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SOME MIDDLE-AGE SPREAD, A FEW MOOD SWINGS, AND GROWING EXHAUSTION: THE HUMAN RIGHTS MOVEMENT AT MIDDLE AGE

Penelope E. Andrews*

I. INTRODUCTION

I am truly honored to be here today to celebrate the life and work of my dear friend, Nadine Strossen, who remains an inspiration. I am particularly honored to be in the company of such eminent participants—all who have made a mark in the field of legal theory and who have been active participants in the civil rights project in this country.

In keeping with the theme of this symposium, “the scholar as activist,” I wish to confine my comments to the subject of international human rights law and the engagement of scholars as activists in this arena. I do so for several reasons. First, to underscore what I have observed of Nadine’s work over the years. Although a quintessential American, in the best possible use of the term, Nadine is also a global warrior for justice. Under her stewardship, and in collaboration with the excellent people involved in the organization, the American Civil Liberties Union (“ACLU”) has become not just a notable American institution, but also one that has global resonance.¹

Second, human rights has increasingly become the language of progressive politics.² In universities and elsewhere the human rights project is seen as providing a vision and a framework for transforming society. Indeed, it is fair to say that the range of constitutional frameworks adopted in newly-emerging democracies reflect the “global growth in human rights consciousness.”³ The Portuguese scholar, Boaventura de Sousa Santos, has commented on the primacy of human rights as “the language of progressive

* Professor of Law, City University of New York, School of Law (“CUNY”). LL.M., Columbia; LL.B., Natal; B.A., Natal. I would like to thank Dean Robert Butkin, Professor Paul Finkelman, and the students of the *Tulsa Law Review* for inviting me to participate in this symposium. I would also like to thank the Professional Development Committee of CUNY Law School for research support. Thanks to CUNY law students, Lara Rabiee (3L), Gabriel Ward (3L), and Kelly Kuterbach (3L), for research assistance. The title of my article bears absolutely no relevance to the contemporary chronological reality of Nadine. From my perspective she is eternally youthful and none of the attributes in the title will affect her.

1. See e.g. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (Oxford U. Press 1990).

2. See Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 *Transnatl. L. & Contemporary Problems* 125, 125–26 (1998).

3. Douglass Cassel, *Does International Human Rights Law Make a Difference?* 2 *Chi. J. Intl. L.* 121, 124 (2001) (emphasis omitted).

politics,”⁴ confidently providing an “emancipatory script”⁵ for those seeking redress from unjust and abusive regimes.⁶ Upendra Baxi, the Indian legal scholar and human rights activist, refers to the discourse of human rights as seeking to “supplant all other ethical languages.”⁷

In many ways, this focus on human rights globally echoes the struggle for civil liberties and civil rights in the United States in earlier decades.⁸ Then, despite widespread opposition, the vision of a society underpinned by human rights and dignity seemed attainable; this emboldened generations of activists and inspired many scholars. And sometimes, inspiration and boldness merged to shape the scholar as activist. The path-breaking contributions of scholars like John Hope Franklin, C. Vann Woodward, and Kenneth Clark to the 1954 decision of *Brown v. Board of Education*⁹ reflect the scholar as activist in the finest light.¹⁰

Third, I chose to focus on global human rights because my country of birth, South Africa, has in the last decade emerged from the horrors of colonialism, apartheid, and authoritarianism to a country committed to embracing human rights for all its citizens.¹¹ Many factors contributed to this remarkable achievement, but one was a vigorous global human rights campaign that involved a significant number of American scholars and activists.¹² And indeed the American civil rights struggle loomed large in South Africa’s struggle for democracy.¹³ Today the South African Constitution¹⁴ embraces both the range of civil liberties found in the American Constitution and in the International

4. Boaventura de Sousa Santos, *Toward a Multicultural Conception of Human Rights*, 1 *Zeitschrift für Rechtssoziologie* 1, 1 (1997).

5. *Id.*

6. *Id.*

7. Baxi comments:

No preceding century of human history has been privileged to witness a profusion of human rights enunciation on a global scale. Never before have the languages of human rights sought to supplant all other ethical languages. No preceding century has witnessed the proliferation of human rights norms and standards as a core aspect of what may be called “the politics of intergovernmental desire.” Never before has this been a discourse so varied and diverse that it becomes necessary to publish and update regularly, through the unique discursive instrumentality of the United Nations system, in ever exploding volumes of fine print, the various texts of instruments relating to human rights.

Baxi, *supra* n. 2, at 125 (footnotes omitted).

8. See Penelope E. Andrews, *Making Room for Critical Race Theory in International Law: Some Practical Pointers*, 45 *Vill. L. Rev.* 855 (2000).

9. 347 U.S. 483 (1954).

10. See Ronald Roach, *The Scholar-Activists of Brown: Scholars Reflect on the Intellectual Contributions to the Historic Desegregation Case*, 21 *Black Issues in Higher Educ.* 26 (2004) (quoting Leland Ware, University of Delaware Professor of Law and Public Policy).

11. See e.g. Allister Sparks, *Tomorrow is Another Country: The Inside Story of South Africa’s Road to Change* (1st Am. ed., Hill & Wang 1995); see also *South African Review 7: The Small Miracle: South Africa’s Negotiated Settlement* (Steven Friedman & Doreen Atkinson eds., Ravan Press 1994).

12. See e.g. *South Africa: Time Running Out: The Report of the Study Commission on U.S. Policy Toward Southern Africa* (U. Cal. Press 1981); see also *Africa and the United States: Vital Interests* (Jennifer Seymour Whitaker ed., NYU Press 1978); Clyde Ferguson & William R. Cotter, *South Africa: What is to be Done*, 56 *For. Affairs* 253 (1978).

13. See Penelope E. Andrews, *Perspectives on Brown: The South African Experience*, 49 *N.Y.L. Sch. L. Rev.* 1155, 1157–60 (2005).

14. Const. of the Republic of South Africa 1996 (available at <http://www.polity.org.za/html/govdocs/constitution/saconst.html?rebookmark=1#PREAMBLE>).

Covenant on Civil and Political Rights,¹⁵ as well as a range of social, economic, and cultural rights found in the International Covenant on Economic, Social and Cultural Rights.¹⁶

Fourth, I estimated that at fifty-plus years, and therefore soundly middle aged, the global human rights project today provides occasion for reflection and evaluation.¹⁷ We are here to celebrate Nadine's work—an assessment and an evaluation of her life's impressive endeavors. Similarly, an assessment of the modern human rights project is appropriate as the Universal Declaration of Human Rights¹⁸ ("Declaration") approaches sixty years. Indeed, in September 2005, scores of leaders from around the world met at the United Nations to celebrate the organization's sixtieth birthday and to assess the promises made in the United Nations Millennium Project. This endeavor, announced in 2000, outlines a series of goals to redress poverty, eliminate inequalities, and spur good global governance.¹⁹ I want to maintain the celebratory tone of this event, but as the title of my paper suggests, growth, inconsistencies, and increasing exhaustion has crept into the overall human rights project.

Obviously this article will skim the surface of a monumental subject, one that has generated volumes of analysis. My contribution to this symposium is a modest attempt at considering the possibilities and the limitations of the contemporary global human rights project—a project that is at once ubiquitous and distant, optimistic yet desperate, so international and cosmopolitan, but essentially local.²⁰

II. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A ROCKY CHILDHOOD AND DYSFUNCTIONAL ADOLESCENCE

Fifty-seven years ago the United Nations adopted the Universal Declaration of Human Rights, a document with the potential to change the relationship between government and its citizens. The Declaration was interpreted as a notice to those governments hiding behind the principle of state sovereignty, especially when they violated the rights of their citizenry, that this was no longer to be the case, and that some measure of accountability towards citizens was now applicable.²¹ The record, however, seems to suggest that the Declaration had a limited impact on the lives of the majority of the world's inhabitants, particularly those who are the poorest.²²

15. G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) (entered into force March 23, 1976).

16. G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) (adopted and opened for signature, ratification, and accession on December 16, 1966; entered into force January 3, 1976).

17. See *Human Rights Fifty Years On: A Reappraisal* (Tony Evans ed., Manchester U. Press 1998).

18. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 71 (1948).

19. See *United Nations Millennium Declaration*, G.A. Res. 55/2, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/2 (2000).

20. My observations are rather generalized ones. I do not, for example, explore various categories of rights in depth, including the rights of women, indigenous and other minorities, children, or refugees. All of these discrete subjects provide ample room for exploration. The scope of this article precludes such a detailed examination.

