothy Thomas, began organizing funding support at Ford and with other donors for human rights work in the United States, some of the strongest opposition came from the most progressive foundations. These organizations cited numerous civil rights and social justice grantees who agreed that, whatever the demonstrated power of human rights work to transform other societies, in this society the language, methodologies, and ideas embedded in the human rights framework would at best not help, and at worst, would harm the fight domestically.⁸

Law of Economic, Social, and Cultural Rights: A U.S. Perspective, in *Economic Rights in Canada and the United States* 41 (Rhoda E. Howard-Hassmann & Claude E. Welch, Jr. eds., 2006).

8. See Dorothy Thomas, *Ford Foundation, A Revolution of the Mind: Funding Human Rights in the United States* 2–17 (2002).

It is undeniable that the efforts of the U.S. government to protect itself and its citizens from the developments in human rights have been highly successful. That's the bad news. The good news is that these efforts have never been completely successful. And the best news is that today these efforts to ban human rights from our shores are becoming steadily but surely less and less successful.

It is important to understand why the United States has historically worked so hard to keep human rights from being applied at home. But it is even more important to understand why, after sixty years of doing so, we are still having this conversation. Why is the influence of human rights growing in this country when the conventional wisdom is that it was killed long ago? Is there a basis for genuine hope that the explicit fight for human rights will not only continue but can be won in these United States? I think there is. In these hard times, I offer five reasons for that hope.

The first is that despite the slogan and discourse we all use so often about "bringing human rights home," human rights have never left home. Eleanor Roosevelt got it right when she said famously that human rights begin at home and "[u]nless these rights have meaning there, they have little meaning anywhere."⁹ We have to be careful when we talk about bringing human rights home that we don't give the impression that all these years the rights have been somewhere else; that we picked up the concept of human rights on a trip abroad and then forgot to pack it for the return home; that human rights are an idea invented in some foreign place, unable to pass through U.S. customs.

These rights, our rights, are as at home here, if not more so, as they are in any other country. The core idea of human as opposed to constitutional rights, that these are inalienable rights that belong to every human being and are inseparable from human dignity and freedom, is at the heart of our Declaration of Independence.¹⁰ As Dwight D. Eisenhower put it, that revolutionary doctrine "has ever since been the heart of the American Faith."¹¹ The idea, pioneered by

9. Eleanor Roosevelt, Address before the United Nations, *In Your Hands: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights* (March 27, 1958), available at <http://www.udhr.org/history/inyour.htm>.

10. Lynn Hunt, *Inventing Human Rights* 15 (2007).

11. Dwight D. Eisenhower, Address at the Columbia University National Bicentennial Dinner (May 31, 1954), available at

such fighters as Frederick Douglas and Susan B. Anthony, that human beings have rights independent of any legal or economic status, was a key part of the struggles for the abolition of slavery, women's suffrage, the rights of indigenous people, labor rights, the rights of immigrants, and economic and social rights.

It takes some doing to paint human rights as a "foreign" idea. It was, after all, not some wild eyed extremist but the longest serving President of the United States, Franklin Roosevelt, who in a State of the Union address argued that economic and social human rights had become self-evident.¹² It was not some obscure or marginal political activist but the greatest fighter for justice this country has ever seen, Martin Luther King, Jr., who said we have "moved from the era of civil rights to the era of human rights."¹³ As former President Jimmy Carter put it, "America did not invent human rights. In a very real sense, it is the other way around. Human rights invented America."¹⁴

Those of us who have worked for decades in the global human rights movement have never seen any indication that Americans are any less interested in their human rights than people in other countries. But our evidence has been unfortunately largely anecdotal. Now thanks to the Opportunity Agenda, with support from the U.S. Human Rights Fund, rigorous and professional polling has provided the kind of data academics love and all of us need. Its survey of the American public reveals that 80% of Americans believe that "every person has basic rights regardless of whether their government recognizes those rights or not," and 81% agree "we should strive to uphold human rights in the U.S. because there are people being denied their human rights in our country." A majority of Americans also believe that economic and social needs such as housing (51%), a living wage (68%), health care (72%), and quality public education (82%) are human rights.¹⁵

<http://www.presidency.ucsb.edu/ws/print.php?pid=9906>.

12. Franklin Roosevelt, State of the Union Address (Jan. 11, 1944), *reprinted in Economic Rights, supra* note 7, at 213.

13. Martin Luther King, Jr., To Chart our Course for the Future, Address to the Southern Christian Leadership Conference Ministers Leadership Training Program (Feb. 23, 1968), *reprinted in Economic Rights, supra* note 7, at 109.

