

In Defense of Human Rights

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ABSTRACT

This Article argues that international human rights law, and the human rights movement more generally, need more defenders than critics in the current international political environment. Groups ranging from academics to governments have taken stances critical of human rights, and this Article seeks to defend the rights framework from some of these while also arguing for the importance of human rights in today's world. Noting that the field of human rights is not beyond criticism, this Article embraces some of those criticisms. However, it suggests that human rights law specialists need to spend at least as much time defending human rights law, and the universality of human rights, as they do criticizing it. Moreover, their criticisms need to be grounded in the reality of the theory and practice of human rights law to be useful and advance human dignity. Decontextualized hypercriticism risks playing into the hands of antirights actors, including some contemporary governments, as well as diverse fundamentalists and extremists.

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I. INTRODUCTION

2019 is a critical moment for considering the future of international human rights law. Embattled humanity—living in a world of extremists of all kinds, of proliferating claims of cultural relativism and cultural excuses for human rights violations, a world threatened by catastrophic climate change, where hate is being normalized, inequalities are growing, public space is being privatized, and where the impulse to censor thrives—desperately needs full implementation of its universal human rights, which are both grounded in international human rights law and transcend that body of law.¹ Yet, antirights actors continue to hold power and take power around the world in many states and societies.² The international human rights system is threatened by budget cuts and loss of political support.³ Human rights discourse and international human rights legal obligations are disappearing in many intergovernmental and

1. See Karima Bennouna (Special Rapporteur in the Field of Cultural Rights), *Rep. of the Special Rapporteur in the Field of Cultural Rights*, 3, U.N. Doc. A/HRC/40/53 (Jan. 17, 2019) [hereinafter A/HRC/40/53] (explaining the threats and challenges growing extremism and fundamentalism pose to human rights).

2. See, e.g., NAUREEN SHAMEEM, OBSERVATORY ON THE UNIVERSALITY OF RIGHTS (OURS), RIGHTS AT RISK: TRENDS REPORT 2017 50–52 (2017), <https://www.oursplatform.org/wp-content/uploads/Rights-At-Risk-OURS-Trends-Report-2017.pdf> [<https://perma.cc/7UQY-YL7S>] (archived Sept. 10, 2019) (illustrating various international anti-rights actors and their activities).

3. Just to give a few examples, in the U.N. system this has resulted *inter alia* in budget cuts at the Office of the High Commissioner for Human Rights, including related to staffing for the U.N. Special Procedures system, and to threats to cancel meetings of six of the U.N. human rights treaty bodies, which would have prevented the holding of already-scheduled reviews of state reports and interactive dialogues with states parties, and the consideration of individual complaints about alleged violations of human rights. Press Release, Office of the High Comm’r for Human Rights, U.N. Budget Shortfalls Seriously Undermine the Work of the Human Rights Treaty Bodies (May 17, 2019). Some of these measures were opposed successfully through civil society human rights activism. See Jacob Blaustein Inst (@JBI_HumanRights), TWITTER (July 1, 2019, 9:21 PM), https://twitter.com/JBI_HumanRights/status/1145908189965275136 [<https://perma.cc/3BX4-M2PY>] (archived Sept. 11, 2019) (describing the efforts of NGOs in opposing threats to cancel the fall meetings of U.N. Treaty Bodies). Regional systems, such as the Inter-American Commission on Human Rights (IACHR) have also faced financial crisis and layoffs. The President of the IACHR put this in stark terms: “In the Inter-American Commission on Human Rights, we face the worst financial crisis in history. We have empty coffers.” Stephanie Farrior, *IACHR Financial crisis: suspends hearing, 40% staff layoffs to come*, INTLAWGRRLS (May 24, 2016), <https://ilg2.org/2016/05/24/iachr-financial-crisis-suspends-hearings-40-staff-layoffs-to-come/> [<https://perma.cc/XR76-6EV2>] (archived Sept. 11, 2019). That specific crisis was solved through donations. Press Release, Inter-American Comm’n on Human Rights, IACHR Overcomes Its Severe Financial Crisis of 2016 and Thanks Countries and Donors who Made it Possible (Sept. 30, 2016). However, such events are recurrent and also arising in other regional human rights systems. See, for example, this story regarding the European human rights system: Jennifer Rankin, *Human rights body faces cash crisis after clash with Russia*, GUARDIAN, Mar. 16, 2018, <https://www.theguardian.com/law/2018/mar/16/human-rights-body-faces-cash-crisis-after-clash-with-russia> [<https://perma.cc/N2PB-4EAQ>] (archived Sept. 11, 2019).