21. See Louis Henkin, *The Age of Rights* (Columbia U. Press 1990); see also Mary Ann Glendon, *The Rule of Law in The Universal Declaration of Human Rights*, 2 Nw. U. J. Intl. Hum. Rights 5 (2004).

22. See Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*

But the passage of the Declaration was not insignificant. It is arguable, for example, that the Declaration fueled the several waves of decolonization that began to occur several years after its implementation.²³ This was particularly so for the African colonies. The language and the vision of the Declaration came to provide inspiration to those who yearned for a world free of the excesses of racial superiority so grotesquely demonstrated by Nazism. As colonialism became inseparable from legacies of racial superiority, the colonial *status quo* was no longer tolerable in this new human rights framework.²⁴

The passage of the Declaration was a testimony to the vast potential of humanity for kindness, care, compassion, and equity.²⁵ Although only aspirational, it sets out the possibilities of a world underscored by universally recognized human rights—although with obvious differences regarding their implementation.

But inconsistencies were almost inevitable. Like some child born to embattled parents, the Declaration and other human rights instruments had a rocky infancy. The historical record seems to suggest there was dissension amongst the leading countries of the world about the adoption of such a sweeping universal document on human rights.²⁶ There must have been particular discomfort within the ranks of those countries that were victors of the Second World War, whose closets no doubt were rattling with the skeletons of racism, colonialism, and oppression—the Jim Crow racist legal structure of the United States, the colonies of Britain and France, and the Gulags in Russia.²⁷

Another contradiction was generated during the Cold War, with the ideological positioning of the capitalist West and the socialist East leading to a bifurcated approach to rights.²⁸ The West, led by the United States, insisted on the primacy of civil and political rights, the embodiment of civil liberties outlined in the several amendments to the United States Constitution. These included freedom of speech, the right to vote, freedom of association, and the like.²⁹ The Socialist bloc countries, joined by many countries of the Third World, saw economic, social, and cultural rights as a precondition for democracy.³⁰ These discrete sets of rights increasingly became hostage to cynical Cold War politics, and it is arguable that this period represented a very bleak period in

(U. Pa. Press 1999); see also Dr. Gro Harlem Brundtland, Dir.-Gen., World Health Org., Speech, *Fiftieth Anniversary of the Universal Declaration of Human Rights* (Paris, France, Dec. 8, 1998) (available at http://www.who.int/director-general/speeches/1998/english/19981208_paris.html).

23. See Henry S. Wilson, *African Decolonization* (Edward Arnold 1994); see also Frederick Cooper, *Africa Since 1940: The Past of the Present* (Cambridge U. Press 2002).

24. See *Human Rights and Development in Africa* (Claude E. Welch, Jr. & Ronald I. Meltzer eds., St. U. N.Y. Press 1984); see also A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford U. Press 2001).

25. See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* 238–40 (Random House 2001).

26. Wiktor Osiatyński, *Human Rights for the 21st Century*, 2000 St. Louis-Warsaw Transatlantic L.J. 29, 32–33 (2000).

27. *Id.* at 32.

28. See Martin Walker, *The Cold War: A History* (Henry Holt & Co. 1994).

29. See Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton U. Press 2002).

30. *Truth Claims: Representation and Human Rights* (Mark Philip Bradley & Patrice Petro eds., Rutgers U. Press 2002).

the annals of human rights advocacy and implementation.³¹ The human rights project lurched from a shaky childhood to a dysfunctional adolescence.³²

The decades following the drafting of the Declaration displayed a disappointing tendency between the theory and practice of human rights. The utopian possibilities of human rights, as embodied in the Declaration, represented an arcane structure for most of the inhabitants of the globe; they were distant and abstract in their substance and structure.³³ The legalistic and formal arena of the United Nations during this period allowed for a rhetoric of rights to flourish with alarmingly little possibility of their implementation. For a variety of geo-political and socio-economic reasons, fueled by the Cold War, human rights as a project was largely decontextualized and rendered more distant to their purported beneficiaries.³⁴

The end of the Cold War era and its artificial rights binary has created the discursive space for a re-examination of the panoply of rights including civil, political, economic, social, and cultural rights. A hierarchical approach to human rights is increasingly rejected as a mode of rights articulation and advocacy. Scholars like Philip Alston,³⁵ Barbara Stark,³⁶ Oloka-Onyango,³⁷ and Cass Sunstein³⁸ have forcefully argued against a bifurcated approach to rights and the incorporation of social, economic, and cultural rights into national constitutional projects, including that of the United States. For the modern human rights project, adulthood brought new possibilities.

III. MIDDLE-AGED SPREAD: THE GROWTH OF THE HUMAN RIGHTS PROJECT

We have witnessed in the last few decades a growing and vigorous human rights movement, as demonstrated by the proliferation of international human rights non-governmental organizations (“NGOs”) like Amnesty International, Interights,

31. See Yves Dezalay & Bryant G. Garth, *Human Rights from the Cold War to Kosovo: Constructing New Universals Within Hegemonic Battles* (Am. B. Found. 2000).

32. The passage after the Declaration of two pivotal international human rights documents—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—reflect this conflicting approach to rights.

33. See Kristin Nadasdy Wuerffel, Student Author, *Discriminating Among Rights?: A Nation’s Legislating a Hierarchy of Human Rights in the Context of International Human Rights Customary Law*, 33 Val. U. L. Rev. 369, 377 (1998) (noting that the Declaration does not “enunciate the rights with exacting specificity” (footnote omitted)); see also Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (2d ed., U. Pa. Press 2003).

34. Wuerffel, *supra* n. 33, at 377 n. 47 (noting that the lack of specificity in the Declaration was arguably due to the need to “elicit support from governments and nations with very different ideologies and cultures”); see also Tiyanjana Maluwa, *Human Rights and Foreign Policy in Post-Apartheid South Africa*, in *Human Rights and Comparative Foreign Policy* 250, 252 (David P. Forsythe ed., U.N. U. Press 2000) (“It was an approach that, therefore, deliberately subordinated human rights concerns to Cold War calculations and resulted in obliviousness, for example, to the claims of people on the receiving end of oppression and torture in various countries.” (footnote omitted)).

35. See *Human Rights and Development: Towards Mutual Reinforcement* (Philip Alston & Mary Robinson eds., Oxford U. Press 2005); *The Right to Food* (P. Alston & K. Tomaševski eds., Martinus Nijhoff 1984).

36. See Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an “Entirely New Strategy,”* 44 Hastings L.J. 79 (1992).

37. See J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 Cal. W. Intl. L.J. 1 (1995).

38. See Cass R. Sunstein, *The Second Bill of Rights: FDR’s Unfinished Revolution and Why We Need It More Than Ever* (Basic Bks. 2004).

Human Rights Watch, and Global Rights, which have become major international human rights actors.³⁹ This growth is also evidenced by the embrace of human rights, particularly in law schools, but also elsewhere in the academy, as a legitimate academic area of study.⁴⁰

In addition, there is a vast and growing literature, academic and otherwise, on human rights.⁴¹ Indeed, it is in the field of human rights that one observes the scholar as activist in a most pronounced manner. A cursory glance at the expansion of legal and other academic journals dedicated to the analysis of human rights,⁴² or the number of scholars, particularly legal scholars, who serve as consultants for various human rights projects and organizations, demonstrate this fact.⁴³ Many veterans of the American civil rights movement have shifted their activities to global human rights issues.⁴⁴

There is an abundance of human rights in theory; and yet, even a superficial examination of almost every country of the globe suggests an erosion of human rights.⁴⁵ In the Western democracies, classic civil liberties are being sorely tested in the so-called war against terrorism.⁴⁶ Ideologies of racism and xenophobia, supposedly discredited, are resurfacing in public discourse, under the guise of "immigration reform" or "crime control."⁴⁷ The American national disaster, played out during the Katrina hurricane in the late summer of 2005, reflects the unfinished business of human rights in this great land.⁴⁸ In much of the developing world, and this is particularly the situation in most of

39. See Margaret E. Keck & Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell U. Press 1998); see also William Korey, *NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine"* (St. Martins Press 1998); Jeri Laber, *The Courage of Strangers: Coming of Age with the Human Rights Movement* (Public Affairs 2002).

40. See Peter Rosenblum, *Teaching Human Rights: Ambivalent Activism, Multiple Discourses, and Lingering Dilemmas*, 15 Harv. Hum. Rights J. 301 (2002).

