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State and Society in the Violation and Promotion of Human Rights

Interview with Professor Rhoda E. Howard-Hassmann
Wilfrid Laurier University, Canada

You've discussed instances where state policies are the primary cause of human rights violations. You've termed state food crimes as a "type of government-promoted human rights violation." Would you explain what state food crime means and provide some examples?

State food crimes are crimes by states that intentionally, recklessly, by incompetence or by indifference, deprive their citizens or others under their authority of food (Marcus, 2003). These four categories are not discrete, however. Moreover, intention is hard to prove, as opposed to recklessness, incompetence, and indifference. Therefore, it is very difficult, but not impossible, to prosecute an individual leader for intentionally depriving their citizenry of food.

The four cases I discussed in *State Food Crimes* (2016) were North Korea, Zimbabwe, Venezuela, and Israel in the West Bank and Gaza. North Korean citizens were starving in the 1990s and 2000s as a result of both intentional and reckless state policies. Malnutrition and some starvation continue to the present day. This starvation was the result of deliberate state policies that prohibited a national private market in food, prohibited importation of food, wasted national resources on a nuclear weapons program, and prohibited any free expression of people's opinions and concerns. What I call penal starvation also occurred in North Korea's vast network of concentration camps.

Intentional and reckless "nationalization" of white-owned productive land in Zimbabwe from 2000 until President Mugabe's resignation in 2017 resulted in under-production of food, as well as mass unemployment of agricultural workers. This was compounded by the decisions to give formerly productive white-owned farms to Mugabe's relatives and cronies. Indifference to the suffering of the masses, prohibition of citizens' rights to protest, and manipulation of elections compounded the problem.

A similar scenario occurred in Venezuela. President Hugo Chavez (1999–2013) instituted policies that President Nicolas Maduro (2013–present) has intensified. Both leaders confiscated productive farms. They instituted and maintained price controls that reduced the food supply, because producers who could not charge the full cost of their production withdrew from the market. They also plundered the earning and assets of the state-owned oil firm in order to import the food that Venezuela had previously been able to produce. Corruption was rampant, the state manipulated the mass media and elections, and protestors were arrested and sometimes tortured. By 2021, over five and a half million people had fled (United Nations High Commissioner for Refugees, 2022).

The situation in the West Bank and Gaza was somewhat different. There was no mass starvation, but Israeli policies such as permitting Jewish settlers in the West Bank to acquire land previously owned by Palestinian farmers reduced the food supply. This policy violated international humanitarian law, which forbids transfers of population into conquered territory. Israel also built a wall that cut off some Palestinian farmers from their land. The International Court of Justice ruled this wall illegal, as part of it was built in the West Bank itself, not in Israel proper. Israel also imposed controls on how much food could cross the border from Israel to the West Bank and Gaza. Periodic blockades by both Israel and Egypt (of Gaza) worsened the situation. The result was high rates of malnutrition in the West Bank and Gaza.

Freedom of speech, press and assembly are necessary so that citizens can voice their concerns about the lack of food.

One thing that all these cases demonstrated is that civil and political rights are key to the right to food. Freedom of speech, press and assembly are necessary so that citizens can voice their concerns about the lack of food.

Another instance of state action is manipulating citizenship policies and laws. How widespread has this been and what have been/are the impacts?

Some countries grant citizenship by virtue of *jus soli*; that is, by virtue of birth within a country's territories. Some are also relatively generous in granting citizenship by naturalization. Others rely on *jus sanguinis*, or the right of citizenship by "blood" or ancestry. This can create problems, for example, if you are born in a country that does not grant citizenship by place of birth, but your parents are citizens of another country that will not grant you citizenship unless you are actually born there.

These rules disproportionately affect women and children. For example, there are still some countries where women must give up their original citizenship and take their husband's citizenship if it differs from their own. Then if they divorce, they may be rendered stateless if they can no longer retain their husband's citizenship. This can also affect their children.

On the other hand, there is also "sticky citizenship" (Macklin, 2015). Under international law, no country may deprive an individual of citizenship if it leaves that person stateless. However, there have been cases, as in the UK, where the courts have decreed that mere eligibility for citizenship elsewhere means the government can deprive an individual of citizenship.

The United Nations High Commissioner for Refugees (UNHCR) estimates that there are at least ten million stateless people in the world as a result of the kinds of policies I describe above (United Nations High Commissioner for Refugees, 2023). Sometimes, deprivation of citizenship is a precursor to genocide, when states decide to deprive entire categories of people of citizenship. In 1935, the Nazis deprived all German Jews of citizenship; in 1982, Myanmar deprived the Muslim Rohingya community of citizenship.

There is also *de facto* statelessness. In 2010, the Dominican Republic deprived residents of Haitian descent of citizenship if their ancestors had arrived in the DR after 1929, claiming they were still Haitian citizens. But many of these individuals had no family in Haiti and no resources to live there (Belton, 2017).

In general, citizens of wealthy, developed, democratic countries have won the "birthright lottery" (Shachar, 2009). Although most people in Canada and the US don't realize it, their citizenship is their single most valuable possession. Not only does it grant them the right to live in a prosperous democracy, but it grants them the right to move relatively freely around the rest of the world.

Your book, *Can Globalization Promote Human Rights?,* analyzes the question presented and provides positive and negative reflections to help answer it. Much has happened concerning globalization since its publication in 2010. How would you address the question presented by the title of the book now?

In my book, I presented both positive and negative scenarios for the interaction of globalization and human rights. Looking at the economic side of globalization, I concluded that global free trade was good for human rights, whereas policies of international financial institutions, and the international financial network as a whole, appeared to have negative repercussions for human rights. I also considered the question of absolute incomes versus relative inequality and concluded that although inequality within (but not between) states was widening, there was a considerable reduction worldwide in absolute poverty since about 1980.

In 2010, growth in what was then known as emerging economies (Brazil, Russia, India, China, South Africa) seemed likely to reduce poverty

and inequality, but since then, growth in these states has slowed down. Inequality within states has contributed to severe social and political problems (Hill, 2021) even though inequalities between states have lessened in the last twenty years (Chancel et al., 2022, p. 11).

Another problem is the re-emergence of protectionism. Part of this is the result of claims by populist politicians that foreign countries are "stealing" jobs, such as former President Trump's accusations against China, or indeed, President Biden's hope to keep jobs in America for Americans. Since February 2022, Russia's invasion of Ukraine has caused a new focus on protectionism in countries whose economies are negatively affected by the war.

If I were rewriting this book today, I would devote more space to the downsides of globalization, such as international criminal networks, and (as a subset of such crime) the increased possibilities of corrupt appropriation of state assets provided by the international financial system. I would devote more space to global capacities for surveillance. And I would write more on international migratory flows as a consequence of poverty, wars, and climate change.

Finally, although I did include a chapter on the resurgence of religion and nationalism, I would devote more attention to the politics of resentment, especially resentment of "the West," not only for its economic and political strength but also for its promotion of what some states or societies view as non-traditional, non-indigenous rights such as LGBTQ+ rights. Much of this resentment, however, is created by the political elites of some states in order to stir up hostility to perceived "enemy" countries, such as Russia's obsession with LGBTQ+ rights as a way of distracting the population from more serious problems such as poverty.

I stand by my analysis of the positive effect of globalized social movements, such as the international feminist, Indigenous, and environmental movements. I did not anticipate that social media would result in globalized racist and proto-fascist social movements, however, nor that it would result in the globalized capacity of foreign countries to intervene in the domestic affairs of sovereign states.

Events since 2010 thus suggest that the beneficial aspects of globalization have been outweighed by the detrimental aspects of protectionism, nationalism, racism and homophobia, and authoritarianism. The negative scenario I proposed in my book seems a better descriptor of the world in 2023 than the positive scenario.

Some people now argue that the 1948 Universal Declaration of Human Rights is a colonial document. How do you answer that charge?

This is now a common perception among members of the cultural left. It is wrong.

The UDHR is the first of many human rights documents produced by the United Nations. Representatives of 56 states took part in the discussions that resulted in its texts. These included almost all the independent states in Asia, the Middle East, and Africa; the Soviet Union and its satellite countries; and all Latin American countries, as well as the wealthy North Atlantic countries. For example, female representatives from India and the Dominican Republic were influential in ensuring that women's equality rights were protected in the Declaration. The biggest geographical block left out of these discussions was sub-Saharan Africa, which was almost entirely under colonial rule until about 1960 (and some countries such as Mozambique and Angola until 1975). Indigenous people were not represented at these discussions as they did not—then as now—have their own states.

The Canadian legal scholar, John Humphrey, wrote the first draft of the Declaration after surveying the Constitutions of all independent states. This is one reason why economic, social, and cultural rights such as the rights to health care, education, housing, food, and an adequate standard of living are included in the UDHR, as they were included in both Soviet Bloc and Latin American constitutions. The other is that these countries insisted on inclusion of social and economic rights even when North Atlantic countries resisted them (Morsink, 2022; Sikkink, 2017, pp. 55-93).

The actual colonial powers (Britain, France, the Netherlands, Spain, and Portugal) opposed extension of human rights to all the people of the world, wanting to put colonial subjects under a sort of trusteeship instead. They were opposed by the Soviet Bloc and Latin America. They also had to concede that human rights were universal because of pressure from anti-colonial actors from places such as sub-Saharan Africa (Burke, 2010).

Most of the substantial corpus of human rights Declarations and Covenants (treaties) were written after almost all colonies had become independent. These include the two general Covenants on Civil/Political and on Economic, Social, and Cultural Rights, dating from 1966 but coming into force in 1976 after enough countries had signed on. They also include the International Convention on the Elimination of All Forms of Racial Discrimination (1969); the Convention on the Elimination of All Forms of Discrimination Against Women (1981); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1987); the Convention on the Rights of the Child (1990); the Convention on the Rights of Persons with Disabilities (2008), and many other documents. Almost every country in the world was involved in formulating these documents, and almost every country in the world supports them, if often more in principle than in fact.

Thus, it is simply untrue to say that either the 1948 Universal Declaration of Human Rights, or the entire elaborate international human rights regime as it exists in 2023, is colonial.

Would you briefly discuss achieving human rights in a democratic state versus the possibility of doing so in an undemocratic state?

It is impossible to achieve the full range of human rights in an undemocratic state.

There is no non-democratic state that protects human rights as rights. Any non-democratic state that claims it protects human rights is confusing state benevolence with rights. Unless citizens can openly claim their rights, criticize their governments, and if necessary overturn them in elections for not protecting or fulfilling those rights, any positive "human rights" aspects of their lives are a result of ephemeral state choice rather than actual state duty. In this respect, the Universal Declaration of Human Rights "fudges" in Article 21(3), where it does not prescribe competitive multi-party elections, instead merely stating the need for elections. This opened the door to legitimize one-party states.

Aside from political democracy, there are other structural requirements for a rights-protective state (Howard-Hassmann, 2018, pp. 49–71). One is the existence of a regulated market economy based on private property. No state that has abolished private property protects human rights. But private property does not mean unregulated acquisition of property by any means possible.

By a regulated economy, I mean one in which monopolistic and oligopolistic control of the economy is prohibited; in which excessively high profits and incomes are taxed away by the state; in which safety and environmental regulations are protected; in which all citizens have equal economic opportunity; and in which labor rights are fully protected.

A rights-protective state also requires a functioning government and a competent state bureaucracy. Political order, protected by a functioning government that controls its entire territory, is an underlying condition for any democracy. A competent state bureaucracy requires that personnel not only be educated but also be adequately paid, so that they do not need to rely on corruption or bribes to support themselves and their families. An independent judiciary is also a prerequisite for a rights-protective state, but only if its personnel believe in and are willing to implement human rights, even when the laws of the country undermine them.

This does not mean that citizens should wait until all these structural prerequisites are in place before demanding their human rights. Rather, rights evolve in a spiraling process, with the various rights claims and state responses interacting with one another. It is especially important to note that civil and political rights and economic, social, and cultural rights are interdependent. It is difficult for people to be active citizens if they are mired in poverty or subjected to chronic and debilitating poor health. Citizens lacking education may not have the required tools to make informed political decisions.

Thus, the only type of state that is fully protective of human rights is a social democracy. Social democracy is a variant of liberalism that views the social provision of economic security as an inherent part of respect for the individual. It is characterized by an activist state that tries to provide basic social rights, protect citizens against market forces, and reduce inequality, at the same time as it protects basic civil and political rights, private property, and a market economy.

Nevertheless, if I had to choose one, and only one, human right, it would be the right to freedom of expression. This means not only free speech and a free press, but also the ability to criticize one's rulers without fear of arrest, torture, imprisonment, or execution. It also means freedom of assembly, so that citizens can assemble without fear to discuss or protest state policies. We see how important this right is when we see how many journalists and activists are murdered by various states every year.

Some critics argue that to focus on freedom of speech is to focus on a political right at the expense of economic, social, and cultural rights that might be more relevant to people in the Global South. One of the most basic economic rights is the right to food. But in both my earlier (Howard, 1982; Howard, 1986) and my later work (Howard-Hassmann, 2016), I show that without the right to freedom of expression, there is no right to food. People can't criticize policies that deprive them of food. The best they can do is hope that their government is benevolent enough not to deprive them of their own ability to cultivate their own food, and to distribute food when necessary. Again, this shows the interaction and interdependence of all human rights, in both developed and less-developed societies.

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Human Rights Violations in Ukraine: Can Victims Expect Accountability and Redress?

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How well-equipped are international institutions to police and sanction serious breaches of human rights and deliver redress to victims and their families? Are they fit for purpose? Do we expect too much of these institutions? To date, my work has included evaluation of these institutions in the context of counter terrorism strategies. In my recently published *Human Rights Law and Counter Terrorism Strategies: Dead, Detained or Stateless*, I delved into human rights issues relating to the preventive detention of terror suspects, the treatment of detainees, and targeted killing (as well as issues concerning returning foreign fighters). I highlighted how, with few exceptions, the United Nations (UN) and other international juridical bodies have limited powers to compel states to cease violating human rights, or to compensate families of victims of human rights violations adequately, or at all.

In this article, I focus on a range of alleged human rights violations arising out of the current Ukraine conflict and evaluate international mechanisms that exist to provide redress for victims and accountability of perpetrators of human rights violations. The UN Human Rights Council established an Independent International Commission of Inquiry on Ukraine, which delivered its first report to the General Assembly on October 18, 2022. The report focused on events in four areas of Ukraine during the period from February 24 through March 31, 2022. It documents many instances of war crimes and violations of human rights and international humanitarian law (IHL), which included endangerment and attacks on civilians including children, summary executions, enforced disappearances, detention, torture and inhumane treatment, and sexual and gender-based violence.

On December 2, 2022, the Office of the High Commissioner for Human Rights (OHCHR) published a report dealing with the killing of 441 civilians comprising 341 men, 72 women, and 28 children in Ukraine between February 24 and April 6, 2022. Some deaths occurred in places of detention, but many other deaths were caused by summary executions in civilians' homes or out in the streets. On the same date, the OHCHR published an Update on the Human Rights Situation in Ukraine from August 1 through October 3, conducted by the UN Human Rights Monitoring Mission in Ukraine (HRMMU). In that period, HRMMU recorded 86 cases of conflict-related sexual violence against women, men, and children, and 457 cases of arbitrary detention, which included multiple enforced disappearances, widespread practices of torture, and ill-treatment in places of detention. In November 2022, other reports estimated that 15,000 people had gone missing in the current conflict. As of January 16, 2023, the OHCHR recorded 18,358 civilian casualties since the start of the conflict. Of these, 7,031 were killed, including 432 children, and 11,327 were injured. However, the OCHR believes that the figures are likely to be higher than those reported. In other words, many people are victims of egregious breaches of human rights and possible war crimes arising from enforced disappearances, detention, torture, rapes, and murders in Ukraine.

Regarding compensation for victims and their families, the likelihood of anyone succeeding in a domestic claim against Russia is nil. Therefore, both in terms of compensation and accountability, the only possible route to justice is via international law. In times of armed conflict, three sets of laws apply concurrently: international human rights law, international humanitarian law, and international criminal law. What may victims and

their families expect from human rights jurisprudence and institutions in terms of delivering redress and accountability?

International human rights law guarantees the right to life, and *inter alia* prohibits arbitrary deprivation of life, arbitrary detention, torture, and inhumane treatment. States have a duty to safeguard human rights, investigate violations of those rights, and to hold violators accountable. Under some treaties, victims and their families may be compensated for having their rights violated.

One hundred seventy-three State Parties have signed the International Covenant on Civil and Political Rights (ICCPR), including the Russian Federation and Ukraine. Russia's actions referred to above appear to violate numerous rights. These include, but are not limited to, the right to life (Article 6), the right not to be tortured or subject to inhuman treatment (Article 10), and the right to liberty (Article 9).

What can victims expect from the ICCPR? The Human Rights Council, through its Working Groups, monitors and investigates arbitrary detention, and the Human Rights Committee investigates and adjudicates complaints, which may be brought by individuals who are subject to the jurisdiction of a State Party, after domestic remedies have been pursued and exhausted. The adjudication process is far from satisfactory, in that the powers of the Human Rights Committee are limited to directing an offending State to provide "adequate or appropriate" compensation in an unspecified amount. Furthermore, there is no mechanism to compel compliance with their rulings.

Russia, as a non-member of the Council of Europe, and Ukraine have ratified the European Convention on Human Rights. Article 2 addresses the right to life, Article 5 addresses the substantive and procedural aspects of the right to liberty, and Article 3 addresses fair treatment. What can victims expect from the European Convention? The European Court of Human Rights (ECtHR) will adjudicate complaints of violations brought by individuals, when domestic remedies have been exhausted. It can order the payment of specified amounts of damages to individuals. The Committee of Ministers of the Council of Europe supervises the activities of Member States and monitor payments of damages, but the majority of damages have tended not to be paid promptly or at all. Thus, although the European Convention offers a greater prospect of compensation, the results are not perfect.

The Council of Europe suspended Russia's right of representation on February 25, 2022, but Russia is still bound by the Convention and is still required to implement ECtHR judgments. Although individuals complaining of Russian violations in past and present Russian incursions may believe that recourse to the ECtHR may give them the compensation they seek, Russia does not have a good track record of paying compensation. For example, in *Georgia v. Russia*, Russia signed a Memorandum of Understanding in December 2021 to pay 10 million euros in compensation relating to the arrest, detention, and expulsion of Georgian nationals from Russia during 2006–2007, but no time frame was set for the payment to be made.