14. Jimmy Carter, Farewell Address (Jan. 14, 1981), *available at* <http://jimmycarterlibrary.org/documents/speeches/farewell.phtml>.

15. The Opportunity Agenda, Human Rights in the U.S.: Opinion Research with Advocates, Journalists, and the General Public 3-4 (2007), *available at*

The second reason for hope is that over the last decades, slowly but surely, organizations working for the people have begun to reflect the will of the American people. A steadily growing number of organizations, from the ACLU to the Border Action Network, are increasingly framing their work in the language of human rights. They are not doing this because the U.S. government has made it easy—as we have discussed, quite the opposite is true. And they are not doing it because that is where the money is.

They are doing it because the human rights framework has a power to open up possibilities that working within a strict constitutional or civil rights framework does not. The idea of human rights has power precisely because it takes us immediately to the most unassailable and universal basis for rights claims—human dignity and freedom. This innate understanding that our status as human beings, not the law, demands that we be treated with equality and respect has been the driving force in every successful struggle in our country's history. In 1968, the striking sanitation workers in Memphis did not hold up signs citing the National Labor Relations Act. Instead, their signs appealed to the most powerful human rights justification of all, declaring simply: "I am a man."¹⁶

Just as the denial of rights has always been preceded by efforts to demonize and deny the humanity of people—as we see today in the battle over immigration—fulfillment of rights has always required recognition of the full humanity of each person, whatever their legal or social status. That is where human rights begins.

The advancement of human rights domestically also allows us to break out of the current limits of a U.S. legal framework that denies the existence of economic and social rights—rights as essential to the full development of a human personality as any of the rights in the U.S. Constitution. It was his growing understanding of poverty's effect on human dignity that led Martin Luther King, Jr. increasingly to talk of human rights as he began work on the Poor People's Campaign. Many of the first groups to embrace human rights were those, like the Kensington Welfare Rights Union,

<http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/HUMAN%20RIGHTS%20REPORT.PDF>.

16. Michael K. Honey, *Going Down Jericho Road: The Memphis Strike, Martin Luther King's Last Campaign* 211–13 (2007).

working on the very same economic rights that the U.S. government refused to accept as rights at all.

Similarly, a growing number of groups working against racism have come to understand the importance of international human rights standards. Unlike U.S. law, which, with few exceptions, looks only at intent in identifying discrimination, international standards also put the emphasis on the effects of policy decisions and call for corrective measures in response.¹⁷ The use of this much more powerful and complete rights framework also has made it possible for United States groups to build alliances across international borders and to begin to mobilize international pressure against U.S. practices—pressure that has proven vital for the fight on a range of issues from the environment to the death penalty to abuses related to the war on terror.¹⁸

Whatever the reasons, the number of organizations now using in full or in part a human rights framework has been growing dramatically, as has the funding for them both from foundations, such as the U.S. Human Rights Fund, as well as from private donors. The United States Human Rights Network, which began in 2003 with some fifty organizations, now has in its ranks more than 250. These include organizations both small and large—the Mississippi Workers Center for Human Rights and the NAACP Legal Defense Fund; Global Rights and the Border Action Network for Human Rights; the Deaf and Deaf-Blind Committee on Human Rights and Jobs for Justice; the Heartland Alliance for Human Needs and Human Rights and Amnesty International, to name just a few.¹⁹

We should not overstate the strength of this expanding network of groups. Many of these groups still have very limited resources and capacities. Much of the work is still barely visible and the victories resulting from it are still far too few. But there are victories, even major ones. In May, the Coalition of Immokalee Workers ended its campaign against Burger King after winning its demands for improved wages and working conditions. As Lucas

17. Close to Home: Case Studies of Human Rights Work in the United States 15 (Dorothy Thomas & Larry Cox eds., 2004).

18. *Id.* at 92–97, 20–26, 41.

19. United States Human Rights Network, Member Organizations, http://ushrnetwork.org/about_us/members (last visited Sept. 30, 2008).

Benitez put it, we are now moving “toward a future of full respect for the human rights of workers in the Florida tomato fields.”²⁰

As such victories become known, they fuel greater awareness and interest in using human rights strategies at home. The experience of my own organization is, I think, instructive. As a global human rights organization Amnesty International always included the United States in its work—some of the first prisoner of conscience cases it publicized were civil rights workers imprisoned in the South. But its limited mandate (political imprisonment and torture), its limited capacity, and its internal working rules, which for the most part forbid Amnesty International members from working on cases in their own country, undoubtedly gave the impression that it thought the United States did not warrant the same human rights scrutiny as other countries.