41. See e.g. Off. of the U.N. High Commr. for Hum. Rights, *Human Rights: A Compilation of International Instruments* (U.N. 2003) (available at <http://www2.unog.ch/intinstr/uninstr.exe?language=en>); see also Henry J. Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford 2000); U.N. Educ., Sci. & Cultural Org., *Human Rights: Major Intl. Instruments: Status as at 31 May 1999* (Janusz Symonides & Vladimir Volodin eds., U.N. Educ., Sci. & Cultural Org. 1999) (available at <http://unesdoc.unesco.org/images/0011/001176/117645mb.pdf>).

42. David J. Bederman, *What's Wrong with International Law Scholarship? I Hate International Law Scholarship (Sort Of)*, 1 U. Chi. J. Intl. L. 75, 80 (2000) (noting growth of specialized international law journals, including those having to do with human rights); see also Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 Fla. St. U. L. Rev. 813, 821-22 (1999) (noting the explosion in specialized law reviews and listing many dealing with international and human rights).

43. See e.g. Nadine Strossen, *Reflections on the Essential Role of Legal Scholarship in Advancing Causes of Citizen Groups*, 49 N.Y.L. Sch. L. Rev. 505 (2004).

44. Andrews, *supra* n. 8, at 868.

45. Baxi, *supra* n. 2.

46. See Nadine Strossen, *Maintaining Human Rights in a Time of Terrorism: A Case Study in the Value of Legal Scholarship in Shaping Law and Public Policy*, 19 N.Y.L. Sch. J. Hum. Rights 3 (2003); see also Upendra Baxi, *The "War On Terror" and "War Of Terror": Nomadic Multitudes, Aggressive Incumbents, and the "New" International Law: Prefatory Remarks on Two "Wars,"* 43 Osgoode Hall L.J. 7 (2005); Stephen J. Ellmann, *Racial Profiling and Terrorism*, 46 N.Y.L. Sch. L. Rev. 675 (2002-2003).

47. See Eric K. Yamamoto et al., *Dismantling Civil Rights: Multiracial Resistance and Reconstruction*, 31 Cumb. L. Rev. 523 (2001).

48. See Felicia R. Lee, *Grieving Rosa Parks, Rights Leaders Ponder Future and Seek New Focus and Methods*, 155 N.Y. Times A17 (Oct. 31, 2005) (discussing how "Hurricane Katrina exposed fault lines of race and class in America"); see also *Katrina Relief: Private vs. Public Responses*, 7 The Lighthouse (Carl P. Close ed., Oct. 24, 2005), http://www.independent.org/publications/the_lighthouse/detail.asp?id=100 (citing Mary L.G. Theroux, Speech, *Public and Private Responses to Katrina: What Can We Learn?* (Chief Exec. Orgs. Women's Seminar, Oct. 7, 2005) (available at <http://www.independent.org/newsroom/article.asp?id=1589>)).

Africa, all manner of rights—civil and political, as well as social, cultural, and economic—are routinely sacrificed to the dictates of corruption, civil strife and war, and incompetence.⁴⁹ Despite a vocal, global women's human rights movement, women remain second-class citizens by every indicator in almost every country of the world.⁵⁰ And the claims of culture—so contingent and nuanced—continue to subjugate women in the most horrific ways.⁵¹

The importance of the Declaration, and indeed the whole edifice of human rights law in enforcing rights both at the local level and globally, is still hotly debated. There is no doubt that human rights law has attained a certain credibility, or at least respectability, in several formerly recalcitrant quarters of the globe.⁵² One only has to peruse the proliferation of human rights instruments in the last two decades to sense the vigor with which certain human rights principles and values have been incorporated in international human rights legal instruments. A cursory glance at the publications emanating from the United Nations will confirm the proliferation of human rights texts.⁵³

In addition to the voluminous activity at the international level, many newly-emerging democracies have adopted international human rights principles in their constitutional or legal frameworks.⁵⁴ This is particularly the case in countries that have emerged from authoritarian or repressive histories of governance, and for whom new legal and constitutional arrangements have to be, at the core, transformative in their potential for rights enforcement.⁵⁵

In these countries the human rights project takes on enormous significance, both substantively and symbolically. This has, for example, been the case in Argentina, after its many decades of brutal military dictatorship: the Argentinean Constitution incorporated a slew of international human rights principles.⁵⁶

South Africa provides another interesting case-in-point: the Constitution adopted in South Africa includes, both in spirit and in substance, the major tenets of international

49. See *Human Rights, the Rule of Law, and Development in Africa* (Paul Tiyambe Zeleza & Philip J. McConaughay eds., U. Pa. Press 2004).

50. See *Human Rights of Women: National and International Perspectives* (Rebecca J. Cook ed., U. Pa. Press 1994).

51. See e.g. Penelope E. Andrews, *Violence Against Women in South Africa: The Role of Culture and the Limitations of the Law*, 8 Temp. Pol. & Civ. Rights L. Rev. 425 (1999); see also L. Elizabeth Chamblee, *Rhetoric or Rights?: When Culture and Religion Bar Girls' Right to Education*, 44 Va. J. Intl. L. 1073 (2004).

52. A. Yasmine Rassam, *Book Review*, 10 Pace Intl. L. Rev. 187, 193 (1998) (reviewing *Islam and Justice: Debating the Future of Human Rights in the Middle East and North Africa*, Hum. Rights First (Jan. 1997)) (noting "acceptance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights by most Muslim countries"); see also Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations*, 6 Mich. J. Gender & L. 449, 495 (2000) (stating "widespread ratification of the International Covenants throughout the world suggests a certain level of acceptance of the universal system" (internal quotation marks and footnote omitted)).

53. See *supra* n. 42.

54. See Janet Koven Levit, *The Constitutionalization of Human Rights in Argentina: Problem or Promise?* 37 Colum. J. Transnatl. L. 281 (1999).

55. See George Lawson, *Negotiated Revolutions: The Czech Republic, South Africa and Chile* (Ashgate Publ. Co. 2005); see also Rudolf L. Tökés, *Hungary's Negotiated Revolution: Economic Reform, Social Change, and Political Succession, 1957–1990* (Cambridge U. Press 1996).

56. See Levit, *supra* n. 54.

human rights law.⁵⁷ Its Constitution is extremely broad in its generous protection of not only civil and political rights, but also economic and social rights. Indeed, it is arguable that the South African Constitution, with its detailed and expansive listing of human rights, vindicates fifty-plus years of the existence of the International Bill of Rights.⁵⁸ The South African Constitution embodies a synthesized notion of rights, recognizing the interdependence of civil and political rights on the one hand and social, economic, and cultural rights on the other.⁵⁹ South Africa therefore leads the way in eschewing a bifurcated and hierarchical approach to rights.⁶⁰

But despite these very interesting local developments in which international human rights has been incorporated into national constitutions and laws, skeptics point to their ineffectiveness in fundamentally addressing the lack of enforcement of rights, particularly socio-economic rights, in many countries that have adopted human rights instruments.⁶¹

A more interesting and equally significant development has been emerging in higher education, particularly in the United States, but also elsewhere. Commencing in the early 1990s and gaining momentum since 2000, several law schools and other academic departments have begun to include courses in international human rights law, international relations, and international politics in their degree programs, or offer specific programs at the graduate level with a specialization in human rights law. Human rights centers or institutes have been established at many universities, with the specific purpose of educating future professionals in the field of human rights.⁶² A number of these programs are interdisciplinary in nature, reflecting the interweaving of law, politics, economics, history, and culture in the articulation and implementation of human rights principles.⁶³

57. See Heinz Klug, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction* (Cambridge U. Press 2000).

58. See Devika Hovell & George Williams, *A Tale of Two Systems: The Use of International Law in Constitutional Interpretation in Australia and South Africa*, 29 Melbourne U. L. Rev. 95 (2005).

59. See Penelope E. Andrews, *The South African Constitution as a Mechanism for Redressing Poverty, in Democratic Reform in Africa: Its Impact on Governance and Poverty Alleviation* (Muna Ndulo ed., Ohio U. Press 2006).

60. See Mark S. Kende, *The South African Constitutional Court's Embrace of Socio-Economic Rights: A Comparative Perspective*, 6 Chapman L. Rev. 137, 143 (2003) (noting the South African Constitutional Court's view that the rights in the South African Constitution are interrelated and mutually supporting); see also Pierre De Vos, *Pious Wishes or Directly Enforceable Human Rights?: Social and Economic Rights in South Africa's 1996 Constitution*, 13 S. African J. Hum. Rights 67, 71 (1997) (on the interconnectedness of civil and socioeconomic rights).