Although the subject of enforced disappearances is tangentially addressed in terms of the rights to liberty and fair treatment in instruments such as the ICCPR and the European Convention, since December 2010, a specific international treaty exists to deal with this issue: the International Convention on Protection of all Persons from Enforced Disappearance (ICPPED). Only 68 countries have ratified the ICPPED. Notably, amongst others, Russia and Ukraine have not. This Convention places the responsibility on the States Parties to enact legislation to prevent and criminalize enforced disappearances, investigate, hold persons accountable, and establish procedures relating to detention. It is not applicable to activities that took place before the Convention entered into force. The Committee on Enforced Disappearances has very limited enforcement power. If a complaint is made about a State party, the Committee can seek information from that Party and visit the State. It can only transmit recommendations and request that the State take all necessary measures, but it cannot compel the State to do any of it. It has no power to sanction the State and there is no mechanism for an aggrieved person to seek redress. Individuals have no rights to seek redress. In the case of the claims of enforced disappearance reported in the press in the current war between the Russian Federation and Ukraine, as neither Party have ratified the Convention, the Committee on Enforced Disappearances has no jurisdiction to do even the limited actions described above.

Could the International Court of Justice (ICJ) assist victims? Individuals cannot petition the ICJ for redress: only States may do so. On February 26, 2022, Ukraine instituted proceedings in the ICJ against Russia concerning a dispute relating to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Russia did not respond to any allegations. The ICJ has the power to require provisional measures from a State pending a final decision in the case. On March 26, 2022, the Court ordered three provisional measures: (1) that Russia should immediately suspend the military operations that it commenced on February 24 in Ukraine; (2) that Russia should ensure that any military and irregular armed units, or other persons or organizations under its control or direction, should take no further steps in the military operations in Ukraine; and (3) both parties should refrain from "any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve." This order has not been complied with, and the ICJ has no mechanism itself to enforce compliance. The ICJ is the "principal judicial organ of the United Nations," so theoretically the Security Council could enforce ICJ judgments. However, as Russia has the right of veto, neither enforcement nor compliance will happen.

Under international humanitarian law (IHL), civilians may not be targeted unless they are participating in the fighting. Armed forces are required to take steps to avoid or minimalize civilian deaths and injuries. The willful killing of a civilian constitutes a violation of IHL and international criminal law. IHL does mandate that parties to an armed conflict are obliged to pay compensation to victims. The International Court of Justice (ICJ) can order State parties to make reparations, but, as stated above, it lacks enforcement powers.

What about punishing the violators of international human rights law? States can sanction other States, but that is another conversation. As to juridical bodies, the International Criminal Court (ICC) was established by the Rome Statute in 1998. The ICC only has jurisdiction over crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. Enforced disappearance by a State or a political organization falls within the definition of crimes against humanity. The ICC cannot accept jurisdiction over a case unless a State is unwilling or unable to carry out an investigation or prosecution. The ICC also can issue orders of reparation to victims, but those orders can only be made against convicted individuals. As of April 2022, the ICC has only issued orders in four cases.

One hundred twenty-three countries are State parties to the Rome Statute. Russia and Ukraine are not, although in 2015 Ukraine did accept jurisdiction over alleged crimes committed since February 20, 2014. On February 25, 2022, the ICC Prosecutor stated that his office "may exercise jurisdiction over and investigate any act of genocide, crime against humanity or war crime committed within the territory Ukraine from 20 February 2014 onwards." On February 28, the ICC Prosecutor announced he was opening an investigation into the situation in Ukraine following a referral from 40 countries, and shortly after submitted the Situation in Ukraine to Pre-Trial Chamber II. Russia has not accepted jurisdiction.

Since at least April 2022, a mere two months after Russia invaded Ukraine, reports started to appear alleging that Russia has committed war crimes. On April 25, the ICC Prosecutor took the unprecedented step of joining a Eurojust Joint Investigation Team on alleged core international crimes committed in Ukraine. The Ukraine Prosecutor is also trying to gather evidence. A December 2022 report noted that he is investigating more than 58,000 potential Russian war crimes. To date, Ukraine has successfully prosecuted just one Russian soldier. The reality is that while the war continues it is extremely difficult to collect and process evidence for both domestic or international courts. The sheer number of allegations will make the task even harder and will take considerable time.

On February 25, 2022, the ICC Prosecutor stated that as neither Ukraine nor Russia were State Parties to the Rome Statute, the Court would not be able to exercise jurisdiction over the crime of aggression. Since 2018, the Court has had the right to indict persons for the crime of aggression, which is stated in the Rome Statute to mean "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Simply put, it means "waging an illegal war" but only those most responsible can be prosecuted. The rules of the ICC indicate that in cases where neither the perpetrating nor victim States have ratified the ICC, a referral from the

UN Security Council to the ICC is required. As Russia has the power to veto on the Security Council, the likelihood of such a referral happening is extremely unlikely. Because of these problems, and because the crime of aggression is a separate overarching crime that under current ICC rules cannot be tried in the ICC, Ukraine has been seeking support for the establishment of a special criminal tribunal for many months. A number of other countries and organizations have supported this call. On January 19, 2023, Members of the European Parliament resolved that a special tribunal would "fill a vacuum in international criminal justice and complement the investigative efforts of the ICC." It is still not known whether a special tribunal will in fact be established, and if so, when.

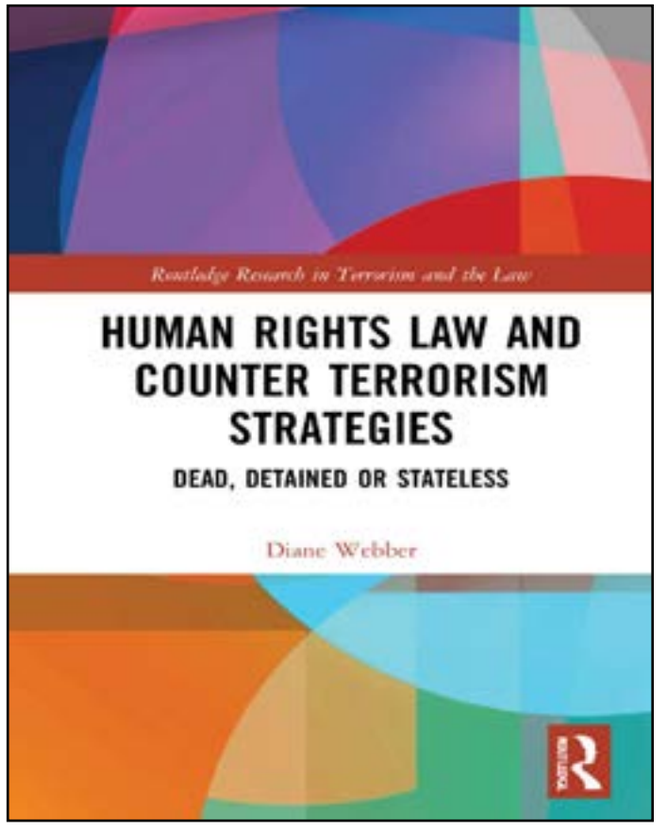
> ...international juridical bodies have very limited powers, if any, to compel the making of reparations to victims and their families.

As this article has demonstrated, the international juridical bodies have very limited powers, if any, to compel the making of reparations to victims and their families. There appears little prospect of meaningful redress via the international institutions, and accountability will take a long time coming, if it comes at all.

It is time for a rethink on how to compensate properly and adequately the victims of human rights and IHL violations, when such redress cannot be achieved in the relevant domestic courts. The bodies dealing with violations of human rights need the power to make meaningful compensation orders, backed up by effective enforcement powers.

As to accountability, in time, but not the near future, the ICC may well be able to prosecute the individuals who have committed genocide, crimes against humanity, and war crimes in Ukraine. If a special tribunal is established by the Security Council, theoretically the Russian leaders could be prosecuted for the crime of aggression, but such trials are more likely to take place in *absentia*. This special tribunal should be established as a matter of urgency, as justice must be done, and soon.

Diane Webber is a British solicitor who worked for many years in London in private practice, focusing on criminal law (particularly white collar fraud), employment and discrimination law, and sports and entertainment law. She returned to study and earned her LL.M. and S.J.D. at Georgetown Law Center in Washington, D.C. Her area of expertise is in comparative counterterrorism law and policy and human rights.



Corruption, Human Rights, and State Collapse

Professor Dave O. Benjamin
United States

Introduction

The mid-1990s saw a global awakening to the specter of systematic violence against civilians in conflict. Much of this was occasioned by genocide in Rwanda, Bosnia, and elsewhere; the harsh reality that conflict was increasingly prosecuted against civilians rather than belligerent armed forces; and that the entire infrastructure of the state was destroyed in the process. Human rights violations were as endemic as they were systemic, and state collapse was reality. In responding, the international community sought to address consequences rather than the root cause: corruption. Anti-corruption initiatives were predominantly declaratory, without acknowledgement of intent and criminality, and had little impact. As some of the world's most resource-endowed states fell further into poverty, destitution and conflict, their leaders amassed insane wealth and power, seemingly insulated from consequences externally or domestically. This article interrogates linkages among corruption, human rights violations, and state collapse/failure.

Corruption at the Core

Corruption – the abuse of public office for private gain – lies at the heart of political violence, conflict, and state collapse. At one end of the spectrum, it has been justification for more than enough coups in Global South states while, at the other end of the spectrum, its consequences have been manifest and amplified by natural disasters and failure to recover from them. Central to public office is the public trust – an expectation by the public that those who represent them in elected and appointed office will protect their interests. However, this expectation has been abused and violated consistently, whether in resource-endowed or resource-dependent states, with catastrophic consequences. Bribery, conflict of interest, nepotism, and culture of intimidation, have all become hallmarks of institutional corruption. The World Bank Institute pointed out in the early 2000s that corruption had become so deeply rooted in shadow democracies that political parties were being funded, along with their election campaigns, by political corruption.

It is therefore no surprise that corruption has become the nemesis of development, good governance, accountability and transparency, and democracy itself. It has fueled redirecting of public finances and resources to support military expansion under the guise of anti-terrorism measures, national defense (against phantom enemies), and even crime prevention (although increases in crime are one of the consequences of corruption).

Erosion of Institutions of Accountability and Transparency

The legislature, judiciary, and free media are all subject to erosion as corruption deepens. These public and private institutions protect human rights as much as they protect the public interest by demanding

...corruption has become the nemesis of development, good governance, accountability and transparency, and democracy itself.

accountability and transparency in the operations of government including resource allocation and distribution. As corruption deepens – especially political corruption – these institutions become liabilities to corrupt public officials, and are easily compromised. The rule of law is replaced by arbitrary rule as absolutism takes root, and the media are subjected to intimidation through the court and by police and military. Arcane colonial laws are invoked to support intimidation of the media and new laws are passed to insulate the political leadership, targeting opposition and dissent.

Quickly enough political dissenters are targeted for killing, opposition parties are silenced, and a culture of fear envelopes the nation. All to protect the corrupt political and administrative leadership at the expense – and literally so – of the sovereign people. Diversion of finances and resources is obfuscated, and the dichotomy between mass poverty and the immense wealth of political leaders becomes more apparent. Free and fair elections are dispensed for political assassination, voter intimidation and murder, and election rigging that is manifest in ways from outright vote-buying to ballot box swapping. All facilitated by erosion of institutions of accountability and transparency whose mission is protecting the public interest.

Generational Corruption

Corruption is not cultural, but it becomes generational if not addressed early. Kenya, Indonesia, and the Philippines have all been cases of generational corruption where the long terms of heads of state have resulted in crony corruption, questionable acquisitions of economic and political power by descendants, and the indoctrination of the public such that wealth accumulation is understood to be a benefit of public office. The very concept of public service and respect for the public interest is lost in the process. Rebuilding after the reign of a corrupt autocrat is a long-term challenge with the uncomfortable prospect of descendants of the kleptocrats being able to carve new public images for a return to state capture.

Conversely, as wealth accumulation is concentrated on a generational basis, so poverty, destitution, and dislocation expand through succeeding generations. Economic and political exclusiveness results in exclusion, just as the doctrine of trust replaces meritocracy. Children and grandchildren are primary beneficiaries of corruption, building political careers on exclusive wealth that is diametrically opposed to collective poverty of the masses. Inventing mythology about a great period during which their parents ruled mirrors the collective amnesia about the destruction corruption wrought on the population.

In Sum

Corruption is ultimately the cause of state collapse, state failure, and regression of state and nation to frontier status in which brigands and others involved in organized crime hold the reins of power. Although some states have sought to address corruption through training of public officers, legislation, and public information campaigns, corruption remains a threat to democracies, the rule of law, and the very legitimacy of the state. It is one of the most powerful threats to human rights.

Dave Benjamin is former Associate Professor and Chair of the MA in Global Development and Peace program at University of Bridgeport. He has published in international human rights, global governance, and international criminal law, and has authored conference papers on corruption and human rights. A former president of New England Political Science Association, he has also given service to the Human Rights section of International Studies Association.

Africa: Site for the Production of Knowledge About Human Rights

Interview with Professor Bonny Ibhawoh
McMaster University, Canada

Among your many publications, you've written *Human Rights in Africa* (Cambridge University Press, 2018). Would you highlight some commonly held western misconceptions about human rights in Africa?

Let's focus on two misperceptions. The first is a prevalent notion that human rights, as it relates to Africa, centers on victims and violators. In the discourse of human rights in Africa, whether looking at academic discourses or media narratives, it's either about ruthless dictators oppressing their people, warlords inflicting unimaginable harm on people, or hapless victims with little or no agency. The responsibility of well-intentioned advocates and activists in the world is to rescue African victims from African violators.

One of the points that I make in my book, which others have made too, is that we need to think about human rights in Africa in a way that reflects the complexity of the situation. There are indeed violators and victims, as there are anywhere in the world, but the issues are more complex. There are human rights advocates within Africa who are working to address these problems.

Most significantly, human rights in Africa means more than looking at violators and victims. It is a site for the production of knowledge about human rights. What does human rights mean? How do we deal with the tensions, the contradictions, the conflicts, and the paradoxes of human rights? These are not just questions that were confronted by enlightened, liberal philosophers and Western thought leaders. These are also issues that intellectuals, politicians, and activists are grappling with in Africa. As a result, we must shift our focus so we come to think about Africa as a site for the production of knowledge about human rights issues.

The other important point that my book highlights is that the expression of an alternative vision of what human rights could be is founded on African culture and African worldview. It's not always a repudiation of universal human rights because that's also the question we face when we talk about cultural relativism, that African cultures invariably undermine the sanctity of universal human rights. That is a big misconception because it allows us to dismiss every critique of the dominant universal paradigm as a culturally relativist argument put forth by dictators and patriarchal authorities. These are people who want to undermine human rights by using the arguments of cultural relativism to justify human rights violations. This is very troubling because it prevents us fromseeing the intellectual arguments for what they are.

And in my book, I make it clear that the arguments for what I call cultural legitimacy, not so much relativism, are not only coming from dictators or patriarchal leaders. Women and other marginalized groups are also saying that they want culture to inform how human rights are understood. Therefore, we must begin to take a more nuanced approach rather than polarized discussions on universalism versus cultural relativism. We must take a more nuanced approach towards understanding the intellectual and ideological arguments on human rights questions coming from Africa and, more broadly, from the Global South.

An area of your research interests is truth commissions. What are they? How effective have they been?

This question ties to the previous question about Africa as a site for production of knowledge about human rights. It is why I started my research interest on human rights and my current project, Confronting Atrocity Project. It draws from the philosophical argument that Africa is

Africa can be a place for new ways of thinking about questions of justice and questions of accountability.

not just a place for implementing human rights ideas that have been crafted elsewhere to make people have human rights. Rather, Africa can be a place for new ways of thinking about questions of justice and questions of accountability. It can also encourage questions on human rights in the way that promotes human rights around the world. A truth commission is a paradigm that is an example of that. It is a model of restorative and transitional justice began in Latin American and has become incredibly popular across Africa. The South African Truth and Reconciliation Commission established it as a global paradigm of restorative justice.

Truth commissions are basically national quasi-judicial bodies set up to investigate either contemporary human rights violations or historical injustice. The first mandate of a truth commission is finding the truth or focusing on truth-seeking/truth-finding. As these commissions don't always find the truth, we use the term truth seeking. The second mandate is acknowledgement and justice for victims. Justice can mean many things and is not necessarily limited to offenders in jail. It can take the form of memorialization, apology, restitution, among others. There's a broad scope of what justice means in the truth commission context. The third and most significant mandate, and why I think African contribution to human discourse is really amplified, is reconciliation. How does society move forward? Not all truth commissions have a reconciliation mandate, but almost all the truth commissions that have been established in Africa have explicit reconciliation mandate.

This is not something typically heard in Western discussions of human rights since the state has no business reconciling people.It leaves reconciliation to the church, to moral leaders. But what has happened with the Truth Commission model, at least the way it has evolved in Africa, is that these questions of reconciliation, of restitution, of restoration, that in classic Western liberal traditions are confined to the spiritual, moral, and social realm, have now been brought to the center of national politics. It is born out of the realization that these questions are central to African values and worldviews. There are also very pragmatic responses that indicate many post-colonial African states do not have the kind of robust, traditional, justice systems as the West. The capacity to have a Nuremberg-type war crimes tribunal for every conflict is not there. Truth commissions have been described as justice for the poor. For instance, Rwanda, a country that experienced genocide, had to be creative in how it went about dealing with that very difficult phase in the country's history. They tried with many strategies including truth commissions and the Gacaca courts.

What I see in the way truth commissions have evolved in Africa is a uniquely African approach to questions on human rights and justice. What makes it really appealing to those who study it is that a truth commission model provides an example of how African ideas and Africa as a space for the production of knowledge about questions on global justice and international human rights can influence the West.

About seven years ago, Canada decided to adopt the National Centre for Truth and Reconciliation (NCTR) to deal with its historical injustices against indigenous people. Where did Canadians look? South Africa. Members of the Canadian truth commission looked to South Africa to learn how that nation had dealt with post-Apartheid truth-seeking and then brought those values back to try and use them to deal with historical injustices committed against indigenous people. This is a unique case where the West is learning from Africa about how to deal with human rights questions on justice. That is refreshing.

This is not to suggest that the South African Truth Commission was perfect. It had its flaws, but it provided a model. Even in the United States, the reparations debate has now also been linked with the question of truth commissions. I have received a number of inquiries from city councilors and non-governmental organizations who want to know more about this model and if it is something that might help to address questions on contemporary human rights issues and historical injustice.

Would you discuss in more detail how a Truth Commission such as in Canada may be used in the United States?

A semblance of that model, actually. No two truth commissions are the same. In fact, it's just a generic term for traditional, commissions of inquiry. Most countries have had one but what makes this model unique is that the mandate is explicitly on truth finding in a way that goes beyond the traditional justice system. We call them non-judicial or quasi-judicial. It is not a traditional court or tribunal-based commission of inquiry.

Truth commissions are distinguished by the level of public participation. They are public hearings beyond courts. In South Africa, hearings were held in gymnasiums, public fields, and stadiums. It takes justice to the people and doesn't follow the strict procedural rules that we associate with commissions of inquiry. This also allows for a unique kind of public engagement and that model lends itself as a solution to specific kinds of gross human rights violations.

The argument here is not that the South African model, the Chilean model, or the Canadian model would work perfectly in the United States. Rather, it demonstrates that there might be elements of this emerging paradigm of restorative justice that even the United States might be able to use.