This began to change when the United States resumed the practice of killing prisoners in the late 1970s. Since then, Amnesty International has expanded the scope of its work to cover all the rights in the UDHR. What is striking is how quickly the response to this domestic work has changed. When Amnesty International first began attacking the United States’ use of the death penalty, there was widespread outrage from government officials, editorial boards, and even Amnesty International members that we were using the same human rights language to describe U.S. practices that was used to describe disappearances in Chile or political imprisonment in the Soviet Union. Today we are a long way from winning the fight to abolish the death penalty, but it is striking how seldom—if ever—someone questions the idea that killing prisoners is a human rights issue. In part this is because the Supreme Court has itself cited international human rights standards in its decisions on aspects of the death penalty, such as the killing of juveniles.²¹ In part it is also because more and more people are aware of how isolated the United States has become in this practice and of the deplorable human

20. Coalition of Immokalee Workers, Burger King Corp. and Coalition of Immokalee Workers to Work Together (May 23, 2008), http://www.ciw-online.org/BK_CIW_joint_release.html.

21. See *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (referring to the laws of other countries as well as to international authorities in its decision to prohibit the execution of minors); see also *Atkins v. Virginia*, 536 U.S. 304, 317 n.21 (2002) (appealing to world consensus against imposition of death penalty for crimes committed by the mentally retarded).

rights records of the limited company we keep on this issue.²² But whatever the reason, there has been a vast change in attitude as to whether the death penalty is an issue amenable to the language of international human rights.

The same is true for other areas where Amnesty International is carrying out work on domestic violations of human rights, from racial profiling to the failure to honor the right to housing and the right to return for those displaced in the aftermath of Hurricanes Rita and Katrina. Not only is the human rights lens not seen as a liability, but it is increasingly proving itself to be a powerful asset in winning victories. Our recent work on the obscene levels of rape of Native American women has not only drawn unprecedented attention to a situation that has been ignored by authorities for decades, but has also compelled a legislative movement to address these crimes more quickly than any of us could have imagined.²³

Another important sign of change is the degree to which the U.S. government is beginning to be held accountable, not least of all by domestic NGOs, in international human rights fora. The United States used to be able to get away with saying almost anything to the committees monitoring its performance on the few international human rights treaties it has ratified. The most recent sign that things are not what they used to be took place in February when the U.S. delegation arrived in Geneva to present its report on the Convention for the Elimination of Racial Discrimination (CERD). Instead of the usual ten or fewer American NGO participants, the U.S. was met by over 120 representatives of American NGOs armed with their own report on racism in the United States.²⁴

22. See Amnesty International, *Death Sentences and Executions in 2007*, at 8, (Apr. 15, 2008), available at <http://www.amnesty.org/en/library/info/ACT50/001/2008/en> (observing that 88% of all known executions took place in only five countries: China, Iran, Saudi Arabia, Pakistan, and the United States).

23. See Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA (2007)*, available at <http://www.amnesty.org/en/library/info/AMR51/057/2007/en>. This report and campaign was launched in the spring of 2007. Legislation to address many of the concerns and recommendations of the report was introduced in the House on July 23, 2008, as the Tribal Law and Order Act of 2008, H.R. 6583, 110th Cong. (2008).

24. Press Release, U.S. Human Rights Network, *Over 120 U.S. Activists and Experts in Geneva to Monitor UN Hearing on U.S. Record on Race* (Feb. 20,

The battle at the CERD meeting over racism in the United States points to a third reason for hope in the fight to realize human rights at home. The human rights movement, with the help of some truly pioneering scholars, is beginning to recover and spread the real story of why the United States turned its back on human rights at home and what happened to those individuals and organizations that fought against that turn—a story that is inseparable from the story of the fight against racism. I have already mentioned the brilliant account of this history by Carol Anderson in her book *Eyes Off the Prize*.²⁵ Her intellectual work and that of others has begun to destroy the myth that the United States has worked so long and hard to create—that human rights have not been applied to the United States because there was no need for them.

Instead, we now know the truth: the United States blocked the use of human rights at home precisely because it knew they were desperately needed. Policy makers knew there were massive violations of human rights in this country, particularly directed at people of color who were tortured and killed in large numbers, denied the right to vote, and denied decent education, jobs, and health care, all of which produced legacies of human rights violations that continue to this day. It has now been extensively documented that those in power were terrified that people might appeal to the UDHR to win redress in the United States.²⁶ We now know that to prevent this movement the government painted these activists un-American.²⁷

The new three volume series, *Bringing Human Rights Home: A History of Human Rights in the United States*, is the latest example of this effort to recover the truth about human rights in the United States. As this history becomes better known, a more rigorous debate will emerge on such key, yet neglected, human rights questions as: How is it that the richest country on earth has millions of people living in poverty, without decent education and health care?