61. See Wojciech Sadurski, *Postcommunist Charters of Rights in Europe and the U.S. Bill of Rights*, 65 L. & Contemp. Probs. 223, 230 (2002) (noting concern over inclusion of socioeconomic rights in post-communist constitutions due to their under-enforcement); see also Shubhankar Dam, *Lawmaking Beyond Lawmakers: Understanding the Little Right and the Great Wrong (Analyzing the Legitimacy of the Nature of Judicial Lawmaking in India's Constitutional Dynamic)*, 13 Tulsa J. Comp. & Intl. L. 109 (2005) (noting frustration by the Indian Constitutional Court with its inability to directly enforce socio-economic rights); Bonny Schoonakker, *Treated with Contempt*, Sun. Times (S. Africa) (Mar. 21, 2004) (on the failure of the South African Constitutional Court's Grootboom decision to lead to positive gains for the plaintiff in that case) (available at <http://www.suntimes.co.za/2004/03/21/insight/in01.asp>).

62. See e.g. U. Minn. Hum. Rights Lib., *Centers for Human Rights Research and Teaching*, <http://www1.umn.edu/humanrts/links/centers.html> (last accessed Jan. 25, 2006) (providing an extensive list of centers providing education in human rights); see also Susan H. Gillespie, *Opening Minds: The International Liberal Education Movement*, 18 World Policy J. 79 (Winter 2001–2002).

63. For example, the faculty members of the University of Connecticut's Human Rights Institute are drawn

These developments have been met with both delight and doubt. Henry Steiner, an international legal scholar at Harvard, is enthused about teaching human rights in the legal academy, claiming that it “has left an indelible mark on the university.”⁶⁴ What is important, according to Steiner, is that “many new students begin their humanistic or professional studies with a keen awareness of and perhaps active experience in [the international human rights] movement.”⁶⁵

These activities raise the question: Are we witnessing the emergence of “[a] truly global conscience . . . , sensitive to the inequities of poverty, gender discrimination, child labour and environmental degradation,”⁶⁶ or, is this, as Upendra Baxi suggests, “human rights languages [as] stratagems of imperialistic foreign policy”?⁶⁷ These somewhat contradictory perspectives capture, on the one hand, the enormous humanistic or transformative potential of human rights advocacy. On the other hand, they highlight what has been termed the “imperial” side of human rights, serving as it were, as a handmaiden of the designs of empire of the West.⁶⁸ In many ways, this ambiguity plagues the contemporary global human rights project that emerged from the ruins of the Second World War as a moment of universalizing possibilities.⁶⁹ African scholars like Makau wa Mutua⁷⁰ and Maxwell Chibundu⁷¹ have observed that human rights are perceived as captured by the imperatives of empire building, the new “civilizing mission.”⁷²

But as we deconstruct these contradictory impressions, all is in fact not dismal. In many ways the universe of global human rights activism is very exciting on several levels. The first is the innovative and expansive networks of human rights activists and NGOs that have emerged in the last two decades.⁷³ Motivated by a vigor and passion for their various causes, these activists and NGOs have energized a world grown weary by the cynicism of the Cold War, and the way human rights were held hostage to

from a range of disciplines, including philosophy, political science, history, and law. *The Human Rights Institute Faculty*, http://www.humanrights.uconn.edu/hrinst_faculty.htm (last visited Jan. 25, 2006).

64. Henry J. Steiner, *The University's Critical Role in the Human Rights Movement*, 15 Harv. Hum. Rights J. 317, 317 (2002).

65. *Id.* (internal quotation marks omitted); but see Larry Catá Backer, *Human Rights and Legal Education in the Western Hemisphere: Legal Parochialism and Hollow Universalism*, 21 Pa. St. Intl. L. Rev. 115 (2002).

66. Mail & Guardian Online, *Global Governance is in Crisis*, <http://www.mg.co.za/Content/13.asp?ao=31722> (Feb. 25, 2004) (internal quotation marks omitted).

67. Baxi, *supra* n. 2, at 147.

68. See Philip Alston, *The Myopia of the Handmaidens: International Lawyers and Globalization*, 8 European J. Intl. L. 435 (1997).

69. Commenting on the meeting in San Francisco in April 1945 to discuss the establishment of the United Nations, Brian Urquhart, the former Under-Secretary of the United Nations, noted the momentous symbolism of the event: “[It] seemed a magic moment, a revival of hope, common sense, and the possibility of a decent future.” Brian Urquhart, ‘A Great Day in History,’ *The N.Y. Rev.* 8 (Jan. 15, 2004) (reviewing Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations: A Story of Superpowers, Secret Agents, Wartime Allies and Enemies and Their Quest for a Peaceful World* (Westview Press 2003)).

70. E.g. Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 Harv. Intl. L.J. 201 (2001).

71. E.g. M. O. Chibundu, *Making Customary International Law Through Municipal Adjudication: A Structural Inquiry*, 39 Va. J. Intl. L. 1069 (1999).

72. See Makau wa Mutua, *The Ideology of Human Rights*, 36 Va. J. Intl. L. 589 (1996).

73. See Keck & Sikkink, *supra* n. 39.

ideological struggle and political opportunism. It has been noted that these NGOs are increasingly “part of the governing architecture of the international political system.”⁷⁴

The activism of global human rights actors is reflected in the vast range of civil society networks, such as the World Social Forum (“WSF”), first held in Brazil during 2001, 2002, and 2003, and in India during 2004.⁷⁵

Committing itself to the belief that “another world is possible,”⁷⁶ the WSF was created to respond to, and resist the model of, globalization formulated at the annual World Economic Forum at Davos, Switzerland, a venue for interaction between national governments, the International Monetary Fund, the World Trade Organization, and large multinational corporations.⁷⁷ The WSF sees its essential purpose as strengthening the alliances amongst a range of popular people’s movements and NGOs.⁷⁸

The WSF is not the only example of an informal global network of activists; vast numbers exist in many locations, pursuing various causes including the environment, rights of indigenous peoples, peace and security, global economic accountability, rights of workers, human rights, and women’s rights.⁷⁹ They all share a commitment—to a greater or lesser extent—to justice, equity, and peace. Many of them work in opposition to the activities and policies of national governments and international actors such as the World Bank or multinational corporations.⁸⁰ Several however work in alliance with governments to pursue particular goals, particularly on the national level, and increasingly some are forming partnerships with multi-national corporations and other global actors to pursue specific justice or equity goals, for example, relating to labor or consumer issues.⁸¹

These networks utilize the electronic media most efficiently to publicize widespread human rights abuses in particular locations, as well as to engage with

74. Paul Wapner, *Introductory Essay: Paradise Lost? NGOs and Global Accountability*, 3 Chi. J. Intl. L. 155, 158 (2002).

75. See Fórum Social Mundial, *Background: The Events of 2001, 2002 and 2003*, http://www.forumsocialmundial.org.br/main.php?id_menu=2&cd_language=2 (Sept. 29, 2003) (discussing the World Social Forums in Brazil); World Social Forum, *World Social Forum India*, <http://www.wsfindia.org> (last visited Mar. 24, 2006).

76. World Social Forum, *World Social Forum Charter of Principles*, http://www.forumsocialmundial.org.br/main.php?id_menu=4&cd_language=2 (June 8, 2002) (internal quotation marks omitted); see also Alisa Solomon, *Porto Alegre Postcard: Artists Imagine Another World*, *The Nation* 18 (Mar. 21, 2005).

77. Francisco Whitaker, *World Social Forum: Origins and Aims*, http://www.forumsocialmundial.org.br/main.php?id_menu=2_1&cd_language=2 (June 22, 2004); see also Denis Goulet, *Changing Development Debates Under Globalization: The Evolving Nature of Development in Light of Globalization*, 6 J. L. & Soc. Challenges 1, 12 (2004).

78. See World Social Forum, *supra* n. 76.

79. See e.g. Hasmy Agam, *Working with NGOs: A Developing World Perspective*, 13 Colo. J. Intl. Envtl. L. & Policy 39 (2002).

80. See *50 Years is Enough: The Case Against the World Bank and the International Monetary Fund* (Kevin Danaher ed., S. End Press 1994).