Let's get back to your project at McMaster University, Confronting Atrocity. Would you discuss its mission and objectives?

One of the interesting things about truth commissions is the idea of finding the truth. For example, a new government comes into power, like Mandela's government in South Africa, and wants to find the truth. There are public hearings and they have a mandate but in some cases, the truth that truth commissions finds is not what the sponsoring government expected. The history of truth commissions is littered with truth commissions that have been disbanded midway into their work or truth commission reports that were never released once they were established.

The inspiration for the Confronting Atrocity Project was to provide a space for publicly available documents from truth commissions. It should be noted that some documents are classified to protect victims and those who appear before tribunals. Our goal is to provide a repository of documents that we can analyze. I think we now have the most comprehensive database of publicly available truth commission reports. We are also analyzing these reports to try to find parallels, to try and understand how they work, and their limitations.

We are a resource, not just for academics, but also for communities that have to engage with truth commission processes. We get a lot of queries from NGOs and civil society groups saying, "our municipality or our government is thinking of a truth commission. We do not know what these things are, how do we engage? Can you provide some orientation on what you know?" We provide those kinds of public services, pro bono, and provide expert advice to agencies and organizations that might want to know more about truth commissions and how they work.

You have an upcoming study concerning the impacts of inequality on development. What effects does inequality have on developing nations?

Apart from my job as a professor and a researcher of human rights history, I work as chair of the United Nations Expert Mechanism on the Right to Development. The mechanism is a subsidiary body of the United Nations Human Rights Council, which is based in Geneva. The mandate of the body, which consists of experts, academics, and practitioners, is to promote the right to development worldwide. The right to development is enshrined in the United Nations Declaration on the Right to Development adopted by the General Assembly in 1986. The premise is that each individual has a right to participate in, to influence, and to enjoy the outcome of their development. It's anchored on the notion that an improvement in the quality of life, the objective improvement in the quality of life of people, is a right. That it is a right that people hold as individuals and also as collectives.

An interesting aspect of this right is that of duty bearers. For every right there is a duty bearer. Typically for human rights, the duty bearer is the state. For the right to development, the primary duty bearer is the state as well. Governments have the right to do their best to provide the conditions necessary for development and also, the right to develop an agenda. The development of individuals, collectives, and communities is also an international responsibility. States have a duty to cooperate and

to work together in partnership to ensure this development. It's a right that transcends state borders. There is what we call extra-territorial obligation to operationalize and fulfill these rights, which are mainly social and economic rights.

My study, which has been undertaken under the auspices of this expert mechanism, focuses on inequality as a central obstacle to fulfilling this aspiration of the right to development. In the United Nations Sustainment Development Goals, we talk about "leave no one behind." These are aspirational ideals of a better world that have been articulated by nations and states coming together, the United Nations. But how do we operationalize them? The goal of this study is to focus on inequality as a central obstacle to fulfilling these aspirations andmaking policy recommendations to states, civil society organizations, and international organizations on how they can address the problem of inequality. It is about identifying best practices and making recommendations on how it can be addressed .

Is the study expected this year?

Yes. I will be presenting the report at the meeting of the expert mechanism in April 2023, at the United Nations. Recently, I was in Geneva for a meeting of the expert mechanism and we held what we call an interactive forum with civil society organizations. I received feedback from the civil society organizations accredited to the United Nations that the input will be part of this study.

I have a personal interest in this because I frankly do believe that inequality is at the root of many of the challenges the world confronts today. The official stance at the UN is we do not see one Sustainable Development Goal as more important than the others, that they are integrated. But if you press me, I would say that the sustainable development goal to reduce inequality is foundational. There will always be hierarchies in human society but the gaping inequalities, the obscene inequalities that we've seen in the past two, three decades, is really at the root of so many other problems. If we could just share resources a little bit more equitably, it would help to address other SDGs such as poverty, hunger, education, and others.

As Mahatma Gandhi famously said, "there is enough in the world for everyone's need, but just not enough for everyone's greed." If we can bridge that gap, maybe we can address some issues better.

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He is the author of *Human Rights in Africa* (Cambridge University Press, 2018); *Imperial Justice* (Oxford University Press, 2013) and *Imperialism and Human Rights* (SUNY Press, 2007) [named Choice Outstanding Academic Title]. Dr. Ibhawoh is a Fellow of the Royal Society of Canada, a recipient of the McMaster Student Union Teaching Award and the Nelson Mandela Distinguished Africanist Award.

Indigenous, Biocultural, and Women's Rights

Interview with Professor Cher Weixia Chen
George Mason University, United States

How effective have international laws been to protect the rights of indigenous people? What has been effective and the most challenging? What major areas of progress would you like to see?

In general, the efficacy of international law has been largely criticized. This is because international law tends to be non-binding and "soft" (except international environmental law). For the most part, international law has not been effective in protecting indigenous rights.

For a long time, indigenous peoples have considered the advancement of indigenous rights in international law as one of the main goals of the international indigenous movement, culminating in the adoption of the 2007 UNDRIP and 2016 American Declaration on the Rights of Indigenous Peoples. Both documents, however, are declarations and thus not legally binding, even though they signified the increasing attention to indigenous rights in international law and were the outcomes of the tremendous efforts of various actors at various levels. What looks promising is at the regional level, particularly at the Inter-American level. During the past two decades, the Inter-American Court on Human Rights and Inter-American Commission on Human Rights together have become a mechanism for indigenous peoples in the area to address the wrongs they have endured. For example, in 2021, the Inter-American Court of Human Rights affirmed indigenous peoples' right to freedom of expression in Guatemala in the historical decision *Maya Kaqchikel Indigenous Peoples of Sumpango v. Guatemala*.

During the past two decades, the Inter-American Court on Human Rights and Inter-American Commission on Human Rights together have become a mechanism for indigenous peoples in the area to address the wrongs they have endured.

In the future, to protect indigenous rights, first, at the international level, the International Labor Organization (ILO) Convention No. 169, a binding and arguably most operative international legislation on indigenous rights, should gather more ratification and be implemented more widely.

Secondly, at the regional level, the Inter-American system, the European Court of Human Rights, and the rising African regional system should develop more innovative legal approaches to addressing the violations of indigenous rights.

You've presented the concept of "biocultural rights." Would you expand on this?

My colleague, Mike Gilmore, and I developed this concept of "biocultural rights." He is an expert on biocultural studies, and I am very interested in indigenous rights. We both felt the protection and promotion of indigenous rights has a long way to go. After we examined the current literature and mechanisms, we came up with the concept of "biocultural rights," a theoretical framework that seeks to holistically address the issue of protecting indigenous rights. "Biocultural rights" is an approach that considers the past, present, and future of indigenous peoples, aiming at effectively protecting indigenous rights. For indigenous peoples,

nature and culture are intertwined. Their land and natural resources are intricately linked to their way of life and cultural practices. But our legal system treats them separately. There are indigenous rights to their land and natural resources. The right to culture and intellectual property law have also been applied to protect the culture of indigenous peoples. To indigenous peoples, culture and nature are equally important, and the violation of one will inevitably lead to the violation of the other. For example, the damage of their water would affect adversely their ceremonial rights. That was the origin of "biocultural rights."

A number of recent movements in the US and around the world have further pushed the women's right agenda forward. How would you characterize the current state of women's rights?

I think the Me-too movement is still going strong in the US, with the attention and activities moving to the state level, lobbying for legislative changes. Public support for the movement is there, undeniably.

Also, after the Dobbs decision, the women's rights movement in the US now has a newfound focus (women's reproductive rights) and a strong sense of urgency. Furthermore, many have advocated for a global and intersectional approach to women's rights. There have been calls (and actions, too) to support those women from various backgrounds fighting for their rights in Iran, Afghanistan, India, and elsewhere around the world. It is plausible to envision an international women's movement.

A subtopic of women's rights that you've researched is women's pay gap. What are the primary reasons for the gap? What actions and policy would you like to see from the public and private sector to help close the gap?

Causes:

The deep-rooted factor causing the women's pay gap is historical and structural. We are still very much a patriarchal society. Those lines of work dominated by females, such as child care, have been traditionally undervalued, and those skills associated with these works are valued less. Ultimately, this cultural attitude towards women, their jobs, and the associated so-called more feminine skills constitutes the most significant barrier to realizing gender pay equity.

There is also this factor of the "mommy penalty." Many women workers have to take leave to care for their young babies, which creates a gap that often leads to a disadvantage in their promotion at the workplace.

Some legal factors also contribute to the gender pay gap. Here in the United States, it is legally challenging for women workers to file a lawsuit against their employers, who are usually equipped with better resources. Women workers may have difficulty gathering the needed evidence as well.

Actions and policies:

Addressing the issue of the gender wage gap requires a comprehensive approach that fully engages all levels of actors.

At the societal level, there needs to be a fundamental cultural change from embracing just "equal pay for equal work" to embracing "equal pay for equal work" and "equal pay for work of equal value," which entails an overhaul of the existing job evaluation system. That is, to reconsider the concept of "pay" and the value of the traditionally/historically undervalued female-dominated lines of work. For this, the public sector could take the lead and learn from the practice in Canada, a prime example of addressing the gender wage gap.

At the same time, we should equip women workers with the necessary skills to negotiate salary and assist them in filing aggrievance at the workplace and in court. More importantly, women workers should be present in the policy-making process regarding wages and promotion. Their voice should be heard and actively sought.

Legally, the relevant law should be reformed and made easier for women

workers to address the wage discrimination they experience.

At the organizational level, gender pay equity should be incorporated into the corporate code of conduct.

Another area you've researched is burnout experienced by human rights activists. What are the causes and effects?

Causes: The foremost significant cause is the "culture of martyrdom." Many human rights activists consider the attention to their own well-being is unwarranted when thinking of how the victims (such as those of genocide and human trafficking) are suffering. Thinking about their own well-being and self-care, for them, is a "privilege." And many social justice and human rights organizations and communities also discourage the discussion of activists' well-being. Such neglect of activists' well-being is the structural factor leading to activist burnout.

Many activists my colleagues Paul Gorski, Graziella McCarron, and I interviewed also attribute the causes of activist burnout to in-fighting within movements, heavy workload, underappreciation from others, and their own deep sensitivities to structural injustice and frustration with the slow social change.

Hence many activists experience burnout, manifested mainly in three aspects: 1) the deterioration of their physical health, 2) the deterioration of their psychological and emotional health, and (3) a sense of hopelessness.

Activist burnout has harmful effects on their activist work, often leading to them withdrawing from activism. And their withdrawal will negatively impact the marginalized communities activists work for and, ultimately, the social movement at large.

Dr. Cher Weixia Chen is an Associate Professor in the School of Integrative Studies, the founder of the Human Rights and Global Justice Initiative, a Senior Scholar of the Center for the Advancement of Well-Being, and a faculty fellow of the Institute for a Sustainable Earth, George Mason University. Dr. Chen co-created the undergraduate Social Justice and Human Rights concentration, Social Justice and Human Rights minor Dr. Chen is the recipient of the GMU 2021 OSCAR Mentoring Excellence Award.

Dr. Chen's scholarship focuses on the issues of human rights (particularly the rights of marginalized groups such as women's rights and indigenous rights) and she is the author of *Compliance and Compromise: The Jurisprudence of Gender Pay Equity* (Brill/Martinus Nijhoff and *International Human Rights: A Survey* (Cambridge University Press, 2022, with Alison Dundes Renteln).

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The Past, Present, and Way Forward for Human Rights

Interview with Professor Andrew Fagan

University of Essex, United Kingdom

You've stated that human rights are negatively impacted by myths and misunderstandings. Would you provide some examples and how they affect human rights?

An excellent question. Thank you. I previously wrote about a series of what I termed myths and misunderstandings in my 2009 book. Then, as now, I wanted to draw attention to what I took to be several areas of weakness or vulnerability within the human rights project, which I thought did not attract the attention they deserved. Rather than revisit those now, I would like to take this opportunity to, so to speak, upgrade my critical concerns about the contemporary human rights project.

Human rights has suffered from a long-standing misunderstanding regarding what I will call a tacit commitment to a rather teleological vision of humanity which has itself served to support a false and complacent presumption that the eventual triumph of human rights, like that of liberal democracy, was in some sense inevitable.

A commitment to human rights rests heavily upon the hope that humanity can overcome our baser inclinations towards inflicting systemic harm upon other humans, non-human animals, and the wider natural environment. Regardless of how normatively minimalist one is in one's aspirations for human rights, the project itself contains an unavoidably utopian dimension. Human rights may thereby be contrasted with other visions of humankind that are far more nihilistic or, some might wish to say, realistic, in their expectations of humanity's capacity for some form of sustained collective goodness. There is a bitter irony in this secular humanist vision, of course, insofar as human rights are largely a response to our continuing inhumanity towards others. We turn towards human rights in order to protect ourselves, or those we ally with, against the predations of other humans. Normatively grounded upon a humanist philosophy, human rights might nevertheless never have seen the light of the day were it not for genocide, crimes against humanity, racism, sexism and all of the other pathologies of our species. We owe our very existence as human rights scholars and defenders, in large part, to inhumanity.

Despite so much evidence to the contrary, the human rights project has remained grounded in a philosophical vision which heralds our ability to realise our better nature, or our better selves. Many assumed, and some overtly argued, that the triumph of a rights-based form of liberal democracy was an inevitable element of human moral progress and that, in time and with a relatively light touch from the powers that be, we would all come to enjoy the benefits and fruits of the so-called age of rights.

As we are all too painfully aware, this predicted age of rights has not come to pass. Liberal democracy is under attack, even within some of its key heartlands, neoliberal economics produces gross and unsustainable forms of inequality, global warming is no longer a hypothetical construct, and human rights are in danger of becoming a minority interest for an increasingly unrepresentative (in electoral terms) collection of peoples across the globe.

The characteristic response to this so-called backlash against human

rights amongst many within the human rights community has been resentment, recrimination, and righteous indignation at the denial of our hopes and aspirations. While understandable, I think this response is largely counter-productive for the fortunes of human rights. Too many harboured a false assumption that the triumph of human rights was in some sense inevitable and now feel cheated by history itself. History, however, makes no promises and humankind possesses no inherent telos. Too many of us continue to feel cheated by the failure of myth to become reality.

For my part, and in keeping with my intellectual interests in the Frankfurt School and a variety of more post-structuralist influences, I think the human rights community is far better served by discarding these continuing beliefs in a mythical teleological vision of humanity, or in the inevitability of reason's triumph over superstition. Like every other normative project, human rights consist of a complex collection of socio-historical constructs which speak to a similarly complex constellation of interests, wants and collective aspirations. Humanity has no telos. A recurring appeal to what morality allegedly demands of us will not, by itself, convince more people that it is better for all of us to support human rights, rather than some other, more dystopian, vision of our collective future.

Against the myth of the historical inevitability of the triumph of human rights over authoritarianism and xenophobia, it's high time that we recognise that human rights have to be fought for, politically. The grounds upon which human rights rest are inherently and necessarily unstable. Morals change. Laws can be revoked. There is nothing in the human condition or human history which serves to guarantee anyone's faith in human rights. Human rights may very well slide into obscurity in time if we do not constantly work to agitate for them.

In 2017, the Myanmar military conducted a campaign against the Rohingya people that included murder, rape, and arson. Many fled to Bangladesh while others stayed in Myanmar, under oppressive rule and continuing to suffer human rights violations. What should be done by the international community for accountability of human rights violations against the Rohingya and protect their human rights now and moving forward?

I first became involved in efforts to promote human rights in Myanmar in 2011, when I travelled to Yangon on the invitation of the British Council in order to deliver a series of human rights lectures and workshops to a carefully selected constituency of human rights defenders and members of the then political opposition. These were exciting times, which seemed to be full of promise for a better future for the people of Myanmar. However, I quickly became aware of the widespread hostility towards the Rohingya, even amongst members of the political opposition, some of whom had been imprisoned for decades for their incredibly brave commitment to democracy and rights. I came to see that, in addition to their hatred for the military, many amongst the political opposition appeared to share a rejection of the Rohingya's claims to full citizenship within Myanmar. As my engagement with Myanmar developed over the ensuing few years leading up to and following the November 2015 landslide election victory of the NLD, I became more and more anxious about the plight of the Rohingya even within an ostensibly "democratic" country. In various fora, I argued against the US, the UK's and the EU's "cautiously optimistic" stance towards the new NLD-government. While western diplomats seemed largely hopeful that Aung San Suu Kyi's government would satisfactorily resolve the challenge of the Rohingya, I consistently argued that this was highly unlikely, given just how widespread and deep was the hostility directed towards the Rohingya. It genuinely pains me to say that my concerns were shown to be well-founded.

Coming forward to the present-day and to address your question directly, I fear that very little will be done by the international community to ensure that those responsible for genocide against the Rohingya will be held to accountable for those crimes. Western states have enacted a series of sanctions against Myanmar and members of the ruling military junta. Trade embargoes have been restored which impact direct foreign investment to the country. The UN Special Representative for

We cannot abandon our universalising aspirations and still be able to claim that we are seeking to protect and promote human rights.

the Human Rights situation in Myanmar regularly continues to raise awareness of the heinous human rights violations taking place within the country. International non-governmental organisations have either radically downsized or ended their activities in the country. Myanmar has largely returned to its former status as a pariah state. However, none of this poses a serious threat to the military junta's rule. Effective UN action against Myanmar and in support of the Rohingya continues to be blocked by China and Russia, particularly within the all-important Security Council. I wish I could say otherwise, but I can't see any foreseeable end to the suffering of the Rohingya people, nor any prospect of any form of international legal redress for the violations they suffer.

One of your books is *Human Rights and Cultural Diversity: Core Issues and Cases***. What are some key challenges for advancing universal human rights across different cultures? Can these differences be overcome? If so, how?**

Wow. What a question. Human rights are intended to be enjoyed by all humans everywhere, without distinction. Universality is thus a necessary, inherent component of the entire project. We cannot abandon our universalising aspirations and still be able to claim that we are seeking to protect and promote human rights. So much for the principles of human rights. In reality, we know that human rights are not universally upheld and implemented. Some of us, by accident of birth or location, enjoy more of our human rights, more of the time than many of our less fortunate counterparts elsewhere. This disparity in the normative theory and the lived reality of human rights is shameful and serves to undermine the very appeal of human rights for many. People are entitled to ask why they should continue to support a doctrine that delivers so little and so rarely for them.

Contrary to some critics and some purported defenders of human rights, the doctrine doesn't require a one-size-fits-all template for all human peoples and societies. Difference and diversity needn't be obstacles to the endless struggle to realise the promise of human rights. In reality, however, they are. Differences in respect of culture, identity, religion, belief, and the like have become roadblocks in the global promotion of human rights. These differences have also become increasingly polarised in the interminable debates and conflicts between the "West" and the "East", or the "North" and the "South". These reified constructs have become weaponised by political and economic elites who, more often than not, desire nothing more than the promotion of their own partial interests and privileges. We all too easily come to think that all "westerners" (whoever they might be!) characteristically support human rights, whereas the "other" routinely does not. This is simply untrue. Supporters and opponents of human rights do not neatly fall into such crude geopolitical blocs.