This brings us to a fourth reason for hope—indications that the American people are ready to ask such questions and beginning to demand answers. This hope is based on the contributions that the

2008), available at <http://www.ushrnetwork.org/files/ushrn/images/linkfiles/2-19-08%20Press%20Release.pdf>.

25. Anderson, *supra* note 3.

26. *Id.* at 79.

27. *Id.* at 6.

Bush administration has made to the growing domestic human rights movement. As we know, American exceptionalism is a longstanding policy and practice, but it is accurate to say that no administration has applied it more aggressively than the current one. To take just one example, in the name of security it defends indefensible practices—torture, disappearances, and indefinite detention without charges or trial. There is still much work to be done to show the link between these ugly fruits of American exceptionalism abroad and the equally ugly fruits—poverty, racism, lack of health care, demonization of immigrants—of it at home. But if recent polls showing that the vast majority of Americans believe that the country is on the wrong track are any indication, Americans want a change.²⁸ This growing disgust with U.S. violations of human rights abroad has resulted in an enormous opportunity for action—both at home and abroad.

This brings me to the fifth reason for hope. It is, I confess, one that is based less on hard facts and more on a feeling that is hard to pin down, but also increasingly impossible to ignore. Something is happening in this country. There is a yearning not just for change but a yearning to participate in creating change. This has been nowhere more evident than on the campaign trail, where both presidential candidates, Barack Obama and John McCain, are presenting themselves as agents of change.

But the presidential candidates—including even Barack Obama, whose campaign has been trumpeting change ever since the beginning of the Democratic primary—did not create the hunger for change on which their campaigns have relied. Obama arguably rose to prominence by best figuring out how to tap into a hunger that was already developing. That hunger could be seen in the outrage over the abandonment of people of color during Hurricane Katrina, the scores of grass roots initiatives to provide people with assistance, the outpouring into the streets, at no small risk, of new immigrants demanding equality and dignity, and the politically diverse movement, particularly of young people, to force the United States and other governments to take meaningful action to stop the genocide in Darfur. In this context, a politician, especially a talented

28. Tom Raum, Associated Press, AP-Ipsos Poll: Most say U.S. on Wrong Track, *Boston Globe*, June 20, 2008, available at http://www.boston.com/news/nation/articles/2008/06/20/ap_ipsos_poll_most_say_us_on_wrong_track/.

one, can become the impetus that drives massive numbers of people to create their own hope.

For many of us this is not an entirely new feeling. If we are fully to realize the promise for human rights this time around, we need to learn from what happened some forty or fifty years ago. Here I can speak from personal experience. At the time, my home was headed by a single mother who, as hard as she worked—and I have never known anyone who worked harder—could not escape being one setback away from insurmountable poverty. As a young person I did not know why this situation existed, but I knew it was wrong, and began to look for some reason to hope it could change.

I remember being inspired by the words of John and Robert Kennedy, Malcolm X, and Martin Luther King, Jr. But the real inspiration—the motivation to spend my life working to make things right not just for my mother but for so many others who were in the same or worse situations—came from seeing people in the streets demanding freedom, equality, and dignity. The movements of the 1960s arose because millions of people shared that same vision—a vision, whether the words were used or not (and they were used more often than is today remembered), of human rights.²⁹ What was most remarkable about these movements, and most responsible for their strength and endurance, was the degree to which people, even under the most vicious repression, remained faithful to the value of human rights; to the core idea that every person, even an oppressor, has to be treated with dignity and respect. But assassination robbed the movement of leaders of principle and vision, just as it was taking on the denial of not just political but economic rights, denials rooted in the most powerful structures and systems of privilege in the country.

Today, as we enter another period of real hope and change, the success of new movements will depend once again to no small extent on how much of the vision of human rights they embody. This in turn depends, not on every social justice organization embracing every aspect of a human rights approach, but on the creation of a strong and relevant domestic human rights movement that can influence every fight. Eleanor Roosevelt, her faults and limits notwithstanding, said it best: “Without concerted citizen action to

29. See, e.g., Thomas F. Jackson, *From Civil Rights to Human Rights: Martin Luther King, Jr., and the Struggle for Economic Justice* (2007) (offering numerous examples of King and other leaders explicitly using the language of human rights to frame their demands).

2008]

REASONS FOR HOPE

147

uphold [human rights] close to home, we shall look in vain for progress in the larger world.”³⁰ Only with a concerted effort to build a new U.S. human rights movement can we move toward a truly new country and new world.

30. Roosevelt, *supra* note 9.