81. E.g. Fair Labor Association, *Welcome*, <http://www.fairlabor.org> (accessed Jan. 25, 2006) (describing itself as “a non-profit organization combining the efforts of industry, non-governmental organizations (NGOs), colleges and universities to promote adherence to international labor standards and improve working conditions worldwide”); Social Accountability International, *Human Rights @ Work, Making Workplace Human Rights a Vital Part of the Business Agenda*, <http://www.sa-intl.org> (accessed Jan. 18, 2006); see also Janelle M. Diller, *On the Possibilities and Limitations of NGO Participation in International Law and Its Processes: Corporate Applications*, 95 Am. Socy. Intl. L. Procs. 304 (2001); Susan K. Sell, *The Quest for Global Governance in Intellectual Property and Public Health: Structural, Discursive, and Institutional Dimensions*, 77 Temp. L. Rev. 363 (2004).

activists in centers of influence. For example, Egyptian activists in Cairo, despite great danger to themselves, have been able, since 2002, to connect with human rights activists in New York to publicize the plight of Egyptian individuals persecuted by the Egyptian government on the basis of their homosexual status.⁸² Although large numbers of men continue to be charged, tortured, and repressed, their plight has brought global attention to the persecution of homosexuals in Egypt. Similarly the international solidarity network, Women Living Under Muslim Laws, has been very successful at publishing widespread abuses of women's rights in several contexts.⁸³

Another example is the fairly successful local and global activities by the Treatment Action Campaign, a network of organizations in South Africa committed to fighting the devastating HIV/AIDS epidemic in South Africa.⁸⁴ Their strategies include education campaigns, publicity, and lobbying.⁸⁵ In 2002 they launched a successful lawsuit against the South African government for its failure to provide anti-retroviral drugs to HIV positive pregnant women, and in effect mandated the government to do so.⁸⁶ The success of this lawsuit in the Constitutional Court, South Africa's highest court, invigorated the campaign to pursue the provision of anti-retrovirals to all South Africans who are HIV positive.⁸⁷

All of these struggles were largely pursued utilizing the symbols and terminology of human rights, albeit contextualized to pursue their own agendas.⁸⁸

IV. INCREASING EXHAUSTION AND A LITTLE CYNICISM: CRITIQUES OF THIS GLOBAL HUMAN RIGHTS PROJECT

Notable skepticism and criticism continues to be leveled against the global human rights project. Questions arise about the universality of human rights principles.⁸⁹ It has been argued that basic human rights should be universal in scope, but tempered by a recognition of the possible need for limited cultural variations.⁹⁰ This debate has plagued the human rights movement since its inception.⁹¹ The increasing trend of

82. See Human Rights Watch, *In a Time of Torture: The Assault on Justice In Egypt's Crackdown on Homosexual Conduct* (Hum. Rights Watch 2004) (available at <http://hrw.org/reports/2004/egypt0304/egypt0304.pdf>).

83. See Women Living Under Muslim Laws, *Calls for Action*, <http://www.wluml.org/english/actions.shtml> (accessed Jan. 18, 2006).

84. See Treatment Action Campaign, *About TAC*, <http://www.tac.org.za/about.html> (accessed Jan. 18, 2006).

85. *Id.*

86. See *Minister of Health v. Treatment Action Campaign*, Case CCT 8/02 (2002).

87. Aarthi Belani, *The South African Constitutional Court's Decision in TAC: A "Reasonable" Choice?* 25 (Ctr. for Hum. Rights & Global Just., Working Paper, Econ., Soc. & Cultural Rights Ser. No. 7, 2004) (available at http://www.nyuhr.org/research_publications.html).

88. See *The Power of Human Rights: International Norms and Domestic Change* (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., Cambridge U. Press 1999).

89. See e.g. *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Abdullahi Ahmed An-Na'im ed., U. Pa. Press 1992); Natan Lerner, *Religion, Beliefs, and International Human Rights* (Orbis Bks. 2000).

90. See Michael J. Perry, *Are Human Rights Universal? The Relativist Challenge and Related Matters*, 19 Hum. Rights Q. 461 (1997); see also William J. Talbot, *Which Rights Should Be Universal?* (Oxford U. Press 2005).

91. See e.g. Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 Hum. Rights Q. 400 (1984); see also *The East Asian Challenge for Human Rights* (Joanne R. Bauer & Daniel A. Bell eds.,

identity politics has fueled this debate, the latest incarnation a so-called “clash of civilizations.”⁹²

Questions also arise as to whether the implementation of human rights principles, in both the local and global context, has been effective in reducing human rights violations.⁹³ One of the most cogent criticisms has come from Tony Evans, the British scholar, for the reluctance to include in the human rights equation the question of power and politics. According to Evans, this diminishes our understanding of the possibilities and limitations of human rights theory and practice.⁹⁴ If law is “politics by other means,”⁹⁵ then international human rights law exemplifies that adage.⁹⁶ Human rights discourses become political stratagems, as so eloquently argued by Upendra Baxi.

David Kennedy, the Harvard international scholar, has, for some time, cast a wary eye over the human rights project in the West. He has ventured some thoughtful criticisms about the human rights movement, and specifically raised the question as to whose interests are served, and whose voices or interests are silenced or excluded.⁹⁷ He has also indicated some “characteristic blind spots and biases”⁹⁸ that may leave human rights professionals “more sanguine about the *status quo* than they might otherwise be.”⁹⁹

So too has Makau wa Mutua, the Kenyan international legal scholar based in the United States. He has commented that “the seduction of human rights discourse has been so great that it has, in fact, delayed the development of a critique of rights.”¹⁰⁰ A further question raised is that of the appropriateness of the incorporation of norms in the domestic context. This debate is particularly animated in the United States where legal scholars continue to question the relevance of international human rights law in the American domestic context.¹⁰¹

Cambridge U. Press 1999); Dianne Otto, *Rethinking the “Universality” of Human Rights Law*, 29 Colum. Hum. Rights L. Rev. 1 (1997).

92. See Tony Blankley, *The West's Last Chance: Will We Win the Clash of Civilizations?* (Regnery Publ. 2005); Samuel P. Huntington, *Who are We?: The Challenges to America's National Identity* (Simon & Schuster 2004); Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (Touchstone 1997).

93. See Cassel, *supra* n. 3; see also Yves Beigbeder, *Judging War Criminals: The Politics of International Justice* (St. Martin's Press 1999).

94. See *Human Rights Fifty Years On*, *supra* n. 17.

95. Richard L. Abel, *Politics by Other Means: Law in the Struggle Against Apartheid, 1980-1994* (Routledge 1995). Abel describes the use of law to tame politics in the South African context. Similarly, international law has aspirations to harness international politics.

96. Michael Byers, *Custom, Power and the Power of Rules: International Relations and Customary International Law* pt. 1 (Cambridge U. Press 1999).

97. See David Kennedy, *The International Human Rights Movement: Part of the Problem?* 15 Harv. Hum. Rights J. 101 (2002).

98. David Kennedy, *The Disciplines of International Law and Policy*, 12 Leiden J. Intl. L. 9, 9 (1999).

99. *Id.*

100. wa Mutua, *supra* n. 72, at 591 (footnote omitted).

101. See e.g. Jack Goldsmith, *Should International Human Rights Law Trump US Domestic Law?* 1 Chi. J. Intl. L. 327 (2000); see also Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of A Comparative Perspective in Constitutional Adjudication*, 40 Idaho L. Rev. 1 (2003); Natsu Taylor Saito, *Asserting Plenary Power Over the “Other”: Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law*, 20 Yale L. & Policy Rev. 427 (2002).

A further criticism of the human rights project is the failure to include the language of economic equity as a corollary of the language of rights.¹⁰² In newly democratized countries like South Africa, for example, the human rights project, as part of the larger democratic project, was generated by a national democratic movement committed to a transformative agenda of equity and social justice.¹⁰³ Individual rights were to be protected in the new dispensation, but the overall communitarian project of poverty reduction and wealth inequality suggested a vision of redistribution. This vision went beyond the incorporation of socio-economic rights in a constitution to a national ethic that eschews wealth accumulation that worked to the detriment of fellow citizens.¹⁰⁴

V. FROM HUMAN RIGHTS TO HUMAN NEEDS

Despite these critiques, the impact of human rights law, and especially the decades of global human rights activism, suggests that there is a growing global consensus about the core content of needs essential to a decent life.¹⁰⁵ There is, therefore, widespread agreement about the need to eradicate poverty, illiteracy, disease, violence, and other obstacles that thwart the enjoyment of the most basic of human rights. It is arguable that recent developments in global human rights activism, as illustrated by the widespread protests against the major international financial agencies—the World Bank, the International Monetary Fund, and the World Trade Organization—suggest that a new generation of global human rights activists and scholars are concentrating their attention on a more equitable global economic order.¹⁰⁶ They have eschewed mere formal declarations of rights to systems that genuinely aim to address the burdensome poverty that is the currency in the developing countries. These scholars and activists have highlighted the anger felt by many scholars in the third world about the misery and injustice unleashed by ubiquitous poverty.¹⁰⁷ These advocates have provided a scathing analysis of the interplay of globalization in its present configuration, i.e., free markets and the need for human rights protections. They have unleashed a litany of pessimistic and critical accounts of the International Monetary Fund and its role in perpetuating widespread poverty in the poor countries of the globe.¹⁰⁸

Amongst human rights advocates there are clear differences in strategy with respect to the either the attainment or enforcement of social and economic rights. These differences include the perennial philosophical or ideological disagreements about governmental strategies to achieve economic equity, or whether social and economic rights should be constitutionally enshrined, and in addition, whether courts should

102. Thomas W. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity Press 2002).

103. See Ineke van Kessel, "Beyond Our Wildest Dreams": *The United Democratic Front and the Transformation of South Africa* (U. Press Va. 2000).