One recent example of this was the controversy surrounding the hosting of the 2022 soccer World Cup in Qatar, a country with a demonstrably poor human rights record. Critics, including me, argued that the Qatari government's systemic violations of the human rights of women, members of the LGBTQI+ community, political opponents, the media and, for the specific purposes of the World Cup, their appalling treatment of the many thousands of migrant workers who built the stadia and infrastructure, entailed a justified boycott of the event. A variety of Qatari spokesmen and senior FIFA officials pushed back hard against the criticism they received by claiming that we should respect "their" traditions and customs, that western governments also violate human rights, and finally, that critics like me were specifically targeting Qatar because they were Arabs. We were overtly accused of racism, because of our support for human rights, which was an interesting and somewhat unexpected twist.

The charge of racism might be justified were it the case that critics like me were arguing that the essence of Qatari Arabic identity was in some sense fundamentally homophobic and misogynistic. The charge

might also have carried more weight if critics like me were focused on Qatar's human rights record because of their allegedly essential Arabic attributes, or if we were criticising them because of our alleged hostility towards allegedly essential Qatari culture and traditions in the same way that racists target the skin pigmentation of others, or homophobes take offence at others' sexual orientation. Needless to say, critics like me weren't focusing upon Qatar for being Qatari Arabs (not that this has any essential characteristics), but rather because they were simultaneously seeking to sports-wash their image, whilst continuing to systematically violate the rights of some of the most vulnerable members of the population, many of whom, of course, were Qatari. Critics like me were also challenging the very idea that Qatari society (or anywhere else) possesses a distinct and essential identity which the most powerful in that society get to define and stand guard over.

Nevertheless, we shouldn't simply dismiss out of hand others' criticism of us. The human rights community has all-too-often headed for the moral high ground when it would have been better served by a degree of critical self-reflection. Thus, we shouldn't restrict our condemnation of the human rights violations taking place in the Global South, or non-western societies. If we analyse many of these violations closely enough, we will too often see the influence of western interests and agents at work. We must also tend to our own metaphorical houses and call out the human rights violations being perpetrated against the poor and the marginalised across many purportedly "liberal", high-income states. A persistent failure to do this, whilst continuing to condemn human rights violations in distant lands, serves to expose us to the charge of hypocrisy and double-standards.

Put simply, a global outlook is essential for the human rights project, but this requires a refusal to take simplistic sides in geo-political conflicts and calling out human rights violations wherever they occur. I hope that all goes some way to addressing your extremely demanding question!

How do you view the current state of human rights? What needs to be done to promote human rights further?

We have to be realistic, but not unnecessarily defeatist. The human rights project is a bit battered and bruised at present. As I indicated earlier, some peoples' belief that human rights had triumphed over its adversaries was always deeply naïve and led to far too much complacency within many parts of the human rights community. Things were never as good as many imagined. And, by extension, perhaps the fate of human rights isn't so grim as some have insisted of late. As I argued earlier, there is no historical necessity for the existence of human rights, nor any underlying developmental process of which human rights is a mere function. The fate of human rights lies in the minds and hands of people who continue to rail against systemic injustices, which so many continue to suffer through no fault of their own. If you care about your own human rights and thus necessarily the human rights of others, then there is a great deal of work to be done.

There are many fronts upon which the struggle for human rights must be waged. In addition to the long-established violations of civil and political rights, we also need to direct our attention towards third generation rights, such as a right to environmental sustainability and securing protection against the effects of climate change. We also need to focus our collective attention on the human rights violations directly and indirectly resulting from the actions of transnational commercial corporations and business more widely. In the aftermath of a once in a lifetime global pandemic, we have all been reminded of the need for a human rights-based approach to public health and tackling the global and domestic health inequalities which make for shorter and harsher lives for many of the most vulnerable at home and abroad.

My own writing recently increasingly engages with socio-economic inequality and the multitude of pathological consequences of poverty and deprivation for so many. I have argued that the human rights community urgently needs to recognise and engage with the role that social class plays in very many, particularly high-income, societies in which people are born into conditions of poverty and lack of opportunity. While we rightly pay a great deal of attention to other forms of identity-based harm, we have almost entirely ignored social class. We need to apply our

passion and energies towards what some might consider to be rather mundane concerns such as decent housing, employment, education, community, and the like as we call out and confront injustice in our midst. Doing so might also serve to show to many people who feel angry and resentful towards so-called liberal elites, that human rights can provide powerfully constructive instruments in addressing the systemic unfairness of our societies. At the risk of sounding somewhat political, the cost-of-living crisis and the precariousness which so many are exposed to within some of the wealthiest societies on earth offers an opportunity for the human rights community to demonstrate our relevance to others' causes and campaigns.

Most importantly of all, I passionately believe that we need to reunite as a community of people who, despite our own particular causes and concerns, share a fundamental opposition to an unjust world. As I look out upon the human rights community today, I see a multitude of different interests and objectives, all vying to get their causes noticed through the many platforms which technology has created. This ought to be a strength of the human rights project. However, too-often different interests groups appear to be increasingly at odds with rival groups, or groups who take a marginally different perspective upon the injustices they seek to overcome. This division is increasingly embittered and, in some cases, virulent. The principal beneficiaries of this state of affairs are, of course, those who have no immediate interests in us overcoming the injustices we suffer and from which a miniscule global elite fundamentally benefit. So, I would close by saying:

Human rights defenders of the world unite. We have nothing to lose and everything to gain.

Dr. Andrew Fagan is Dircctor of the Human Rights Centre and Senior Lecturer at the University of Essex Law School - Human Rights Centre.

His research focuses upon the normative, political and cultural challenges to human rights, with particular interest in the contributions which radical philosophies and politics can make to defending human rights against multiple challenges.

His work includes *Covid-19, Law and Human Rights : Essex Dialogues. A Project of the School of Law and Human Rights Centre, Human Rights and Cultural Diversity, The Atlas of Human Rights: Mapping Violations of Freedom Around the Globe, and Human Rights: Confronting Myths and Misunderstandings*, and "Taking Social Class Seriously", *Human Rights Quarterly* (forthcoming, May 2023).

Human Rights and AI

Interview with Professor Roman Yampolskiy
Universtiy of Louisville, United States

While AI offers many positive impacts such as the health sector, a wide range of concerns are growing about the use of, and evolution of, AI forms. The Universal Declaration of Human Rights includes articles concerning Right to Non-Discrimination and Right to Privacy. In brief, how is AI currently impacting these areas?

AI systems deployed today are frequently trained on massive datasets collected on the Internet and so may contain private user data which they were not explicitly authorized to train on. Likewise, such poorly sanitized datasets may contain biased decisions leading to automation of discriminatory decisions against protected groups.

Deepfakes have garnered much attention, particularly their use on social media. How advanced is AI currently to create deepfakes? Where is it going next? As techniques and applications in deepfakes advance, what potential repercussions to the justice system are of concern?

AIs today can generate deepfake images and even videos with sound. In the future it will become possible to create multimodal deepfakes which could provide live interactions with users and be nearly impossible to detect. Such undetectable fakes would be highly problematic for evidence evaluation by the justice system and for dissemination of fake news.

Your special expertise is AI Safety and Security. Please elaborate on what that encompasses.

The goal of my research is to create AI systems which are beneficial to humanity and are also safe from malevolent actors. A lot of work goes into understanding how advanced AI systems may fail.

What are the types of Artificial Intelligence and at what stage is it in now?

AI systems are frequently distinguished by their anticipated capability level. Narrow AI systems can perform well in specific domains, such as playing chess or transcribing text. General AI systems are expected to perform well across multiple domains, similar to our expectations of other people. Finally, some predicted future AI systems are likely to be super-intelligent, meaning they would be superior to any human in any domain, including science and engineering.

What are your biggest concerns about human rights (and human civilization) as technology progresses toward Super Intelligence?

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What are the major challenges to control Super Intelligence?

As of today, nobody knows how to control advanced AIs, and no one has as much as a prototype safety mechanism capable of scaling to AIs beyond human capabilities. A major challenge in control of AI is that we humans don't particularly agree on what it is we want to see happen with our world. Essentially, we have 8 billion agents with different preferences and attempting to get AI to make everyone happy is a multivariate optimization problem of on precedented scale.

Dr. Roman V. Yampolskiy is a Tenured Associate Professor in the department of Computer Engineering and Computer Science at the Speed School of Engineering, University of Louisville. He is the founding and current director of the Cyber Security Lab and an author of many books including Artificial Superintelligence: a Futuristic Approach. During his tenure at UofL, Dr. Yampolskiy has been recognized as: Distinguished Teaching Professor, Professor of the Year, Faculty Favorite, Top 4 Faculty, Leader in Engineering Education, Top 10 of Online College Professor of the Year, and Outstanding Early Career in Education award winner among many other honors and distinctions. Yampolskiy is a Senior member of IEEE and AGI; Member of Kentucky Academy of Science, and Research Advisor for MIRI and Associate of GCRI.

Climate Change Litigation and Extraterritorial Human Rights Obligations

Professor Mark Gibney
University of North Carolina - Asheville, United States

In the face of the frightening specter of climate change, accompanied by varying levels of political paralysis at both the domestic and international levels, one of the most noteworthy developments in terms of addressing the rising levels of carbon dioxide and methane in the earth's atmosphere has been the increased involvement of courts and various international institutions. In 2017, 884 climate change cases were filed in 24 countries, with 654 of these in the United States alone. In 2020, there were 1550 cases in 38 countries, with 1200 in the United States. Finally, by 2022, the world total had increased to more than 2000 cases filed in 43 different countries.

Domestic Courts

A significant portion of the climate change cases have been brought in domestic courts. However, although I draw a distinction between domestic and regional courts, what truly makes a case "domestic" is the absence of any discussion of "extraterritorial" issues.

Urgenda v. the Netherlands (Supreme Court of the Netherlands, 2019)

Although the focus of this article is on the legal treatment of the extraterritorial dimensions of climate change, any analysis of this litigation must begin with *Urgenda v. the Netherlands*. This case was brought by a group of Dutch citizens and a Dutch civil society organization seeking a judicial order to reduce the levels of greenhouse gas (GHG) emissions produced in the Netherlands. One of the main defenses offered by the government was that the country's contributions to climate change were minimal at best. However, the Dutch Supreme Court soundly rejected this argument, holding that every state's emissions, no matter how small, still contributed to climate change. The Court then ordered the government to significantly reduce its GHG emissions. It is for this reason that *Urgenda* has achieved landmark status and has served as a precedent for much of the litigation that has followed.

But how far (literally) can *Urgenda* be extended? We can be fairly certain that at least some (and probably most) of the GHG emissions that were causing harm to the Dutch claimants were produced within the territorial borders of the Netherlands. However, what also can be established with at least as much certainty is that some GHG emissions had been produced in other states. Fortunately, the Dutch Supreme Court was not deterred by this, and it ordered the Dutch state to significantly reduce GHG emissions by 2030.

Yet, while Dutch GHG emissions are having a negative effect on the citizens of that country, what also can be established is that Dutch emissions do not stay within Dutch airspace. Thus, one of the questions is how a Dutch court would respond to a case that was not brought by its own citizens, but nationals from some other country on the grounds that GHG emissions produced in the Netherlands were having a negative effect on them. Would the Dutch Supreme Court have ordered a reduction of Dutch emissions in this kind of situation as well? And if not, why not?

Milieudefensie and Others v. Royal Dutch Shell (Hague District Court, 2019)

Following in the footsteps of *Urgenda, Milieudefensie and Others v. Royal Dutch Shell* handed down by the Hague (the Netherlands) district court

in 2021 is a "domestic" case in terms of the actors involved, but with an interesting extraterritorial twist in terms of the court's extraterritorial order Similar to *Urgenda*, the claimants in *Milieudefensie* consisted of several Dutch civil society organizations representing what the district court described as "Dutch interests." It was on this basis that the court excluded ActionAid as a claimant on the grounds that this foreign-based civil society organization did not represent those "interests." Moreover, the case was "domestic" in the sense that the defendant, Royal Dutch Shell (RDS), is a Dutch-based multinational corporation.

Relying on the *Urgenda* precedent, the Hague district court ordered RDS to significantly reduce its GHG emissions. However, what is unique about the ruling is that it applied not only to RDS's operations within the Netherlands but to its business operations outside the country as well. Moreover, RDS was not only responsible for its own GHG emissions, but the emissions of those using RDS products.

This raises at least two questions. The first is whether the district court would have issued a similar ruling against some other oil company that was not based or incorporated in the Netherlands, but which did a considerable amount of business in that country. To be more specific, would the district court have issued a similar order against Total or Exxon/Mobil? And if not, why not?

A second question is what might happen if RDS ignores the court's order, at least with respect to the company's extraterritorial operations. At that point could a case be brought against the Dutch government based on its failure to regulate the extraterritorial operations of this Dutch-based company?

Neubauer et al. v. Germany (German Federal Constitutional Court, 2021)

Neubauer is a case brought by a group of German citizens but also joined by claimants from Bangladesh and Nepal against the German state on the grounds that the government's reduction target of 55% by the year 2030 will be insufficient to stay within the country's "carbon budget," thereby necessitating the adoption of drastic measures that would violate the fundamental freedoms of all Germans alive in 2030 and thereafter.

Taking an intergenerational approach, the Federal Constitutional Court held that "one generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort - if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom" (par 192). The Court then ordered the legislature to set clear reduction targets from 2031 onward. In response to this ruling, federal lawmakers have passed new legislation that requires, at a minimum, a reduction of 65% in GHG emissions from 1990 levels by 2030.

One of the more noteworthy aspects of *Neubauer* is that foreign plaintiffs were granted standing to challenge German policy. However, at the same time, the Constitutional Court also drew a distinction between German and non-German claimants. For one thing, because the breach complained of stemmed from the restrictive measures that would need to be adopted to drastically reduce Germany's GHG emissions (as opposed to the impacts of climate change), the Court concluded that the complainants living in Bangladesh and Nepal would not be affected in their own freedom in the same way as German citizens would. According to the Court:

> The situation is different with regard to the complainants . . . who live in Bangladesh and in Nepal. They are not individually affected in this respect. In their case, it can be ruled out from the outset that a violation of their fundamental freedoms might arise from potentially being exposed someday to extremely onerous climate action measures because the German legislature is presently allowing excessive amounts of greenhouse gas emissions with the result that even stricter measures would then have to be taken in Germany in the future. The complainants . . . live in Bangladesh and Nepal and thus are not subject to such measures (par. 132).

In addition to this, the Court also drew a distinction between adaptation measures undertaken within Germany as opposed to those the German government might attempt to take elsewhere.

> [W]ith regard to people living abroad, the German state would not have the same options at its disposal for taking any addition protective

> action. Given the limits of German sovereignty under international law, it is practically impossible for the German state to afford protection to people living abroad by implementing adaptation measures there. Rather it is the task of the states concerned to select and implement the necessary measures (par. 178).

While this reading of international law is certainly correct in the sense that one state cannot unilaterally intervene in another state without this state's consent, it leaves open the question whether, due to the harm that GHG emissions produced in Germany are causing foreign states - including Bangladesh and Nepal - Germany would have a legal obligation to provide adaptation measures and other forms of assistance if these other states were to demand this of the German state.

People v. Artic Oil (Norwegian Supreme Court, 2020)

People v. Artic Oil decided by the Norwegian Supreme Court in late December 2020 presents the question of how a state's contribution to climate change should be measured. The plaintiffs in this case consisted of various Norwegian environmental groups that sought to challenge the granting of oil drilling licenses that had been issued by the government in 2013 on the grounds that such actions violated Article 112 (1) of the Norwegian Constitution, which provides:

> Every person has the right to an environment that is conducive to health and to natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

Norway's GHG emissions, at least those produced within its domestic realm, are relatively small. In addition, under the Norwegian Climate Act of 2017, the government has obligated itself to achieve a 40% reduction of GHG emissions by the year 2030. On the other hand, Norway is the 3rd largest exporter of natural gas and the 15th largest oil exporter and it is estimated that GHG emissions resulting from exported petroleum are 95% higher than territorial emissions.

The Oslo district court where the case was initiated sided with the government ministry on the grounds that the national parliament had considered, but ultimately rejected, several proposals to review this previous licensing decision in light of Norway's accession to the Paris Agreement. According to the district court, the involvement of the parliament was sufficient to indicate that the constitutional obligation to protect environmental rights had been fulfilled, but also that emissions of CO2 abroad from oil and gas exported from Norway are not relevant when assessing whether the licensing decision entails a violation of Article 112.

The claimants appealed the decision to the Court of Appeals, arguing that the district court had interpreted Article 112 too narrowly in finding that Norway is only responsible for GHG emissions produced inside of Norway. The court agreed with this position, but also held that the granting of exploration licenses, by itself, will not necessarily lead to an increase in GHG emissions.

This ruling was then appealed to the Norwegian Supreme Court where the plaintiffs added to their previous constitutional complaint that the granting of these licenses would also violate Article 2 (right to life) and Article 8 (the right to respect private and family life) of the European Convention, which had served as the basis of the Dutch Supreme Court's ruling in Urgenda. With respect to the geographic scope of Article 112, the Norwegian Supreme Court adopted a "quasi-territorial" approach.

> A final question is whether it is relevant to consider greenhouse gas emissions and effects outside Norway. Is it only emissions and effects on Norwegian territories that are relevant under Article 112 of the Constitution, or must the assessment also include emissions and effects in other countries? Article 112 does not provide general protection against actions and effects outside the realm. However, if Norway is affected by activities taking place abroad that Norwegian authorities may influence directly or take measures against, this must also be relevant to the application of Article 112. An example is combustion of Norwegian-produced oil or gas abroad, when this causes harm also in Norway (par. 149).

This case has been appealed to the European Court of Human Rights. Still, several questions remain unanswered, most notably how it is to

be determined whether exports of Norwegian produced oil and gas are causing "harm" in Norway. This seems to suggest that it would be in the interest of the Norwegian government to ensure that the destination of Norwegian oil and gas is to be sent to distant lands where there would be less likelihood that the GHG emissions would make their way back to Norway. On the other hand, it could be argued, quite persuasively, that GHG emissions produced anywhere on the planet will ultimately cause harm – not only in Norway, but to every state and every individual in the world.

Regional and International Institutions

Although the vast bulk of cases have been filed in domestic courts, some of the most significant cases have either been decided by regional courts or are presently before such courts. In addition, the United Nations treaty bodies have become increasingly active in this realm as well.

Advisory Opinion of the Inter-American Court of Human Rights (2017)

Certainly, one of the most important climate change rulings was the 2017 Inter-American Court of Human Rights (IACtHR) Advisory Opinion. The legal issue in this case was the meaning of the term "jurisdiction" in Article 1 of the American Convention, which reads:

> The State Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social conditions.