104. See Nelson Mandela, Acceptance Speech, *Nobel Peace Prize Address* (Oslo, Norway, Dec. 10, 1993) (available at <http://www.anc.org.za/ancdocs/speeches/nobelnm.html>).

105. See Amartya Sen, *Development as Freedom* (Alfred A. Knopf 1999).

106. See Joseph E. Stiglitz, *Globalization and Its Discontents* (W.W. Norton & Co. 2002).

107. See Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 *Wisc. Intl. L.J.* 353, 368–74 (1998).

108. See e.g. Frank J. Garcia, *The Global Market and Human Rights: Trading Away the Human Rights Principle*, 25 *Brook. J. Intl. L.* 51 (1999).

adjudicate these issues.¹⁰⁹ In short, the disagreements revolve around the suitable accommodation of economic and social rights in a liberal constitutional arrangement. These debates have been part of the international legal landscape for decades.¹¹⁰ However, after almost half a century of the primacy of civil and political rights in international human rights discourse, there is a growing consensus about the interdependence of rights and an increasing recognition that social and economic rights are essential to enjoying the panoply of civil and political rights deemed as a precondition for democracy.¹¹¹

In line with this trend, on September 23, 2003, the Secretary General of the United Nations made a speech to the General Assembly in which he announced the establishment of a panel of experts to examine challenges and threats to global peace and security, collective action in response to these challenges, and a review of the institutions and processes of the United Nations with a view to rendering them more effective.¹¹² This comes in the wake of the establishment of the Millennium Development Goals (“MDGs”) in 2005.¹¹³ These developments, the MDGs, the Secretary General’s panel, and its 2005 report,¹¹⁴ occurs at a pivotal moment in global history. There is no doubt that the United Nations as an organization, and indeed global governance, is at a fairly critical juncture generated by the aftermath of the events of September 11, 2001.

Although September 11 has increasingly become the chronological benchmark for evaluating contemporary global events, the reality is that fundamental changes in world politics had already begun to occur prior to that tragic day. For example, the destruction of the Berlin Wall and the subsequent collapse of the Soviet Union and its former satellite states were momentous global events, and the political, economic, and social repercussions will be experienced locally and globally for some time.¹¹⁵ However, what the events of September 11 engendered, was a renewed global introspection involving the overarching question of peace and security, but also seemingly lesser questions, including those pertaining to human rights, global poverty, human security, and democracy.

These questions had two dimensions: the first was the acknowledgement of the existence of “failed states” and the concomitant lack of human security, as well as the

109. See Justice Albie Sachs, *Social and Economic Rights: Can They Be Made Justiciable?* 53 SMU L. Rev. 1381 (2000).

110. See Jeanne M. Woods, *Justiciable Social Rights as a Critique of the Liberal Paradigm*, 38 Tex. Intl. L.J. 763 (2003).

111. See De Vos, *supra* n. 60.

112. See *African Charter on Human and Peoples’ Rights* (June 27, 1981), 21 Intl. Leg. Materials 58, 59 (1982) (acknowledging that “civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights”); see also Gary Chartier, *Civil Rights and Economic Democracy*, 40 Washburn L.J. 267 (2000); Center for Economic and Social Rights, *Basic Primer, What are Economic, Social, and Cultural Rights?* <http://cesr.org/basic?PHPSESSID=53286375e269cf05ea2645d6b87a1374> (accessed Jan. 26, 2006) (noting “the right to speak freely means little without a basic education”).

113. See generally U.N., *UN Millennium Development Goals*, <http://www.un.org/millenniumgoals> (last updated 2005).

114. U.N., *The Millennium Development Goals Report 2005* (U.N. 2005) (available at <http://www.unfpa.org/icpd/docs/mdgrept2005.pdf>).

115. Robert E. Hunter, *Solving Russia: Final Piece in NATO’s Puzzle*, 23 Wash. Q. 115 (2000).

failure to protect human rights, resulting from the collapse of the infrastructure and institutions of such states.¹¹⁶ Somalia is seen as the classic example of a failed state. In Somalia all formal institutions of society have broken down—there is no functioning parliament, courts, or a bureaucracy, and the organs of civil society are almost non-existent. In this interconnected world, the existence of failed states is seen as a significant threat to global security because they represent chaos, lawlessness, and violence.¹¹⁷ Moreover, it is argued that they are able to export these elements in the form of terror to other parts of the globe.¹¹⁸

The second aspect relating to these questions are the profound global inequalities that appear to be exacerbated by the forces of economic globalization, which are increasingly gaining a visibility in the wealthier countries.¹¹⁹ The harsh realities of global economic inequality—the poverty and deprivation in the developing countries, as evidenced by miles of slums, images of diseased and undernourished children and adults—can now be captured by the electronic media and beamed into millions of homes in the affluent West.¹²⁰

In addition, human misery also flows from ostensible humanitarian intervention.¹²¹ The United States, Britain, and a few of their allies, in a supposed nod to the human rights of Iraqis, have unleashed their superior military forces and generated, in the short term at least, untold suffering and a growing humanitarian crisis. The toll on American and British forces has reached thousands; the toll of Iraqi citizens has been estimated to be around 25,000.¹²²

This is not the first time that human rights considerations have provoked military support. In 1999 NATO forces, under growing international pressure, intervened in Yugoslavia to prevent massacres and other atrocities, particularly against Muslims in Bosnia and Kosovo, but also against other minorities.¹²³

In short, at this particular moment, the prospects for human rights enforcement appear bleak. Despite the heralding of a new international court¹²⁴ to punish those who

116. See Ruth Gordon, *Saving Failed States: Sometimes A Neocolonialist Notion*, 12 Am. U. J. Intl. L. & Policy 903 (1997).

117. See Gerald B. Helman & Steven R. Ratner, *Saving Failed States*, 89 For. Policy 3, 3, 8 (1992).

118. Stanley Hoffmann, *Chaos and Violence: What Globalization, Failed States, and Terrorism Mean for U.S. Foreign Policy* (Rowman & Littlefield Publishers 2006).

119. See Raju G.C. Thomas, *What Is Third World Security?* 6 Annual Rev. Political Sci. 205 (2003).

120. Indeed, thanks to the advances in telecommunications, those of us who live in the developed world can now bear witness to the human rights deprivations occurring as a result of the myriad civil wars occurring in many developing countries, particularly in Africa. See David Rieff, *A Bed for the Night: Humanitarianism in Crisis* 32–45 (Simon & Schuster 2003). For example, the unfolding crisis in Liberia in July 2003 became a world media event. The BBC, CNN, and other international media outlets had reporters stationed on the spot, relaying the activities of the opposing forces in graphic detail, and pondering the inevitable demise of President Charles Taylor with continuous running commentary. Very often, the victims of these conflicts and their suffering are not lost on Western viewers, and this suffering continues to spawn huge campaigns for donations and relief efforts. *Id.* The much-publicized Live Aid concerts organized in late June 2005, to coincide with the meeting of G8 Ministers in Scotland, catapulted African poverty once more to the epicenter of global politics.

121. See Rieff, *supra* n. 120.

122. See Les Roberts et al., *Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey*, 364 Lancet 1857 (2004).

123. See *The Kosovo Tragedy: The Human Rights Dimensions* (Ken Booth ed., Frank Cass 2001).

124. See Lara Leibman, Student Author, *From Nuremberg to Bosnia: Consistent Application of International Law*, 42 Clev. St. L. Rev. 705 (1994).

commit war crimes or perpetuate gross violations of human rights, it is arguable that this period in history differs somewhat from the optimistic, albeit contested, approach to human rights that existed after the establishment of the United Nations and particularly the drafting of the Declaration.

VI. CHALLENGES FOR THE GLOBAL HUMAN RIGHTS PROJECT

So now, at middle age, what are the most significant challenges facing the international human rights project? The top priority, just as it was in 1948 when the United Nations was established, is global peace and security.¹²⁵ The challenge to global peace and security differs somewhat from that which existed at the establishment of the United Nations. The first is the nature of wars—their source, structure, and duration. Although wars between nations remain of global concern, wars within nations are the most troubling.¹²⁶ For example, the 1990s saw a wave of conflicts in Africa between different warring factions, some with clear political objectives, while others merely aimed to terrorize the population.¹²⁷

Today the situation differs significantly from that which existed at the establishment of the United Nations. Then it was sovereign countries waging war against each other that provided the impetus for the establishment of the United Nations, with the slogan “never again.”¹²⁸ Although sovereign nations still go to war against each other, it is the intra-country conflict that is generating widespread human rights casualties, such as those currently being witnessed in Colombia, the Congo, and Sudan.¹²⁹

Often what fuels these conflicts are long-standing and simmering ethnic and religious hostilities that ignite when access to resources are involved.¹³⁰ It has been argued, for example, that access to the Congo’s vast diamond reserves are fueling the conflict there, rendering a peaceful solution illusory.¹³¹

125. See Thomas G. Weiss, *The UN’s Prevention Pipe-Dream*, 14 Berkeley J. Intl. L. 423 (1996).

126. See William B. Wood, *Post-Conflict Intervention Revisited: Relief, Reconstruction, Rehabilitation, and Reform*, 29 Fletcher Forum World Affairs 119 (2005).

127. See Nsongurua J. Udombana, *Can the Leopard Change Its Spots? The African Union Treaty and Human Rights*, 17 Am. U. Intl. L. Rev. 1177 (2002) (discussing the African Union Treaty, the state of human rights in various African countries, and the political factions aimed to terrorize the public).

128. See Major Joseph P. “Dutch” Bialke, *United Nations Peace Operations: Applicable Norms and the Application of the Law of Armed Conflict*, 50 A.F. L. Rev. 1 (2001).

129. This is not to suggest that sovereign nations going to war with each other are not a cause for great concern. In the last two years the actions of the United States, and particularly the Bush administration’s doctrine of unilateral action, which includes the right of pre-emptive action and regime change, is unraveling fifty-plus years of international law, and specifically the Charter of the United Nations. Article 2 of the Charter specifically provides: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” See U.N., *Charter of the United Nations* art. II, <http://www.un.org/aboutun/charter> (accessed Jan. 18, 2006). The United States has done this while perpetuating its image as a global human rights enforcer, as exemplified, for example, by the annual reports of the State Department analyzing human rights practices around the world. See U.S. Dept. of St., *U.S. Department of State, Human Rights Reports Home Page: Country Reports on Human Rights Practices*, http://www.state.gov/www/global/human_rights/hrp_reports_mainhp.html (accessed Nov. 2005).

130. Tom Porteous, *Resolving African Conflicts*, http://www.crimesofwar.org/africa-mag/afr_01_porteos.html (October 2004).

131. Tina Rosenberg, *To Prevent Conflicts, Look to Commodities Like Diamonds*, 151 N.Y. Times A16 (July 15, 2002).

A further challenge to the global human rights project is the appropriate response to gross violations of human rights.¹³² Although the International Criminal Court has been heralded as a pivotal mechanism in stemming such violations,¹³³ its potential to do so may be limited.¹³⁴ It is arguable that the structures and practices of globalization, and particularly the more rapacious aspects of global capital, lead to these egregious violations; the focus on punishing individuals, therefore, seems trifling.¹³⁵ Moreover, these prospective prosecutions only address the consequences of the egregious conduct, not the causes.

Another challenge facing the global human rights project is the unremitting poverty which continues to plague most of the world's nations.¹³⁶ In the developing world, the reasons for the poverty have their locus in many sources—civil conflict and wars, undemocratic and corrupt governments, and economic policies that exploit the vulnerability of poor countries.¹³⁷ In the wealthier nations poverty results from a host of sources, but one source increasingly is the result of state economic policies that impact disproportionately on the poor.¹³⁸ It has been argued that the corollary of poverty—disease, illiteracy, malnutrition, psychological despair, and crime—will continue to thrive if the global questions of poverty are not adequately addressed.¹³⁹

Related to the problems of internal conflict and poverty are the unresolved and contradictory questions of humanitarian intervention. In the last decade or so, it has mostly been the response to humanitarian concerns that has triggered military action, as for example, in the republics of the former Yugoslavia, or Somalia, the latter with

132. See Steven R. Ratner & Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (2d ed., Oxford U. Press 2001).

133. See Payam Akhavan, Student Author, *The International Criminal Court in Context: Mediating the Global and Local in the Age of Accountability*, 97 Am. J. Intl. L. 712, 713 (2003) (noting that the International Criminal Court ("ICC") makes the "imposition of individual responsibility for massive human rights violations, even for seemingly untouchable leaders, . . . a distinct possibility"); see also Leila Nadya Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (Transnational Publishers 2002) (noting the ICC's role in ending the "culture of impunity").

134. See generally Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law* (Oxford U. Press 2003) (offering a critical analysis of the ICC); John M. Czarnetzky & Ronald J. Rychlak, *An Empire of Law?: Legalism and the International Criminal Court*, 79 Notre Dame L. Rev. 55, 60 (2003) (arguing that in transitional societies, the ICC's focus on victim's rights versus what is good for the society as a whole may do more harm than good).

135. See Julia Graff, *Corporate War Criminals and the International Criminal Court: Blood and Profits in the Democratic Republic of Congo*, 11 Hum. Rights Br. 23 (2004); see also Stephen G. Wood & Brett G. Scharffs, *Applicability of Human Rights Standards to Private Corporations: An American Perspective*, 50 Am. J. Comp. L. 531 (Supp. 2002).

136. U.N. Population Fund, *State of World Population 2002: People, Poverty and Possibilities: Making Development Work for the Poor 5* (UNFPA 2002) (reporting that three billion of the world's population live on two dollars or less per day) (available at http://www.unfpa.org/upload/lib_pub_file/25_filename_swp2002eng.pdf).

137. There is a large literature on the causes of world poverty. See generally Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities for Our Time* (Penguin Press 2005); see also Howard White & Tony Killick, *African Poverty at the Millennium: Causes, Complexities, and Challenges* (World Bank 2001); U.N. Dev. Programme, *Human Development Report 2003: Millennium Development Goals: A Compact Among Nations to End Human Poverty* (Oxford U. Press 2003) (available at <http://hdr.undp.org/reports/global/2003>).

138. See generally *Understanding Poverty* (Sheldon H. Danziger & Robert H. Haveman eds., Harv. U. Press 2001); see also Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton U. Press 1990).

139. See U.N. Dev. Programme, *supra* n. 137 (discussing the synergy between poverty reduction and improvement in health and education).

disastrous outcomes.¹⁴⁰ Indeed, humanitarian organizations have been at the forefront of developments to motivate military action.¹⁴¹ This of course raises the central question about humanitarian responses in situations of crisis.¹⁴²

Another challenge facing the human rights project is the role of individual governments in promoting and protecting human rights.¹⁴³ Governments have historically assumed the role of chief protector of human rights principles and generally are the principal conduits through which human rights principles are conveyed, channeled, and challenged. In furtherance of their roles, governments have devised appropriate mechanisms to pursue human rights within their borders and satisfy their obligations under the relevant human rights instruments.¹⁴⁴

But of course, this model of the state as the chief protector and enforcer of human rights is now breaking down, for several reasons. One reason is that we have witnessed state parties as violators of human rights.¹⁴⁵ Another has been the discrepancy between the nature of procedural and substantive violations, and their private counterparts. Public violations of human rights, that is, those violations committed by government actors, are ordinarily subjected to appropriate punitive measures. However, those committed by private actors in the private realm, are largely shielded from governmental intervention.¹⁴⁶

Another obstacle is that governments engage in what has been termed “low intensity democracy.”¹⁴⁷ In other words, existing governmental institutions encompass all the trappings of democracy, including an edifice of formal legal and bureaucratic institutions, but almost overwhelmingly ignore the purported beneficent outcomes that these institutions are supposed to further. In addition, governments will sign and ratify

140. See Reiff, *supra* n. 120, at 26; see also Scott Peterson, *Me Against My Brother: At War in Somalia, Sudan, and Rwanda* (Routledge 2001).

141. Kenneth Anderson, *Humanitarian Inviolability in Crisis: The Meaning of Impartiality and Neutrality for U.N. and NGO Agencies Following the 2003–2004 Afghanistan and Iraq Conflicts*, 17 Harv. Hum. Rights J. 41 (2004).