Unlike the European Court of Human Rights (ECtHR) which has equated the term "jurisdiction" with a state's own territory, the IACtHR ruled that the two are not coterminous and that an individual who is residing in one state could, at the same time, be within the "jurisdiction" of some other state.

> The Court recalls that the fact that a person is subject to the jurisdiction of a State does not mean that he or she is in its territory. According to the rules for the interpretation of treaties, as well as the specific rules of the American Convention [. . .] the ordinary meaning of the word "jurisdiction," interpreted in good faith and taking into account the context, object and purpose of the American Convention, signifies that it is not limited to the concept of national territory, but covers a broader concept that includes certain ways of exercising jurisdiction beyond the territory of the State in question (par. 74).

The Court then applied this reading of Article 1 to the issue of environmental harm:

> In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage. That said, not every negative impact gives rise to this responsibility . . . . (par. 102)

Continuing:

> Accordingly, it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority. It is important to stress that this obligation does not depend on the lawful or unlawful nature of the conduct that generates the damage, because States must provide prompt, adequate and effective redress to the persons and States that are victims of transboundary harm resulting from activities carried out in their territory or under their jurisdiction, even if the action which caused this damage is not prohibited by international law. That said, there must always be a causal link between the damage caused and the act or omission of the State of origin in relation to activities in its

territory or under its jurisdiction or control (par. 103, footnotes omitted).

Based on the IACtHR's expansive reading of Article 1, an individual from one of the state parties to the American Convention could bring a case against one (or more) of the other state parties if it could be established that the policies and practices of this other state were causing substantial harm to this individual. Unfortunately, the United States, which is the second largest producer of GHG emissions, is not a party to the American Convention and therefore no matter the degree of harm caused by GHG emissions from the U.S. it would not be possible to bring a case against that country – at least before the IACtHR.

Sacchi et al. v. Argentina et al. (Committee on the Rights of the Child, 2019)

This communication to the Committee on the Rights of the Child (CRC) under the CRC's individual complaint mechanism was filed by 16 children from five different states: Argentina, Brazil, France, Germany, and Turkey. In their communication, the children all claimed to be within the "jurisdiction" not only of their own state, but within the "jurisdiction" of the other four states as well. This assertion was not contested by the CRC. Of particular note, was the CRC's wholesale adoption of the IACtHR's interpretation of the term "jurisdiction."

> Having considered the above, the Committee finds that the appropriate test for jurisdiction in the present case is that adopted by the Inter-American Court of Human Rights in its Advisory Opinion of the Environment and Human Rights. This implies that when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question. The Committee further considers that […] the alleged harm suffered by the victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction (par. 10.7).

Although the CRC adopted a liberal interpretation of the term "jurisdiction," it ultimately dismissed the communication on the grounds that the claimants had failed to exhaust domestic remedies. In doing so, it rejected the claimants' argument that due to the exigencies of climate change – as well as the lengthy period of time it would take to exhaust domestic remedies in each of these states – the Committee should be liberal on this matter as well.

One question that arises is if each of these claimants is within the "jurisdiction" of each of these other states (that is, the French claimants are within the "jurisdiction" of France, but also within the "jurisdiction" of Argentina, Brazil, Germany, and Turkey, and so on), what this would also mean is that because every country produces some level of GHG, each one of these children would be within the "jurisdiction" of every country in the world. Thus, in theory at least, a single claimant from any country should be able to bring a communication against every other state in the world (except the United States which is not a state party to the Convention), so long as this individual has exhausted the domestic remedies in his/her state.

The most disappointing aspect of the Committee's dismissal of this case is that it might well serve to limit the number of cases brought by claimants from different states, especially if the CRC insists that no communication will go forward unless and until all of the claimants involved have exhausted domestic remedies within their own state. Because of this, perhaps the best way to proceed is state-by-state. Of course, the problem with this is not only its inefficiency, but it treats an extraterritorial problem in a territorial fashion.

Although the *Sacchi* communication was dismissed, the CRC, along with the other U.N. treaty bodies, has repeatedly reaffirmed the extraterritorial nature of human rights. In its General Comment 24, the Committee on Economic, Social and Cultural Rights (CESR) stated: "The extraterritorial obligation to respect requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territory" (par. 29). More recently, in October 2018, the CESR affirmed that States parties are required to respect, protect and fulfill all human rights for all and that "They owe such duties not only to their own populations, but also to populations outside their territories,

consistent with . . . the [UN] Charter."

Similarly, the Human Rights Committee (HRC), in its General Comment 36 (Right to Life), interpreted the term "jurisdiction" in Article 2 of the International Covenant on Civil and Political Rights (ICCPR) in functional terms, referring to the ability of one State to affect the "enjoyment" of the right to life of a person living in another State:

> [A] State party has an obligation to respect and to ensure the rights under article 6 [right to life] of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably forseeable manner (par. 63).

In terms of climate change more specifically, in 2019 five U.N. human rights treaty bodies --responsible for, respectively, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD) – issued the following joint statement:

> State parties have obligations, including extra-territorial obligations, to respect, protect and fulfill all human rights of all people. Failure to take measures to prevent forseeable human rights harm caused by climate change or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.

Agostinho et al. v. Portugal et al. (European Court of Human Rights, pending)

In *Agostinho et al. v. Portugal et al.* a group of Portuguese children filed a case against 32 other state parties to the European Convention on the grounds that due to the harm caused by the GHG emissions from these other states, they were within the "jurisdiction" of these other state parties. The case is currently pending before the Grand Chamber of the European Court of Human Rights.

Similar to the American Convention, Article 1 of the European Convention uses the term "jurisdiction" but also makes no mention of the term "territory."

> The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

However, unlike the IACtHR, since its ruling in *Bankovic et al. v. Belgium et al.*, (2001) the ECtHR has given a "territorial" reading of the Convention – or what it has described as being "primarily" or "essentially" territorial. In *Bankovic*, the Court ruled that civilians living in Serbia (which at the time was not a state party to the European Convention) who were killed and/or injured in the course of a NATO bombing mission were not within the "jurisdiction" of these states parties and, in turn, it dismissed the case as being inadmissible.

Although the ECtHR repeatedly refers to *Bankovic* as "settled law," it has also recognized two exceptions to this "territorial" reading. The first is when European agents operating in some outside state have "effective control" over an individual; while the second is when one of the state parties exercises "effective control" over parts of the territory of some other state. An example of the former is the Court's ruling in *Ocalan v. Turkey* (2000) in which Turkish agents had placed Ocalan, the former PKK leader, in custody during his arrest in Kenya. The Court ruled that although Ocalan was physically present in Kenya, he was within the "jurisdiction" of Turkey, and thus protected by the European Convention.

Al-Skeini v. United Kingdom (2011) is an example of the second exception. In this case, British troops who were members of an occupying force in southern Iraq had killed six civilians, one of whom was in custody at the time death occurred. The British Supreme Court ruled that the individual in custody was within the "jurisdiction" of the United Kingdom, but that the other five who were not in custody were not. This case was appealed to the European Court of Human Rights, which ruled that based

Although climate change is the ultimate global humanitarian problem, law – and this is true not only for domestic law but for international law as well – has generally been tethered to a state's national borders.

on its role as an occupying power, all six individuals were within the "jurisdiction" of the United Kingdom. What remains unclear is whether the mere presence of British troops on the ground would be enough to warrant Convention protection, or whether this, along with the nature of its occupation status, would be required in order to rise to the level of establishing "effective control."

It is important to note that the claimants in *Agostinho* are not only requesting that the ECtHR adopt a more liberal interpretation of the European Convention, much along the lines of the IACtHR's 2017 Advisory Opinion. What the claimants are also asking for is to have the Court adopt a much broader understanding of what constitutes a state's contribution to climate change. According to the claimants, a state's contribution is made up of four different components: 1) GHG emissions produced domestically, 2) emissions from exports (which would address a situation like the *Artic Oil* case discussed earlier), 3) emissions from imports, and finally, 4) GHG emissions due to overseas financial investments made by its own citizens.

Conclusion

This article has examined the expanding role that judicial and judicial-like institutions have been asked to play in addressing climate change, with a particular focus on the extraterritorial questions raised (or those that could be raised) in such cases. Perhaps the biggest hurdle courts will face involves the notion of "territory." In particular, although climate change is the ultimate global humanitarian problem, law – and this is true not only for domestic law but for international law as well – has generally been tethered to a state's national borders.

This helps explain why so many of the cases that have been filed to date have been "domestic," where citizens of a state bring an action against their own government seeking a judicial decree ordering a reduction in GHG emissions. *Urgenda* is an example of this and courts in a few other states have followed this precedent. However, the most obvious problem is that such a state-by-state approach is extraordinarily inefficient. In addition, it is also not clear how many other domestic courts will give the same result as the Dutch Supreme Court did in this case.
What we have also seen is that some courts have attempted to deal with some of the extraterritorial dimensions inherent in climate change. Two examples of this are the *Royal Dutch Shell* case and *Neubauer*. The former because the district court's ruling applied not only to RDS's operations within the Netherlands but in its entire worldwide operations; the latter mainly because the German Constitutional Court granted standing to foreign nationals in a case directed against the German state.

Yet, even rulings that recognize the extraterritorial dimension of climate change are, ultimately, restricted by territorial considerations. Thus, while the Advisory Opinion by the IACtHR read the term "jurisdiction" in a liberal fashion, it is important to note that the case only applies to countries that are state parties to the American Convention. Likewise, even if the Portuguese claimants in *Agostinho* are successful and the ECtHR broadens its interpretation of the term "jurisdiction," at least with respect to the issue of climate change, they still would be without any form of remedy against non-European states, at least with respect to the European Convention.

One of the questions raised in both *Artic Oil* and *Agostinho* is how a state's contribution to climate change should be measured. Is this simply the GHG emissions produced within the territorial borders of that state? Or should the calculus be much broader than this, and also include exports, imports, and even financial investments made by a state's nationals that result in large-scale GHG emissions?

We will close by analyzing the National Inquiry on Climate Change Report issued in 2022 by the Commission on Human Rights of the Philippines (CHRP). In conducting its work, the Commission focused on multinational corporations that produced the greatest levels of GHG emissions. However, what was most notable is that this included not only multinational corporations that conducted business in the Philippines, but also those that did not, but whose overseas operations were causing

harm to Filipino nationals. To quote at some length from the Commission report:

> Many of the respondent oil companies also raised the issue of *territoriality* – they questioned the power of our Commission to inquire into their activities, since they did not operate within the territory of the Philippines.
>
> Stripped of legal niceties, the contention was that our Commission, or, indeed, the Philippine State, in general, may only inquire into the conduct of corporate entities operating within Philippine territory, even if the corporations' operations outside our territory were negatively impacting the rights and lives of our people.
>
> We cannot accept such a proposition (p. 4).

Continuing:

> The CHRP is mandated by the Philippine Constitution with the duty to investigate and inquire into allegations of human rights violations suffered by our people
>
> Our Commission decides on how it must perform its constitutional duty. And the performance of this duty is neither constrained by nor anchored on the principle of territoriality alone.
>
> The challenge of NHRIs [National Human Rights Institutions] is to test boundaries and create new paths; to be bold and creative, instead of timid and docile; to be more idealistic, or less pragmatic; to promote soft laws into becoming hard laws; to see beyond technicalities and establish guiding principles that can later become binding treaties; in sum, to set the bar of human rights protection to higher standards (p. 4-5).

Although its approach led to much criticism, the Commission has shown one important way of addressing climate change without succumbing to the "territorial" trap. The Commission reasoned that its mandate was to protect the Filipino people from all sources that contributed to climate change –some of which operated within the territorial borders of that country, but also those that had no physical presence in the Philippines. Yet, what this approach also does is to create a template for protecting all the earth's inhabitants.

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Since 1984, he has directed the Political Terror Scale (PTS), which measures levels of physical integrity violations in more than 185 countries (www.politicalterrorscale.org). Professor Gibney is also one of the founding members of the Extraterritorial Obligations (ETO) Human Rights Consortium, which in November 2011 produced the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (www.etoconsortium.org).

In 2011 Professor Gibney was recognized by the Human Rights Section of the American Political Science Association as a Distinguished Human Rights Scholar and in 2006 he received the International Human Rights Award from the North Carolina Coalition on Human Rights.

Sustainable Development Goals and Human Rights

Interview with Professor Nandini Ramaujam, with Ellen Spannagel
McGill University, Canada

The COVID-19 pandemic has had many repercussions around the world. What major impacts has it had on human rights in developing countries?

The COVID-19 pandemic has put a spotlight on glaring inequalities within and across societies. One thing the global health crisis has exposed is the lack of an effective social safety net for the poor and the marginalized in low and low-middle-income countries. The impact of the pandemic has been disproportionately high on some segments of the population. The rural-urban divide in terms of access to public goods and services (OECD, 2021) contributed to the undue hardship faced by rural populations. People with disabilities have experienced barriers in accessing healthcare and have been severely affected both socially and financially by the pandemic (WHO, 2020; OHCHR, 2020). Moreover, low-and-medium skilled workers have also been disproportionately impacted (ILO, 2021). The lockdown and social distancing measures to control the spread of the virus caused undue hardship for migrant workers and workers in the informal economy. Border closures resulted in migrant agricultural workers being forced to return home or prevented from traveling to work. This exacerbated food insecurity in households in low-middle-income countries that rely on remittances. The emergency pandemic measures also prevented individuals from seeking alternate sources of livelihood (Berger Richardson and Ramanujam, forthcoming 2023). To give a concrete example, the informal economy in India contributes to 80 percent of no-agricultural employment. Over 80 percent of women in the labor market in India are in the informal sector (ILO, n.d.). This large segment of the population, which to begin with lives in precarity, experienced erosion in the modest gains made in the areas of poverty reduction, education, and health by the Millennium Development Goals (UN News, 2020b). Meanwhile, higher-skilled workers have been able to access and leverage technology and benefit from training and development within the private sector (Chopra-McGowan and Reddy, 2020); Sawers, 2020).

The threadbare public health infrastructure buckled under the pressure of the pandemic, leading to catastrophic consequences, particularly for the poor and marginalized and rural populations. The unequal access to COVID-19 vaccines between high-income and low-income countries combined with a lack of capacity to organize immunization campaigns impacted the economic recovery in many contexts (Hannah Ritchie et al., 2020). Over two and a half years into the pandemic, only roughly 22 percent of people in low-income countries had received at least one dose, compared to approximately 80 percent of people in high-income countries (2020). The pandemic has highlighted the overall underinvestment in public services, particularly healthcare (UN News, 2020a).

According to World Justice Project 4.5 billion people live outside the protection of the law (World Justice Project, 2019). This vast swathe of humanity is unable to enjoy fundamental rights protection. The post-pandemic paradigm must focus on an inclusive and people-centred development agenda. Empowering individuals by enhancing their capabilities must be a priority for the global community (ILO, 2022).

Achieving the Sustainable Development Goal for Zero Hunger by 2030 seems improbable. What have been key issues, particularly concerning inequalities, that negatively impact food insecurity? What steps would you like to see taken to improve current inequalities related to food insecurity?

The economic impact of COVID-19 and rising global food prices, alongside disruptions caused by armed conflict, land degradation, and draught, are significantly impacting food insecurity (Berger Richardson and Ramanujam, 2022). Global food prices and food price inflation have risen to the highest reported levels in a decade (De la Hamaide, 2023). Conflict-driven famines in Ethiopia and Yemen have also led to extreme food insecurity (UN News, 2022). The conflict in Ukraine has put further pressure on global food security (World Food Programme, 2022). UNDP projections showed that if that conflict continues through to the 2030 deadline, nearly ninety-five percent of Yemen's population will be malnourished. Children are among the worst affected, as conflict exacerbates the prevalence of child nutrition and deepens the impact of child wasting and stunting on the development of future generations (Agnello and Ramanujam, 2020).

In striving to overcome siloed, piecemeal approaches, each of the Sustainable Development Goals (SDGs) are seen as interdependent and integral to achieving sustainable development and should be included in discussions surrounding food insecurity. Reducing violent conflict under SDG.16 is essential to effectively deliver the necessary in-kind aid. It is also critical that states recalibrate national food security frameworks around ensuring stable, uninterrupted access to food in the long term, in line with developing effective institutions of governance under SDG 16.6 (Agnello and Ramanujam, 2020). This can include cash transfer programs, which have a strong track record of curbing acute hunger among those living in extreme poverty (Agnello and Ramanujam, forthcoming).

Realizing the ambitious targets of the Sustainable Development Goal for Zero Hunger by 2030 also requires critical paradigm shifts. Historically, global food security efforts have been focused on tackling hunger and malnutrition. However, an approach that sees people as rights holders and not just as "recipients of food" necessitates a multi-dimensional awareness of food systems, alongside the interdependent factors which impact food security. Agency and Sustainability have been identified as two additional pillars of food security, along with access, availability, utilization, and stability (HLPE, 2020).

This requires tackling issues such as the ability of persons to secure adequate employment and income to purchase food, and/or whether individuals have both the rights and access to resources necessary to produce food. Other paradigm shifts include resisting the commodification of good systems, or challenges that pervade discussions surrounding food security (such as North/South; rural/urban; producer/consumer). Because we are more connected to one another as a result of economic globalization and increasing migration, these stark divisions can be challenged in food security discourse (Berger Richardson and Ramanujam, 2022).

To date, globalization has been a mixed bag of achievements. How would you grade the effects of globalization on distributive justice in developing countries?

It is well known that economic globalization has created winners and losers on the one hand, on the other, it has also brought down reduce extreme poverty globally. For example, between 1990 to 2019, the number of persons living in extreme poverty (subsisting on under $1.90 per day), decreased from 36% of the world's population to around 8% (Ciravegna and Michailova, 2022). The World Bank has argued that the global reduction in extreme poverty can be largely attributed to progress in India and China (Ramanujam, Caivano, and Agnello, 2019). In the case of China, its strong, state-led development has allowed the country to capitalize on globalization by attracting industry with its relatively low wages and robust infrastructure (Ramanujam and Farrington, 2022). By investing in its higher-value industries, such as electronics and machinery, China has been able to retain a competitive edge on the

global market and create the conditions to invest in its formal institutional structures (2022). However, “the way in which China implemented policies that allowed it to take advantage of the rise of globalization may not be easily copied by other countries, given the ever-shifting global economic landscape" (Ramanujam, Caivano, and Agnello 2019, 496).

While globalization has reduced inter-country inequalities, intra-country inequalities have increased in many developing countries (Ciravegna and Michailova, 2022). Scholars have identified the source of rising income inequality within East Asian economies as globalization and technological change in the absence of income-equalizing policies that improve equal access to education (Lee and Lee, 2018). In the case of India, deepening inequality “indicates that the benefits of India’s remarkable economic growth have not ‘trickled down,’ particularly among its most vulnerable and marginalized population” (Ramanujam, Caivano, and Agnello 2019, 496). Advanced industrialized economies have also witnessed a sharp rise in inequality (OECD, 2011). Such intra-country inequalities demonstrate that without a strategic state which makes proactive and sustained investments in human capital and a strong safety net in developing countries, the most vulnerable will not benefit from economic globalization (Ramanujam and Farrington, forthcoming 2023).

Globalization has also resulted in a communication technology revolution that comes with its own opportunities and challenges. On the one hand, technological developments have afforded great opportunities to high skilled workers; on the other hand, it has enabled more precarious and casual forms of labor to be performed through digital platforms (Radoslaw et al., 2021). Many laborers within the gig economy are outside of the protection of the law and are not able to access workers’ associations or unions (Adams et al., 2018, 478). However, when technology is managed strategically by a state that both respects the rule of law and engages with the needs of diverse market actors, it need not be a primary driver of inequality (Ramanujam and Farrington, forthcoming 2023). Ultimately, while market-creating and supporting institutions may strongly predict the economic potential of a given nation, the strength of market legitimizing (Rodrik and Subramaniam 2003) and market-engaging institutions (Ramanujam and Farrington, forthcoming 2023) can explain inequality between nations.

... while CCS will be important for decarbonizing difficult sectors including cement and steel, it is currently within a CCS industry self-imposed ‘valley of death’ in failing to leap frog into the future net zero envisioned world.

You are a co-investigator with the Disability-Inclusive Climate Action Research Programme and Executive Director of the Centre for Human Rights and Legal Pluralism (CHRLP). What states would you highlight for assisting the disabled? What major improvements would you like to see from international non-state actors to assist the disabled?

Stigma, discrimination, attitudinal, physical, and structural barriers have prevented people with disabilities from fully participating in political, economic, and cultural life. Eighty percent of the global population with disabilities lives in low-middle-income countries where there is an inextricable and circular relationship between poverty and disability (UN, n.d.). The paradigm-shifting human rights model of disability is pushing for creating an enabling environment for people with disabilities, which is considered as world’s largest minority group, for their participation as empowered citizens. Without a voice and participation in the processes that impact their lives, people with disabilities have been treated as agency-less recipients of the benefits of development (Markus, 2014). Despite these participation failures, people with disabilities “continue to be at the forefront of creating, designing, and advocating for policies, practices, and technologies that enable them to overcome barriers, live autonomously and with dignity, and transform the spaces, cultures, and institutions that they interact with” (Jodoin, Ananthamoorthy and Lofts, 2020, 110). People with disabilities, disabled people’s organizations (DPOs) and their allies, and local and international civil society organizations have become significant actors in pushing for a

disability-sensitive institutional architecture that would enable inclusive development. However, a top-down approach to political empowerment pursued by global and regional civil society organizations has also drawn criticism for undermining the expression of voice and agenda-setting by the grassroots (Meyers, 2014).

The inclusive, rights-driven frameworks of development focus on the expansion of the capabilities of people with disabilities by equipping them with the necessary support to empower their agency. A disability-inclusive development agenda ought to be informed by rights enshrined in the UN Convention on the Rights of Persons with Disabilities (CRPD), in conjunction with Amartya Sen's capabilities approach to development (Caivano and Ramanujam, forthcoming 2023).

Instead of discussing development within a context of assistance, the concept of empowerment has represented a profound shift in international development discourse. Empowerment focuses on creating an enabling environment for people of all abilities to claim their rights and shape the conditions that affect their lives in the process (OHCHR, 2020). For example, in the context of food security, policies and initiatives should strive to create enabling environments where people can access culturally appropriate, nutritious, and sustainable food by exercising their agency (Berger Richardson and Ramanujam, 2022). This approach takes inspiration from Amartya Sen's capabilities approach, which consists of three interconnecting and mutually reinforcing components: capabilities, functioning, and agency (Sen, 2000; Alkire and Deneulin, 2009). In the context of development, Sen's capabilities approach highlights that people with disabilities should be perceived as active participants in their own development, not mere recipients of government programs (Berger Richardson and Ramanujam, 2022).

The CRPD adopts Sen's capabilities approach by moving away from the medical model of disability and embracing the social model's focus on "capability, inclusion, individual dignity and personal autonomy of the person" (Kothari, 2010, 67). The rights enshrined in the CRPD cannot be realized if state failures prevent people with disabilities from meaningfully exercising their capabilities within development and human rights discourse. Consequently, the CRPD provides a strong basis to undergird the obligation of states to include people with disabilities in development decision-making (Caivano and Ramanujam, forthcoming 2023). Any policy designed to meet development objectives necessitates empowering people with disabilities to meaningfully address their own diverse and intersectional needs through their direct inclusion and participation within development programs.

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Ellen Spannagel is a research assistant, consultant, and a BCL/JD candidate at McGill University's Faculty of Law. She has previously worked for organizations such Human Rights Watch, Forum for Human Rights, and the Canadian Centre for Elder Law on topics including climate justice, disability justice, and the rights of aging communities. She also holds an undergraduate degree in Journalism and Humanities from Carleton University.

Death Penalty Lingers in U.S. Amid Efforts to End It Worldwide

Professor Rick Halperin
Southern Methodist University, United States

October 10 came and went as this country observed Indigenous Peoples Day. For much of the world though, it was remembered and celebrated as the 20th anniversary of World Day to Abolish the Death Penalty.

Most Americans, other than those in the anti-death penalty community, were and remain unaware of that date. Efforts to end the death penalty were not helped by the media's neglect. Here in Texas, there were very few articles even referring to the global effort to end the scourge of the death penalty.

Only five days earlier, on Oct. 5, Texas carried out its third execution of the year. Two more are scheduled in November.

On June 29, 1972, the U.S. Supreme Court halted national executions with the Furman vs. Georgia decision. The moratorium would remain in place for almost four and one-half years. During America's bicentennial celebration, the court ruled on July 2, 1976, in Gregg vs. Georgia, that executions could resume, albeit under more narrowly defined capital sentencing requirements.

Gary Gilmore, an inmate on death row in Utah, voluntarily gave up his remaining appeals and became the first condemned individual to be put to death in the U.S. in the modern era when he was shot to death on Jan. 17, 1977, by a firing squad inside the Utah State Penitentiary.
No one was executed in 1978, but executions gradually became more common and hit double digits in 1984 when there were 21 nationwide. Executions peaked in 1999 at 98. Despite the annual decline in executions since then, the U.S. has still conducted double-digit executions annually, including 11 last year and 11 thus far this 2022, with 9 more scheduled before the end of the year.

Perhaps not surprisingly, California, Florida, and Texas — the three most populous states — have the leading death row populations, with 687, 305, and 195 respectively. Nationally, almost 2,400 people are condemned to death, waiting for execution in 27 states, as well as at Fort Leavenworth, Kan., site of the military death row facility, and in Terre Haute, Ind., where over 40 men are waiting under a federal sentence of death.

Most of those currently condemned have much in common: They are men, overwhelmingly poor with little formal education, and are afflicted with serious (and sometimes profound) mental health issues. And most are guilty of the heinous crimes for which they are charged and convicted. They are responsible collectively for a great deal of anger, hurt, pain, and loss that runs rampant in our society.

Most of those currently condemned have much in common: They are men, overwhelmingly poor with little formal education, and are afflicted with serious (and sometimes profound) mental health issues.

It is estimated that up to 15 percent of those waiting to die in this country are innocent of the crimes for which they have been convicted. That translates to over 350 innocent people who are waiting to be killed. Over 180 innocent people have already been freed from various state death rows.

Since Gilmore's execution 45 years ago, the nation has executed 1,551 people, including a whopping 576 condemned men and women in Texas. That figure makes the state not only the leading execution jurisdiction in this country but the leading killing jurisdiction in the entire free world. The U.S. has more methods of execution than any country in the world. We kill the condemned with electric chairs, firing squads, gas chambers, hanging, and lethal injection. Some states (Alabama and Oklahoma in particular) have recently tried (unsuccessfully) to enact killing condemned inmates via nitrogen hypoxia, a method of suffocating a person by forcing them to breathe pure nitrogen, starving them of oxygen until they die.

According to the human rights organization Amnesty International, there were 579 executions in 18 countries last year, a 20 percent increase from the year before, and 2,052 death sentences, a 40 percent increase from 2020.

Over 80 percent of global executions occur in a handful of countries, including Egypt, Iran, and Saudi Arabia. (China is the annual leader in global executions but is never included in those statistics since the country does not openly report such events).

The four primary methods of execution in the world last year were beheading, hanging, lethal injection, and shooting.

However, the global campaign and trends to abolish the death penalty have been more successful in the 40-year span of 1982-2022. An average of four countries a year continue to abolish the death penalty for all crimes so that over two-thirds of the countries in the world no longer carry out executions in the name of the law.

The struggle to help end one of America's longest-running institutions will go on. I would argue that no country, and certainly not our own, can ever be "good" on its overall human rights record so long as it continues to be wedded to the preposterous idea and practice that some people "deserve" to be killed in the name of the law. Society has a right to be protected from its violent transgressors, but exacting the death penalty upon felons who commit such outrages against society is an inhumane solution.

Is executing a small number of individuals, with the above-named methods, the best response to violent crime this country can muster? If so, why is this the best we can do?

If executing people is not the best response our country can produce, then why are we doing it?

Why do we cling to a system riddled with mistakes, that is systemically racist, ineffective, and incapable of solving the larger issues of violent crime in this country?

We need more human rights education in general, and about the merits of the death penalty in particular. We must get beyond the raw and painful emotional responses to violent offenders and seek to enact meaningful solutions that can produce a better and safer society.

Perhaps by Oct. 10, 2023, when we commemorate World Day to Abolish the Death Penalty again, this country will be more advanced in its efforts to end these barbarous execution methods and practices, and closer to the fulfillment of the essential truth of human rights, namely: there is no such thing as a lesser person.

Professor Rick Halperin is Director of the Southern Methodist University Human Rights Education Program. He has served on the Board of Directors of Amnesty International USA from 1989-1995, and again from 2004-2010; served as Chair of the Board from 1992-1993 and again from 2005-2007. He is also a member of the National Death Penalty Advisory Committee, the National Coalition to Abolish the Death Penalty and the Texas Coalition to Abolish the Death Penalty (serving as President from 2000-2006 and from 2007 to present).

Professor Halperin has been involved in many human rights monitoring projects, including an Amnesty International delegation which investigated the conditions of the Terrell Unit (Texas death row facility) in Livingston, Texas. He also participated in a U.N. Human Rights delegation and inspected prison conditions in Dublin, Ireland, and Belfast, Northern Ireland for a report by the Irish Prison Commission, and he participated in a human rights monitoring delegation in El Salvador in 1987.

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Institutionalizing National Human Rights: Origins, Developments, and Transformations

Interview with Professor Sonia Cardenas
Trinity College, United States

The United Nations Human Rights Council was formed in 2006 to promote universal respect for the protection of human rights. How would you assess its progress? Shortcomings? More broadly, how can the UN and other international organizations improve positive responsiveness to human rights issues?

A U.N. body is always an intergovernmental one; it cannot rise above the state interests of its individual members. The expectations made of the Human Rights Council (like the expectations made of the United Nations itself) have in many instances been unrealistic and bound to disappoint. They have also been defined in vague and lofty terms that can't be readily assessed.

We should approach these bodies as complex organizations, and in this sense, we shouldn't underestimate the work that institutions like the U.N. Human Rights Council perform. We know from research across fields that organizations can play useful functions in enhancing cooperation, including solving coordination problems, enhancing trust, and reducing uncertainty. While human rights problems are not always thought of in these terms, fifteen years after its creation, the UN Human Rights Council has worked in ways that certainly increase the flow of information and make incremental improvements possible.

Most importantly, the Human Rights Council introduced the system of Universal Periodic Review (UPR) and it has given substantial access to members of civil society, which can exert influence through avenues such as the Special Procedures mechanism. If these perhaps stand as the Council's greatest accomplishments, it is also true that the Council has not overcome the structural limitations of membership based on politically driven elections, which inevitably will continue to translate into bias and blind spots.

Have human rights practices around the world improved due to the Human Rights Council's work? That may be the wrong question to ask. No intergovernmental organization can promote respect for human rights protection in a way that directly improves conditions on the ground. Rather, human rights change is incremental and systemic, mobilizing a multiplicity of actors who operate in tandem. The reports produced through the UPR mechanism, for example, are used by human rights advocates to apply pressure; and even symbolic concessions taken in response to such pressures can lead to improvements for individuals, which should never be ignored.

So often we imagine human rights improvements as dramatic moments of transformation, sometimes linked to changes in regime or national elections. But human rights violations are also far more intimate than that and involve harm to human beings. While not always possible to track causally, the work of the UPR and Special Procedures has increased information flows, which in turn are critical for applying concrete pressure. Any resultant changes, however small, can contribute to more humane treatment.

Your book, *Chains of Justice: The Global Rise of State Institutions for Human Rights*, explores national human rights institutions, their histories and effectiveness. Currently, there is no national human rights institution in the United States. Do you believe there should be?

The framework of *human rights* has not permeated the United States to the same extent as notions of civil rights. Partly, this reflects historically embedded notions about the extent to which all persons should be entitled to certain economic and social benefits. My view is not so much that there should be a national human rights institution (NHRI), but that creating an internationally accredited body known as an NHRI is highly unlikely at this time.

Many people don't realize that there already is a broad network of local NHRIs in the United States, which have a fascinating history. In fact, over 100 human rights commissions and similar entities exist at the state or municipal level. Although these bodies focus more narrowly on issues of equal opportunity and anti-discrimination, they have been meeting since 1949 as the International Association of Official Human Rights Agencies (which includes Canadian human rights bodies and Bermuda's Ombud).

The origins of these institutions vary, as I trace in my book. Some of them have roots in the race riots and regional wartime economies of early twentieth century America. Others proliferated in the 1960s, when U.S. civil rights activists increasingly adopted international human rights discourse. At the national level, the creation of the Civil Rights Commission was framed in terms of domestic issues but for President Truman and others, it was also very much connected to global standing in a Cold War context.

While a group of lawyers and advocates have called for an NHRI in the United States in recent years, my research suggests that this is highly unlikely to gain traction unless the country were to ratify the International Covenant on Economic, Social, and Cultural Rights, which itself would depend on unprecedented partisan support. Treaty ratification would in turn trigger the need to localize and institutionalize international human rights standards in national legislation so they could be domestically enforced. This is unlikely to occur any time soon.

What makes NHRIs so intriguing, however, is their role as complex bodies producing complex outcomes. As quasi-state agencies, they operate within the state while also standing apart from it. Having an NHRI can advance accountability, providing official documentation of abuse, shaping remediation, and influencing prevention. From a global perspective, it would also be valuable for the United States as a world leader to participate in NHRIs forums.

Absent the creation of an NHRI (or the expansion of the U.S. Civil Rights Commission), what is to be done? How, if at all, could the language of human rights be used constructively in the U.S. context, tapping into broader international discourses and appealing to conceptions of shared humanity? In a polarized world, the power of reframing should never be overlooked.

The Human Right Watch World Report 2022 reported numerous issues that have appeared and magnified in Latin America over the last few years. What issues concern you the most?

All human rights abuses should concern us, of course, as the region continues to see its share of turmoil alongside real progress.

First, there are ongoing issues that violate the physical integrity of people taking the form of physical violence, including extrajudicial killings and arbitrary detention. While the region has made enormous strides in the past few decades, pockets of violence are serious cause for concern.

Second, there are issues involving failing democratic institutions, including ongoing impunity, weak accountability, and systemic corruption. These practices hamper real progress under democracy, as Kenneth Roth elaborates clearly in his opening essay to the 2022 Human Rights Watch Report.

Third, and relatedly, deep inequality and poverty continue to disproportionately harm people across the region based on their social identity, whether women, indigenous people, or LGBTQ+-identifying persons, who are treated differently and often lack access to basic services and opportunities that would allow them to live lives of dignity. All these issues are magnified by a regional and global context of widening social polarization.

In the second edition of my book *Human Rights in Latin America*, which came out last year, Rebecca Root and I argue that the region has undergone remarkable transformation in human rights practices over the

> *[Latin America] has undergone remarkable transformation in human rights practices over the past several decades.*

past several decades. This progress is very much worth marking and celebrating. The persistence of the egregious human rights problems we see are at least now openly visible and deemed unacceptable.

Against this backdrop, a fundamental concern, I believe, is how—despite entrenched polarization—demands for equitable and inclusive change will succeed without being met by violence. As the Human Rights Watch Report suggests, the answer lies with ensuring that more consistent democratic practices are meaningfully institutionalized and thus sustainable.

In the United States, women's rights has seen some steps forward. While far from being fully achieved, these include efforts to close the pay equity gap and ending gender-based discrimination. On the other hand, it could be argued, women's rights has been weakened by the fallout from the Supreme Court decision to overturn *Roe vs. Wade*. How would you characterize the state of women's rights in the U.S. currently?

Equal treatment is in theory quite simple: it carries an obligation not to treat people differently based on their identity. In the case of women rights, it's quite common to hear observations that "we've come a long way" or "it isn't as bad as it used to be." When women hear these phrases, it often reinforces the view that they really aren't seen as equal.

We need to be more direct with what we mean when we speak of women's rights or the rights of any other identity-based group, including those who identify as LGBTQ+. Fundamentally, women's rights are premised on a simple but daring assertion: all human beings have equal worth and value. For this reason alone, and simply by virtue of being human, they should be treated equitably and have access to the same opportunities. As we've all heard since Hillary Rodham Clinton famously declared it almost three decades ago at the World Conference on Women in Beijing, "women's rights *are* human rights."

In the United States as elsewhere, we understandably politicize these debates. What has made the Supreme Court's decision so painful to so many, I think, is that in historical terms, it is quite challenging to take away rights that have been won after long periods of advocacy and struggle. Losing a right recently gained is hard. It's a gut-wrenching blow to all women and girls who believe they are equal to men and should be able to make decisions over their own bodies and about their own lives. People may disagree over *Roe v. Wade*, while still understanding this sense of loss and fear.

Rights are always political, and they are also deeply personal. The state of women's rights isn't simply a tally sheet of wins and losses. It's evident in the everyday experiences of women and girls who are treated differently, often in small and invisible ways. If that's the touchstone for the state of women's rights, we still have a long way to go.

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Two Years On, Why Hasn't Anyone Been Prosecuted for Domestic Terrorism for the January 6, 2021 Capitol Attack?

Professor Lyal S. Sunga
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Recognizing the Capitol Attack as 'Domestic Terrorism' is of Capital Importance

The January 6, 2021 Capitol attack was not random people committing felonies and misdemeanors nor as former President Donald J. Trump claimed 'a simple protest that got out of hand'. It was a premeditated, planned, organized, concerted and intensely violent onslaught that succeeded in interrupting the peaceful transfer of presidential power - among the most important of American constitutional democratic processes - and many called it a 'domestic terrorist attack'.