142. For a provocative analysis of humanitarian intervention, see Reiff, *supra* n. 120.

143. See Intl. Council on Hum. Rights Policy, *Local Government and Human Rights: Doing Good Service*, http://www.ichrp.org/paper_files/124_p_01.pdf (2005).

144. See Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 European J. Intl. L. 171 (2003).

145. See Amnesty Intl., *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* (Amnesty Intl. 2005) (available at <http://www.amnestyusa.org/outfront/stonewalled/report.pdf>); Hum. Rights Watch, *World Report 2006: Events of 2005* (Hum. Rights Watch & Seven Stories Press 2006) (available at <http://hrw.org/wr2k6/wr2006.pdf>).

146. See Hum. Rights Watch, *Sexual Violence and its Consequences among Displaced Persons in Darfur and Chad: A Human Rights Watch Briefing Paper* (Hum. Rights Watch, Apr. 12, 2005) (available at <http://hrw.org/background/africa/darfur0505/darfur0405.pdf>); Hum. Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore* (Hum. Rights Watch, 2005) (available at <http://hrw.org/reports/2005/singapore1205/singapore1205wcover.pdf>); Hum. Rights Watch, *Honoring the Killers: Justice Denied For “Honor” Crimes In Jordan* (Hum. Rights Watch, Apr. 2004) (available at <http://www.hrw.org/reports/2004/jordan0404/jordan0404.pdf>).

147. Susan Marks, *Guarding the Gates with Two Faces: International Law and Political Reconstruction*, 6 Ind. J. Global Leg. Stud. 457, 460, 464–68 (1999). According to Marks, low-intensity democracies exist where “[d]emocratization has been informed by a[n] . . . undemanding and highly formal conception of democracy, in which the holding of periodic multiparty elections is taken largely to suffice, and more far-reaching institutional changes are held to be optional extras.” *Id.* at 464–65 (footnote omitted); see also Susan Marks, *The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology* (Oxford U. Press 2000).

global human rights documents with huge numbers of reservations, but brazenly disregard the provisions of the documents and their obligations at the national level.¹⁴⁸

A further deficiency of the statist model, that is, the state as the protector and enforcer of human rights, is reflected in a growing recognition of the obstacles that states confront in either promoting human rights values or preventing their violation. These obstacles may be the consequences of the particular global economic configuration of this historic moment, that is, a dominant economic paradigm of the free market unfettered by significant governmental restraint. This limitation may sorely test the traditional role and capability of the state.¹⁴⁹ In addition, predatory ruling elites may be indifferent to the plight of the majority of their fellow citizens, or the population at large may have succumbed to a fatalistic despair regarding their overall welfare.¹⁵⁰

But by far the most considerable challenge facing international human rights advocates is the desperate situation of the majority of women around the globe.¹⁵¹ Many of the obstacles to the achievement of human rights that I have outlined above intersect with the plight of women in several ways. These include the violence that women experience in the public and private sphere,¹⁵² and during war and internal conflict.¹⁵³ They also include the failure of the state to protect women and, indeed in some situations, of encouraging or acquiescing in the subordination and suppression of women.¹⁵⁴ The plight of large numbers of women, particularly in poorer countries, is also exacerbated by economic policies that reinforce their poverty.¹⁵⁵

In the final analysis, the human rights project creates somewhat of a paradox. On the one hand, human rights principles are an important tool of empowerment, providing individuals with a language and structure to fight persecution, injustice, and

148. Peterson, *supra* n. 140, at 9; see also Ryan Goodman, *Human Rights Treaties, Invalid Reservations, and State Consent*, 96 Am. J. Intl. L. 531, 541 (2002).

149. It has been noted that:

Three forces seem to characteri[z]e the modern era which together help explain the apparent crisis of all state institutions: a growing strengthening of international capitalist structures which override the ability of elected national governments to control the economy; a retreat from seeing the public sphere as one which can provide essential services and its replacement by a growing emphasis on private[z]ed (i.e., money making) ventures; and an upsurge of particularist identities, which threaten the social cohesion of nation states (and in some cases their very continuance).

Dennis Altman, *Globalisation, the State and Identity Politics*, 7 *Pacifica Rev.* 69, 69 (1995).

150. See Mahmood Monshipouri, *Promoting Universal Human Rights: Dilemmas of Integrating Developing Countries*, 4 *Yale Hum. Rights & Dev. L.J.* 25 (2001); Randall Peerenboom, *Human Rights and Rule of Law: What's the Relationship?* 36 *Geo. J. Intl. L.* 809 (2005); Deborah M. Weissman, *The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez*, 30 *N.C. J. Intl. L. & Com. Reg.* 795 (2005).

151. For statistics on the situation of the world's women, see U.N. Dev. Fund for Women, *Progress of the World's Women 2005: Women, Work and Poverty* (2005) (available at http://www.unifem.org/attachments/products/PoWW2005_eng.pdf).

152. U.N. Econ. & Soc. Council, *Report of the United Nations Development Fund for Women on the Elimination of Violence Against Women* (Dec. 20, 2005) (available at http://www.unifem.org/attachments/products/VAWTrustFundReport2005_eng.pdf).

153. *Id.*; see also Zainab Salbi, *The Other Side of War: Women's Stories of Survival and Hope* (Natl. Geographic Bks. 2006).

154. See Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (U. Chi. Press 2005).

155. See *Women's Rights: A Human Rights Quarterly Reader* (Bert B. Lockwood ed., Johns Hopkins U. Press 2006).

inequity.¹⁵⁶ On the other hand, the human rights project also is an exclusionary mechanism—its symbols, content, and structure largely reflecting the judicialization of politics—with legal processes as the primary enforcement method.¹⁵⁷

Several international human rights scholars have raised questions as to whether the international human rights legal system ought to be strengthened, or whether a focus on the legal pursuit of human rights ought to be jettisoned. Christine Chinkin, the feminist international legal scholar, has raised particularly pointed questions:

Is the concerted effort for universal ratification of human rights treaties pointless given the ease with which states evade or ignore their obligations? Are the procedural and substantive innovations that have been made over the last few years no more than tinkering around the peripheries, or are they steps that can evolve into a widely adhered to regime? . . . Have NGO campaigns for greater legal implementation of human rights been a waste of energy and time, or worse, positively detrimental in that they have diverted resources from political or other campaigns?¹⁵⁸

These are hard questions and no doubt human rights scholars and activists will respond in divergent ways.

Ultimately the pursuit of human rights within the global legal paradigm may only be effective if linked to other human rights strategies. In other words, the practical value of human rights lies in an integrated process of transformation of people's lives involving an engagement with the most salient aspects of identity including kinship, family, community, and religion. It also involves the engagement of other human rights "players," such as teachers, politicians, the media, and religious leaders, who may enable the success of human rights strategies.

VII. CONCLUSION

A narrow focus on the formal pursuit of rights, especially their incorporation in legal instruments, is ultimately limited in scope. But the centrality of human rights is predicated on an interpretation of human rights that recognizes the interconnectedness of identity, interests, dignity, and access to economic resources. The pursuit of human rights is about our interconnected world—a cliché, but also the reality. And it is this reality that Nadine Strossen has consistently strived for.

Nadine Strossen's work has demonstrated the possibility of pursuing rights in the face of official and unofficial hostility, fear, and apathy. She has consistently eschewed a narrow legalistic approach to human rights issues, to one that recognizes the lived experiences and reality of individuals and communities. Despite the many challenges

156. See Jack Donnelly, *Universal Human Rights: In Theory & Practice* (2d ed., Cornell U. Press 2002).

157. In the end, no matter the instruments chosen to pursue human rights, their efficacy will have no meaning without proper enforcement mechanisms and proper systems of accountability and evaluation. Thus far the systems operating at the global level, particularly those administered by the United Nations, continue to operate on the basis of global cooperation, underpinned by the idea that most countries of the world are good global citizens. This is not necessarily the case. In addition, the enforcement mechanisms, particularly the procedural ones, are weak and cumbersome—making them unattainable for most people, except for a select few.

158. Christine Chinkin, *International Law and Human Rights*, in *Human Rights Fifty Years On*, *supra* n. 17, at 105, 119–20.

that I have outlined in my paper, it has become increasingly clear that the pursuit of civil liberties and civil rights in this country will find common cause with the global human rights movement. And the language, structures, and processes of the global human rights framework, with all their limitations, will continue to provide ideological and strategic sustenance for people struggling everywhere. And if nothing more, provide hope.