But not everyone considers the January 6 attack to have been 'domestic terrorism', or for that matter, even a bad thing. Despite considerable bipartisan outrage in the immediate aftermath of the attack, much of the Republican establishment soon engaged in a campaign of denial, deception, deflection, and dissimulation. A December 2021 CBS poll discovered that 47% of Republicans considered the attack 'patriotism' and 56% about 'defending freedom'. A substantial part of the American electorate continues to lap up Trump's election lies, rampant right-wing disinformation and oddball conspiracies spun and promoted by white supremacists and far-right ideologues.

The Capitol attack seems easily to fit U.S. legal definitions of 'domestic terrorism', yet more than two years on, nobody has been charged with that. In contrast, Barry Croft Jr. and Adam Fox were sentenced to 19 years and 16 years imprisonment respectively in federal court on December 28, 2022 on domestic terrorism charges for plotting to kidnap Michigan Governor Gretchen Whitmer. In connection with the same plot, Michigan Jackson County Circuit Court sentenced Pete Musico, Joseph Morrison and Paul Bellar to 12, 10 and 7 years imprisonment respectively for providing material support to terrorism.

The Final Report of the House Select Committee to Investigate the January 6th Attack on the United States Capitol barely mentions 'domestic terrorism'. It focuses almost entirely on President Donald J. Trump's role, instead of analyzing how American white supremacist ideology, and its cousin, violent right-wing extremism, were direct and proximate causes for the assault on American democracy.

Unless the Capitol attack is understood clearly as domestic terrorism rooted in enduring right-wing white supremacist subculture and the activities of violent hate groups and criminally prosecuted as such, America's democratic governance, rule of law and equal protection of the laws will remain more vulnerable to similar assault in future.

Republicans Equivocate on the Question of the Capitol Attack as 'Domestic Terrorism'

Despite in-plain-sight warnings piling up for several of the preceding months, the January 6, 2021 Capitol attack instantly shocked people for its brazen violence and miserably weak law enforcement response. Right away, many said it looked like a domestic terrorist attack. As violence broke out, former Trump communications director Hope Hicks messaged Ivanka Trump's chief of staff Julie Radford: "We all look like domestic terrorists now". Congressman Jim McGovern tweeted that evening: "This is not a protest. It is a terrorist attack on our democracy." Many other politicians chimed in with similar comments. Others however, went immediately into overdrive to deflect blame onto supposed left-wing

agitators. Republican Matt Gaetz and dozens of other Trump supporters spread falsehoods that the rioters "were members of the violent terrorist group antifa", a conspiracy theory Fox News's Laura Ingraham and Sarah Palin picked up and repeated to millions of viewers and followers on the evening of January 6. In a January 12 private conversation with then-House Minority Leader Kevin McCarthy, Trump said Antifa was responsible for the violence, a debunked claim he kept repeating for months afterwards. Two months after the attack, a Suffolk University / USA Today poll found that around half of Trump voters believed that it was "mostly an antifa-inspired attack" in spite of definitive evidence to the contrary, including from many of the rioters themselves.

In the days after the attack, many Democrats and Republicans alike denounced the violence as 'domestic terrorism', including President Joe Biden, then-House Speaker Nancy Pelosi, and Republicans Senate Minority Leader Mitch McConnell and then-House Minority Leader Kevin McCarthy. Republican Senator Lindsey Graham exclaimed: "Yesterday they could have blown the building up. They could have killed us all". Graham referred to those who had occupied the House floor as "terrorists, not patriots". Leading intelligence figures and experts, including FBI Director Chris Wray and former CIA Deputy Director Mike Morell, labelled it 'domestic terrorism'.

Then, many Republicans began to minimize the gravity of the attack and downplayed its danger to American democracy. Some spread outright lies or tragic-comically contradicted themselves. Georgia Republican Congressman Andrew Clyde blatantly lied to a May 13, 2021 House Oversight Committee hearing that: "the House floor was not breached", "it was not an insurrection and calling it an 'insurrection' is a boldfaced lie" and that the Capitol riot actually resembled a 'normal tourist visit' - despite Clyde himself having helped physically barricade the House door against rampaging rioters trying to smash their way in.

Senator Ted Cruz, who led an effort to delay the election certification process for 10 days, displayed stunning self-contradiction that stands in a class of its own. Starting from the day after the attack, Cruz consistently called the riot 'a terrorist attack' in a series of media interviews. On February 13, 2021, he released a written statement: "As I've said repeatedly, what we saw on January 6 was a despicable terrorist attack on the United States Capitol and those who carried it out should be prosecuted to the fullest extent of the law." To a January 5, 2022 Senate Rules Committee Hearing, Cruz reiterated that it was "a violent terrorist attack on the Capitol". Then the very next day - first anniversary of the attack - in an attempt to mollify irate conservatives, Cruz stooped to calling his own characterization of the attack 'sloppy' and 'frankly dumb' in a cringeworthy exchange with Fox's Tucker Carlson who had angrily challenged the 'domestic terrorism' label. Other Republicans tried hard to whitewash January 6, despite hundreds of cell phone and helmet cam clips taken by the rioters themselves showing the violence and destruction up close. E-mails that Dominion Voting's 1.5 billion defamation lawsuit against Fox News brought to light in mid-February 2023 show that Rupert Murdoch, Tucker Carlson, Laura Ingraham, Sean Hannity, Maria Bartiromo, Lou Dobbs and other top Fox personalities, privately ridiculed Trump's election lies during and after January 6 while they propagated the very same lies in their public broadcasts – a galling display of Fox's apparently purposeful and dishonest role as amplifier of false right-wing conspiracy theories.

No wonder that a year after the attack, so much of the American public remained utterly confused about whether or not the Capitol attack was domestic terrorism as an Angus Reid poll found: "While one-quarter (24%) of those who voted for Trump in 2020 agree that the storming of the Capitol was domestic terrorism, still seven-in-ten (68%) disagree" - "a significant difference from the near unanimity voiced by President Joe Biden's voters (92%) in believing that term is appropriate".

The House Select Committee Did Not Refer Trump to be Prosecuted Criminally for 'Domestic Terrorism'

On June 30, 2021, the House of Representatives adopted Resolution 503 with 222 votes in favor (all Democrats except for Republicans Liz Cheney and Adam Kinziger) and 190 against (all Republicans) that established a bipartisan Select Committee to "investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021 domestic terrorist attack upon the United States Capitol Complex". The Committee's 845-page Final Report of December 22, 2022, said the totality of the evidence "led to an overriding and straight forward conclusion: the central cause of January 6th was one man, former

President Donald Trump, whom many others followed" to implement a multi-part plan to subvert the peaceful transfer of presidential power from Trump to Biden. In its report, the Committee details the execution of this plan which comprised: Trump's Big Lie that the election vote-counting process was fraudulent and that he had in fact won the election; Trump's attempt to corruptly persuade Vice President Mike Pence not to perform his ministerial function to certify the slate of electors in favor of Joe Biden; Trump's efforts to pressure 7 states to change the election outcome from Democrat to Republican by creating and transmitting fake election certificates; Trump's attempts to corrupt the Department of Justice; Trump's summoning of a mob to Washington DC knowing they were angry and armed and then instructing them to march to the Capitol; Trump's dereliction of duty for remaining silent for 187 minutes during the attack itself; and following January 6, Trump's unwavering insistence he had won the election when he had actually lost.

The Select Committee, itself without enforcement power, issued referrals recommending that the Department of Justice criminally prosecute Trump for: obstruction of an official proceeding (for trying to derail the certification process); conspiracy to defraud the United States on the election result; conspiracy to make a false statement (for the fake electors scheme); and inciting, assisting or providing aid and comfort to an insurrection using speech not protected by the First Amendment. The referral on incitement relates to Trump's one-hour-and-14-minute rant begun at 11:57 a.m. at the Ellipse just 2 miles from the Capitol Building where he declared he had won the election 'by a landslide', that 'big tech' had 'rigged it like they've never rigged an election before' and that 'our election victory [was] stolen by emboldened radical-left Democrats' and 'the fake news media'. For the cherry on top, Trump added that: "All Vice President Pence has to do is send it back to the states to recertify and we become president and you are the happiest people". He told the crowd that "you'll never take back our country with weakness", "You have to show strength and you have to be strong", "We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated" and that 'we're going to walk down to the Capitol', 'to peacefully and patriotically make your voices heard'.

The Committee's report sheds light on the symbiotic relationship between President Trump and Proud Boys, Oath Keepers, Three Percenters, Qanon, Groypers, and other violent right-wing extremist groups and their sympathizers as well as apparent Trump-right-wing-militia coordination that was orchestrated through Trump surrogates Roger Stone (convicted of 7 felony offenses and whom President Trump then granted a full and unconditional pardon) and former General Mike Flynn (who pled guilty to lying to the FBI, then was pardoned for it by President Trump). In concentrating mainly on Trump as the central cause of the Capitol attack itself and in omitting to analyze in any serious way the domestic terrorist threat posed by right-wing extremism as a clear and present danger to American democracy, the rule of law and equal protection of the laws, the Committee exhibited grievous misjudgment.

Bottom line? Although the Select Committee was mandated to investigate the "domestic terrorist attack upon the United States Capitol Complex", it did not refer Trump, or for that matter anyone else, to the Justice Department for domestic terrorism prosecution. The Committee at least referred Trump for inciting an insurrection, but whether the Department of Justice decides to proceed on that basis remains to be seen.

Instead of Domestic Terrorism Prosecutions, Lenient Treatment

The day after the attack, former Acting U.S. Attorney for the District of Columbia Michael Sherwin said: "Charges such as seditious conspiracy, rioting and insurrection will be considered if warranted". The Capitol 'riot' was the product of 'seditious conspiracy' which is defined as conspiring to overthrow, put down, destroy or use 'force to prevent, hinder, or delay the execution of any law of the United States'. Several rioters already have been charged and convicted for that offense. As for 'insurrection', case-law establishes that no intention to overthrow the government is necessary. Insurrection only has to involve the use of force or intimidation to resist or nullify a particular law for a public purpose, such as trying to redress a real or imagined grievance or injustice rather than for some private motive. The Capitol attack is commonly referred to as an 'insurrection', but two years on, no one has been charged for 'insurrection'.

In fact, by February 2023, the majority of Capitol attack offenders had received no jail time whatsoever. Those who did, received relatively short sentences. Capitol rioters have been not charged with domestic terrorism

offences, but for more run-of-the-mill misdemeanors and felonies.

Consider a few of the more serious cases tried thus far. Texan Guy Reffitt - the first rioter to be prosecuted - was a member of the Three Percenters Militia and a recruiter for the violent extremist group. Equipped with body armor, handguns, flexi-cuffs, communication radios, megaphone, and camera-equipped helmet, he stormed the Capitol on January 6. The prosecution proved Reffitt was on a mission to disrupt Congress and to physically attack House Speaker Nancy Pelosi and Senate Majority Leader Mitch McConnell. On March 8, 2022, a jury found Reffitt guilty on all counts. On July 15, the prosecutor requested the judge to apply a sentence of 15 years, citing federal terrorism sentencing enhancement guidelines, but U.S. District Court Judge Dabney Friedrich refused this request and he declined to call Reffitt a 'domestic terrorist'. On August 1, 2022, Reffitt was sentenced to 7 years and 3 months imprisonment, not for domestic terrorism, but for the relatively mundane offenses of transporting a rifle and semi-automatic handgun for the purpose of 'civil disorder', 'obstruction of an official proceeding', 'entering or remaining in a restricted building or grounds with a deadly or dangerous weapon', 'interference with a law enforcement officer during a civil disorder' and 'obstruction of justice by hindering communication through force or threat of physical force'.

Similarly, on September 1, 2022, former marine and retired NYPD officer Thomas Webster was sentenced for having brutally tackled Capitol Police Officer Noah Rathbun on January 6, choking him and forcing him to the ground, which allowed others in the mob to kick Rathbun while he was down. Webster was sentenced to 10 years imprisonment for the felonies of "assaulting, resisting, or impeding officers with a dangerous weapon; obstructing officers during a civil disorder; entering and remaining in a restricted building or grounds while carrying a dangerous weapon; engaging in disorderly or disruptive conduct in a restricted building or grounds, while carrying a dangerous weapon, and engaging in physical violence in a restricted building or grounds, while carrying a dangerous weapon" and for one misdemeanor. In another case, co-defendants Julian Elie Khater and George Pierre Tanios pled guilty to spraying Officer Brian Sicknick with a chemical substance. Each faced a maximum of 20 years imprisonment and at the time of writing, sentencing was pending. Sicknick collapsed 8 hours after the attack and died the next day. The D.C. Medical Examiner's Office determined that Sicknick's death occurred not from any injury, but from several strokes, and therefore from 'natural causes', which precluded homicide charges.

Although Reffitt, Webster, Khater and Tanios were sentenced to serious jail time, their sentences likely would have been much more commensurate with the seriousness of their crimes if federal sentencing guidelines for terrorism had been applied. Compare their treatment to persons convicted of terrorism in relation to ISIS or Al Qaeda or in relation to domestic terrorism in some other contexts. Cesar Sayoc got 20 years imprisonment for mailing pipe bombs to President Barack Obama, President Bill Clinton, Vice President Joe Biden, Secretary of State Hillary Clinton, CNN and others. Even climate change activist Jessica Reznicek was sentenced as a domestic terrorist to 8 years in prison and ordered to restitute $3.2 million for "damaging and attempting to damage the pipeline using an oxy-acetylene cutting torch and fires near pipeline instrumentation and equipment in Mahaska, Boone, and Wapello Counties within the Southern District of Iowa". Upon Reznicek's sentencing, FBI Special Agent Kowel declared that: "Protecting the American people from terrorism – both international and domestic – remains the FBI's number one priority. We will continue to work with our law enforcement partners to bring domestic terrorists like Jessica Reznicek to justice. Her sentence today should be a deterrent to anyone who intends to commit violence through an act of domestic terrorism." How a seriously misguided climate change activist could be prosecuted as a domestic terrorist while no Capitol attackers were even charged with terrorism offenses, remains mystifying.

Two years on, Capitol rioters have received remarkably lenient sentences despite the gravity of their attack against the heart of American democracy and the rule of law. The Washington Post reported that by January 2, 2023, 357 out of 932 individuals had been charged federally for the Capitol attack, and only 5 were convicted of seditious conspiracy. It noted that of "more than 460 people charged with felonies, only 69 have been convicted and sentenced so far, mostly for assaulting police or obstructing Congress; all but four have received jail or prison time" and that the average prison sentence for a felony conviction so far is 33 months". The Post contrasted the D.C. District Court Judges' strong verbal condemnation for convicted defendants at trial with their actual

sentencing which averaged only 48 days and in the great majority of cases, below that recommended by federal prosecutors and sentencing guidelines. Intriguingly, the Post found that judges appointed by Democratic presidents ordered jail or prison sentences in 61 percent of Capitol attack cases and probation in 18 percent of cases, whereas Republican-appointed judges sentenced people to jail in only 48 percent of cases, and opted for probation twice as often as Democratic-appointed judges did.

Politico noted that: “In court filings, prosecutors have been exceedingly vague about their decisions not to seek terrorism-level punishment in the handful of Jan. 6 felony cases that have gone to sentencing” and that “Sentencing memorandums filed by prosecutors in at least five such cases use the same boilerplate language, stating that the government is not pursuing the enhancement ‘based on the facts and circumstances of’ the case.”

Compare sentences of Muslims for plotting, attempting or providing material support to ISIS (“Islamic State in Iraq and al-Sham”), a foreign terrorist organization. In December 2022, 27 year-old Queens resident Parveg Ahmed was sentenced to more than 12 years imprisonment for having “attempted to travel to Syria to join ISIS”. Mustafa Mousab Alowemer, 24, of Pittsburgh, received 17 years in prison for providing material support to ISIS to attack a church. Uzbekistan national and resident of Chicago Dilshod Khusanov was sentenced to 11 years imprisonment for raising money for ISIS, and Abdurasul Juraboev, Akhror Saidakhmetov, and Dilkhayot Kasimov got 15 years imprisonment for conspiring to provide material support to foreign terrorists. U.S. national Bernard Raymond Augustine and lawful permanent resident Yemeni Mohamed Rafik Naji were each sentenced to 20 years imprisonment for attempting to provide material support to ISIS. Ali Saleh, an American from Queens, New York, got 30 years’ imprisonment for having “made numerous attempts to travel overseas to join ISIS, and when those efforts failed, attempted to assist others in joining the terrorist organization”. Former U.S. Air Force mechanic Tairod Pugh received a sentence of 35 years imprisonment for attempting to join ISIS.

Thus, to date, no Capitol attack offenders have been prosecuted for domestic terrorism or even insurrection. U.S. District Court in Washington sentences have been surprisingly lenient, in stark contrast to sentencing of Muslims for ‘foreign terrorism’ offenses.

Legally Speaking, Was the Capitol Attack Really ‘Domestic Terrorism’?

If prosecutors had faithfully applied the definitions of ‘domestic terrorism’ in the United States Code (‘Code’) or that of the Department of Homeland Security Act (‘DHS Act’) without fear or favor, they could probably have convicted and sentenced Capitol attack organizers, participants, and perhaps even Trump too, for domestic terrorism offenses. The Code defines ‘domestic terrorism’ as activities that “involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State” and that ‘appear to be intended’ to do one of the following: (i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) affect the conduct of a government by mass destruction, assassination, or kidnapping. The Code says ‘domestic terrorism’ has to involve activities that have occurred “primarily within the territorial jurisdiction of the United States”, so that excludes the Capitol attack from being considered international terrorism, but ‘domestic terrorism’ definitions still apply. The DHS Act definition of ‘domestic terrorism’ is broader than that of the Code because it adds in any act that is ‘potentially destructive of critical infrastructure or key resources’.

Evidence from hundreds of Capitol riot criminal prosecutions to date suggests that many of the actions committed by the rioters, and perhaps by Trump himself, fit easily within Code and DHS Act legal definitions of ‘domestic terrorism’. It is worth underlining that an act of domestic terrorism requires only one of the acts enumerated above, not all three elements. Many of the acts perpetrated by at least some of the Capitol riots seem clearly to fulfill one or more of these conditions. The words ‘apparent intention’ direct the court to apply an objective test, i.e. to consider how an act looks to a reasonable observer, rather than a subjective test of exactly what Trump or anyone else actually may have been thinking at any given moment.

So, legally speaking, was the January 6, really 'domestic terrorism'? The correct answer is 'Yes'. First, many individuals committed acts that endangered human life and which violated U.S. and State criminal law, such as violently attacking Capitol Police Officers. Several people have been convicted already of such felonies. Second, Trump supporters and Trump himself tried to overturn the election results by intending to intimidate or coerce illegally the American civilian population into accepting a false electoral result, as the House Select Committee's Final Report documents. Third, some Capitol rioters tried to affect the conduct of government by trying to kidnap and / or assassinate Vice President Mike Pence and House Speaker Nancy Pelosi. Finally, the rioters were actually successful in interrupting the lawful transition of presidential power. All these factual elements together seem to exceed the statutory requirements for 'domestic terrorism' that 'involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State' and which 'appear to be intended to affect' the conduct of government, most obviously in the mob's declared attempt to kidnap and assassinate certain politicians and office holders.

Is it reasonable to believe that Capitol rioters were unaware of the intention of some members of the mob to disrupt the certification process or to threaten the life and safety of Mike Pence and Nancy Pelosi? No, it is not reasonable to believe that. Trump himself sent messages that many, including rioter Stephen Ayres, took as encouragement to storm the Capitol, as Ayres himself testified at his criminal trial. Not only were these intentions widely discussed among many of the Capitol riot organizers for weeks leading up to January 6 and during the attack itself, and that were broadly shared via social media, but a gallows to hang Mike Pence was even erected on Capitol Hill grounds for everyone to see. Hundreds chanted: 'Hang Mike Pence'. The Select Committee discovered that when Trump was told of the 'Hang Mike Pence' chant, he commented that the Vice President perhaps deserved to be hanged (page 137 of the Final Report). At 2:11, rioters smashed and entered the Capitol's south front first-floor windows. Trump egged on rioters by tweeting at 2:24 that Pence had shown 'cowardice' by not refusing to certify the election. As Select Committee member Elaine Luria put it: "He put a target on his own vice president's back". That happened at almost the exact moment Secret Service were forced to move Pence from his Senate office to a more secure location inside the Capitol.

> Domestic terrorism prosecutions can communicate clearly where the boundaries are that separate constitutionally protected free speech on the one hand, from incitement to hatred and violence and planning, preparation and instigation of terrorist acts on the other hand.

Mark Follman pointed out in his March-April 2021 Mother Jones article on "How Trump Unleashed a Domestic Terrorism Movement - And What Experts Say Must Be Done to Defeat It" that many seasoned experts, including former DHS assistant secretary Juliette Kayyem and former FBI agent Michael German, concur that Trump incited domestic terrorism during the Capitol attack and that he should be prosecuted for it.

In short, some, perhaps many, Capitol rioters seem to have engaged in domestic terrorism, but to date, none have been charged for domestic terrorism, nor even for 'insurrection' nor to date has Trump been indicted for having incited domestic terrorism.

The Failure to Charge and Prosecute Capitol Attackers for Domestic Terrorism Shows that the United States Is Not Ready to Address Right-Wing Extremism Meaningfully

Terrorism is no ordinary crime. It specifically targets democratic governance and institutions. If not addressed properly, terrorism corrodes the rule of law, threatens equal protection of the laws by unfairly privileging certain political claims over others, and it demeans democracy. Public trust in American democracy already has steadily declined over the last two decades. The widely respected Economist Intelligence Unit's 2022 Democracy Index ranked the United States 30th out of 167 countries, below Israel and just above Slovenia, and called the U.S. a 'flawed democracy'. The Economist noted that political and cultural polarization posed the greatest threat to U.S. democracy where "differences of opinion in the U.S. have hardened into political sectarianism and institutionalized deadlock". One year after the January

6, 2021 attack, an Axios-Momentive poll found that 40% of Americans did not believe Joe Biden had won the 2020 election fairly. In January 2022, NPR reported that: “64% of Americans believe U.S. democracy is ‘in crisis and at risk of failing’” and two-thirds of GOP respondents agreed “with the verifiably false claim that ‘voter fraud helped Joe Biden win the 2020 election’ - a key pillar of the ‘Big Lie’ that the election was stolen from former President Donald Trump”. By September 2022, a Monmouth University poll discovered that 61% of Republican voters believed Biden’s win was due to election fraud.

Failure to impose punishment commensurate with the gravity of the crime betrays a fundamental responsibility of U.S. law enforcement to educate the American public that violent extremism is wholly illegitimate, that domestic terrorism is not patriotism, and that intimidating or coercing government officials to change policy or refrain from executing law, are serious criminal offenses that will be punished accordingly.

The equivocal political, judicial, intelligence and law enforcement responses do not bode well for the future resilience of American democracy, rule of law and equal protection of the laws from the threat of right-wing domestic terror. In this regard, the intelligence and law enforcement response leading up to and during January 6, 2021, speaks volumes about America’s enduring cultural blind spots towards white supremacist ideology and associated right-wing domestic terrorism. From August 2020, the Federal Bureau of Investigation, Department of Homeland Security Office of Intelligence and Analysis, Secret Service and other U.S. intelligence agencies had developed 38 ‘threat products’ (i.e. briefing notes, reports and memoranda) that assessed the risk of extremist political violence connected to the impending election process which the General Accountability Office (GAO) chronicled in its May 2022 report “Capitol Attack: Federal Agencies’ Use of Open Source Data and Related Threat Products Prior to January 6, 2021". Discounting the warning signals of Trump’s escalating rhetoric before, during and after the 3 November 2020 election and the growing mass of publicly accessible online messages threatening violence in the lead-up to January 6, culminated in a gigantic intelligence failure. Internal Secret Service messages on the morning of January 6 reiterated time and time again: “There is no indication of civil disobedience.” Few rioters were security screened for weapons. The very few who were arrested were found to be carrying guns and ammunition. Many other rioters were armed with pepper spray, stun guns, baseball bats and flagpoles. At least 2000 people actually entered the Capitol Building and at around 2:10 pm, rioters started smashing Senate doors and windows.

Weak, disorganized and uncoordinated agency reaction failed to prevent rioters from threatening the lives and safety of lawmakers. Rioters roamed the Capitol complex for hours and even smeared the House floor and hallways with their own urine and feces. Rioters threatened to hang Mike Pence and shoot House Speaker Nancy Pelosi. Pelosi’s office was vandalized. Seven persons died as a result of the Capitol attack, hundreds more were injured including 140 police officers, and officials eventually estimated damage at $30 million. Rioters forced lawmakers to suspend election certification proceedings and to hide and flee the building. Capitol Hill Police took 7 hours from the time protesters first stormed crowd control barriers to declare the Capitol secure enough at 8:00 pm on January 6 for resumption of the certification process. Instead of mass arrests on the spot, undermanned and overwhelmed police arrested only 14 of the thousands of attackers on January 6, 2021. Compare that with Brazil’s Federal Police immediately detaining 1,843 persons for the January 8, 2023 attack on Brazil’s Supreme Court, Planalto and Congress.

The response to the January 6 debacle fits a long and well established pattern of American law enforcement agencies turning a blind eye to right-wing extremism ‘in an atmosphere of willful indifference’ - as the New York Times phrased it when referring to the legal response to the August 2017 Charlottesville Unite the Right Rally. There, white supremacist James Fields Jr. rammed a crowd of counter-protesters, killing Heather Heyer and injuring 35 others. The white supremacist perpetrator was prosecuted for a ‘hate crime’ rather than for domestic terrorism. Meanwhile, Muslims have been routinely prosecuted for international or domestic terrorism for similar crimes, as Professor Caroline Mala Corbin contends in an article titled “Terrorists Are Always Muslim but Never White”.

Can American Intelligence and Law Enforcement Agencies Address Right-Wing Domestic Terrorism More Responsibly and Consistently Than They Have So Far?

Professor Shirin Sinnar cautions it may be "unrealistic to expect that a national security establishment accustomed to limited transparency and oversight - for institutional, cultural, and legal reasons - will respond to White supremacist violence in an open or accountable fashion, or with significant engagement with the minority communities most targeted by the threat". One only has to recall how ruthlessly the FBI harassed Martin Luther King Jr. for at least 5 years with an intense campaign of surveillance, wiretapping, intimidation, and blackmail while the Ku Klux Klan terrorized African Americans across the US, but this is not just history. In the wake of protests in Minneapolis over the police killing of George Floyd, President Trump declared on May 31, 2020 that: "The United States of America will be designating ANTIFA as a Terrorist Organization", and Trump's Attorney General William Barr said: "The violence instigated and carried out by antifa and other similar groups in connection with the rioting is domestic terrorism and will be treated accordingly".

Selective focus on some groups for domestic terrorism while systematically ignoring others offends the equal protection of the laws and it debases rule of law institutions across the United States. 'White Replacement Theory' or 'Great Replacement' theory' - which contends that the U.S. white majority population is being deliberately replaced by non-white immigrants - forms a pillar of white supremacist grievance. Alarmingly, it has been mainstreamed in the Republican party thanks in large part to President Trump's overt racism and his white supremacist dog whistles. It has also severely distorted American domestic intelligence and police action on terrorism by systematically focusing law enforcement attention and resources on left-wing groups that in fact were not a violent threat all the while ignoring real right-wing danger.

Many white supremacist groups and violent right-wing extremist groups maintain active links with serving law enforcement personnel. A leaked cache of e-mails dating from May 2011 to December 2017 reveals that the D.C. Metropolitan Police Intelligence Bureau focused on monitoring anti-racist and anti-Fascist groups rather than right-wing groups. On February 15, 2023, during the D.C. criminal trial of right-wing extremist Proud Boys national chairman Henry 'Enrique' Tarrio, the prosecutor introduced into evidence e-mails showing that Tarrio had received inside information for at least six months from Intelligence Bureau Lieutenant Shane Lemond leading up to January 6, and that Lemond even tipped off Tarrio that police might be seeking an arrest warrant against him. Tarrio was in fact arrested two days before the Capitol attack on a charge relating to the burning of a Black Lives Matter banner on December 12, 2020. Tarrio was charged in June 2022 with seditious conspiracy for plotting to use force to keep Trump in power and his criminal trial commenced on January 13, 2023.

Belatedly, parts of American officialdom seem to be in the process of recognizing the seriousness of right-wing domestic terrorism but only very tentatively. In November 2022, the U.S. Senate Committee on Homeland Security and Governmental Affairs concluded three years of hearings and research with the observation that since 2019, although the DHS and FBI frequently identified white supremacist violence as the main source of persistent and lethal domestic terrorism, "the federal government has continued to allocate resources disproportionately aligned to international terrorist threats over domestic terrorist threats". The Committee further complained that the federal government failed even to "comprehensively track and report data on domestic terrorism despite a requirement from Congress to do so". President Biden's June 2021 National Strategy for Countering Domestic Terrorism represents a laudable step forward. However, prospects for the National Strategy's success took a major hit with the appointment of far-right Republicans Paul Gosar and Marjorie Taylor Greene to the powerful House Oversight Committee - the Committee responsible for supervising the 'efficiency, effectiveness, and accountability of the federal government and all its agencies'.

American political leaders and rule of law agencies and institutions need to separate radical far-right violence-prone individuals and groups from the less committed political middle and it is precisely here where vigorous prosecutions for domestic terrorism could have, and perhaps can still, help. Domestic terrorism prosecutions can communicate clearly where the boundaries are that separate constitutionally protected free speech on the one hand, from incitement to hatred and violence and planning, preparation and instigation of terrorist acts on the other hand.

The January 6, 2021 Capitol attack should have made crystal clear to all Americans that white supremacist ideology, xenophobia, antisemitism, Islamophobia and other forms of racism and religious intolerance cannot be allowed to run rampant throughout American political life, but this realization seems not to have been achieved. These antisocial, rather demented inclinations, further soured by rancid conspiracy theories born of ignorance, prejudice and hate, all militate strongly towards authoritarianism. They interfere in the functioning of democratic institutions, exacerbate steady corrosion of the rule of law and diminish social trust in American democracy.

One hopes that democracy in America is better than it looks right now. The rule of law remains sacred in the US, even if it is not always honored to the fullest. The deep and abiding respect most Americans seem to have for the rule of law could yet prove to be the saving grace of American democracy. Perhaps as fewer and fewer grow less enamored with Trump, Trump's family, and the authoritarianism Trump represents, prospects could improve for broader and more responsible civic engagement from the moderate political majority. This is by no means guaranteed however: on 17 February 2023, a Harvard-CAPS poll found that in hypothetical 2024 election match-ups, Trump would beat Republican challengers Ron DeSantis and Nikki Haley, as well as President Biden and Vice President Kamala Harris.

In any case, eventual disaffection with Trump and Trumpism will be far from sufficient to combat right-wing domestic terrorism in the United States. Americans will have to either reject or tire of right-wing boorishness, the vacuousness of political polarization, conspiracy-fueled cynicism and racial hatred. They will have to rediscover instead more constructive cooperation that better fosters respect for diversity, human rights, and equal protection of the laws all of which remain crucial for the sanctity of democracy and the rule of law in America.

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We Must Not Forget Ukraine: Stop the Human Rights Recession

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'We will never forget' has always been a powerful slogan used by supporters of democracy and human rights. However, this phrase often ends up in empty words pathetically. Although the brutal and violent crackdowns of aggressors and autocracies on human rights could draw international concerns almost immediately, a high level of international attention towards humanitarian crises could hardly sustain. This also applies to the case of the Russia-Ukraine War. The bloody tragedy happening in Ukraine once hit the headline of newspapers every day – but it is no longer the case (Sabbagh, 2022). It seems that the media and people no longer consider these crises worth paying attention to. Nonetheless, the West must not let Ukraine's conflict become a forgotten human rights crisis like that in Myanmar and Hong Kong. Otherwise, human rights will be undergoing a more rapid recession.

Recent Forgotten Crises

The issue of forgotten crisis is particularly manifested by the 21st century, when human rights are in a retreat and geopolitical tensions are intensifying. Violent suppression of peaceful protests, arbitrary arrests of activists, mass killing of civilians, forced migration, destruction of democratic systems, and invasion have taken place in many countries and cities (e.g. Hong Kong, Myanmar, Sudan) in the form of internal repression, coup d'état, and wars (VanRooyen & Peter Walker, 2007; Moszynski, 2008; Jennings et al., 2019). Notably, the Chinese government has dramatically tightened its control over Hong Kong since 2019. Arbitrary arrests, violent attacks against peaceful protestors by the police, and suppression of political freedom have taken place (Boyajian & Cook, 2019; Maizland, 2022). With an even more tragic outcome, the bloody coup d'etat in Myanmar has also shocked the world. The army has killed civilians, detained people, and arrested protestors and democratic leaders, with some behaviours potentially constituting war crimes (Borell, 2021; United States Institute of Peace, 2022). This has put Myanmar's democratic turn led by activists like Aung San Suu Kyi in reverse.

At first, these human rights crises caught international attention, with netizens all over the world actively tweeting the protestors' struggle there to express their support for the people, which helps pressure international institutions and their governments to adopt corresponding measures in response to the crisis. The United Nations and Western powers like the United States and the European Union have then expressed their concerns or even imposed sanctions to deter autocracies' suppression of human rights (Office of the Spokesperson, 2020; Office of the Spokesperson, 2021a; Office of the Spokesperson, 2021b; Military Coup in Burma, 2021; Dujarric, 2022).

Such intensive human rights repressions, however, failed to capture international attention sustainably, so people living in these places received a decreasing level of support (e.g. verbal expression of concerns, collective movements, condemnations, sanctions, aids, military interventions) from other countries. Protestors could only quietly struggle against autocratic repression, or even accept the reality and give up unwillingly. Consequently, the humanitarian crises in these places

became 'forgotten', where the prospect of a restoration of democracy and human rights remains gloomy.

Ukraine's Vulnerability to Being Forgotten

Particularly, concerns are raised about whether Ukraine will end up becoming another forgotten crisis (Alpher, 2022). Arguably, the situation in Ukraine is much more controversial than that in Myanmar and Hong Kong because the war is caused by a large-scale invasion of a sovereign state, instead of a coup or internal conflict. This could explain why the West is even more strongly concerned about the Ukraine War and imposes a series of unprecedentedly harsh sanctions on Moscow.

However, similar problems of a decreasing level of public and government attention have also occurred in Ukraine's case. Russia's unjustified and unprovoked military action is a clear violation of international human rights law. Russian troops have attacked and executed unarmed Ukrainian civilians as well as raped women (Office of the High Commissioner for Human Rights, 2022; Levy & Leaning, 2022). People's homes and businesses, hospitals, and cultural sites are also devastated (Haque, 2022). Between February 24 and June 24, 2022, the WHO reported 323 attacks on healthcare facilities in Ukraine, which killed 76 people and injured 59 people, and also reduced people's access to medical services (Levy & Leaning, 2022). Trauma, deaths of beloved family members and friends, family separation, and forced displacement were thus caused by the brutal invasion.

While Ukrainian soldiers are fighting with Russia bravely and demonstrating their strong resilience, with limited support, they are unable to defeat Russia swiftly. The West has actually appeared to be tired of the war, despite the high casualties which are as high as 150 deaths and 800 injuries every day (Sabbagh, 2022). The media coverage of the war has declined sharply (Chernukhin, 2022), while social media users' engagement with relevant discussions has also dropped (Rothschild, 2022).

... such a low degree of concern about the [Ukrainian] conflict must be reversed. Otherwise, the human rights recession will only accelerate.

As the war gradually becomes a long-term or an attritional one, it is no longer a 'breaking news' with high news value. Although the casualties remain high, the audience becomes familiar with the war and does not treat it as an unexpected incident, so the war could become less likely to be reported (Galtung & Ruge, 1965; Harcup & O'Neill, 2001). It is therefore understandable that the international community is now paying less attention to the war. However, such a low degree of concern about the conflict must be reversed. Otherwise, the human rights recession will only accelerate.

Dangers Posed by a Lower International Attention

Decreasing attention to the war implies a lower motivation of the public for mobilizing support for Ukraine and protesting against Russia's brutality. Consequently, the governments will lack incentives to provide more economic or military support to Ukraine, or voice their concerns about Russia's violation of human rights. Ukraine will thus face increasing hardships on the frontline and more war crimes will be committed against the Ukrainians, which further worsens Ukraine's wartime human rights situation. Moreover, the lack of support could potentially lead to its defeat or a forced peace talk, which will at best result in the partition of states, and at worst a complete disappearance from the world map.

If the West no longer voices its concerns about Russia's brutality, this could indicate that the international community is not concerned about autocracies' ignorance of people's will and massive violation of human rights. The West's past failures in defending Myanmar and Hong Kong have already shown their reluctance to intervene in human rights crises. The West's further ignorance of Ukraine's situation could prompt

Russia or other aggressors to learn that no one will wholeheartedly stop their violation of human rights or invasion of democracies, so they will dare to commit war crimes and perhaps at a faster pace. This may also encourage other oppressive regimes like China to continue the suppression of their domestic people, especially the Uyghurs in Xinjiang who are facing unjustified imprisonment, surveillance, and forced abortion (Office of the High Commissioner for Human Rights, 2022). It is therefore vital for the West to stand firm in the Ukraine Crisis and demonstrate to the autocracies and aggressors that it does not tolerate any suppression of human rights.

We Must Not Forget

Ultimately, the West must not forget Ukraine. Myanmar and Hong Kong have already taught the world a lesson that a lack of international attention and support could result in the irreversible destruction of their political system and the grave disrespect of human rights. If Ukraine also follows their trail, the international community will lose faith in the West's commitment to human rights, while more countries will fall into humanitarian crises. Supporters of human rights should keep up to date with the ongoing conflict and voice their concerns about the invasion.

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