international debates.⁴ Official rhetoric increasingly attacks, questions, and undermines rights at a basic level, while impunity for gross abuses remains rampant.⁵

At the same time, many significant positive advances in human rights have been made, including through creative use of human rights law. These include local initiatives aimed at increasing understanding and tolerance;⁶ creative efforts by human rights defenders to improve compliance and accountability;⁷ new possibilities and avenues for

4. For a discussion of this issue, see, e.g., Carmel Williams & Alison Blaiklock, *Human Rights Discourse in the Sustainable Development Agenda Avoids Obligations and Entitlements*, 5 INT'L J. HEALTH POL'Y & MGMT. 387, 387–88 (2016).

5. See, e.g., Human Rights Council, Conference Room Paper of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, 4–5, U.N. Doc. A/HRC/37/CRP.3 (Mar. 8, 2018); Anu Kumar, *We Can't Let the Trump Administration Dismantle Women's Rights Around the World*, REWIRE.NEWS (Mar. 19, 2019, 11:37 AM), <https://rewire.news/article/2019/03/19/we-cant-let-the-trump-administration-dismantle-womens-rights-around-the-world/> [https://perma.cc/2JZ4-7CH9] (archived Sept. 11, 2019). As David Miliband recently noted, we are in an “Age of Impunity.” David Miliband, Remarks at the 2019 Fulbright Lecture, *The New Arrogance of Power: Global Politics in the Age of Impunity* (June 19, 2019) (transcript available at International Rescue Committee website).

6. For the many examples of all these positive endeavors and possibilities, see Karima Bennouna (Special Rapporteur in the Field of Cultural Rights), *Rep. of the Special Rapporteur in the Field of Cultural Rights*, 3, U.N. Doc. A/HRC/37/55 (Jan. 4, 2018) [hereinafter A/HRC/37/55]. In the field of promoting understanding and tolerance through human rights advocacy, see the work of Free Women Writers, a non-profit, non-partisan and all-volunteer women's rights organization composed of writers, students and activists based in Afghanistan and the diaspora. Its mission is to improve the lives of Afghan women through advocacy, storytelling and education. One example of its work is the publication of “Daughters of Rabia,” a collection of Afghan women's writings in defense of human rights, which has been distributed in schools, universities, libraries, and to people in six provinces in Afghanistan and has reached thousands online. Its books are available in local languages free of cost, and for sale in English. The books' proceeds are used to provide educational opportunities through scholarships, and to increase access to “consciousness-raising literature.” *Id.* at ¶ 31; see also FREE WOMEN WRITERS, www.freewomenwriters.org/ (last visited Sept. 11, 2019) [https://perma.cc/RU44-ABSV] (archived Sept. 11, 2019).

7. One such effort is the work of the Center for Justice and Accountability (CJA) based in the United States which combines litigation and broader advocacy. According to its website, “CJA's mission is to deter torture, war crimes, crimes against humanity, and other severe human rights abuses around the world through innovative litigation, policy, and transitional justice strategies. . . . CJA's vision is a world in which justice thrives – where every nation has the capacity and willingness to prosecute human rights criminals and achieve justice for those most marginalized in society. We believe too that the world's worst human rights criminals should be brought to justice wherever they are found, as we help build the rule of law in the nations where the original crimes occurred. CJA partners with victims and survivors in pursuit of truth, justice, and redress. . . . CJA has defended the Mayan Ixil community from Guatemala in cases in both Spain and Guatemala, seeking accountability for a genocide that killed thousands; and we have represented 45 Cambodian Americans before the international hybrid tribunal in cases against former leaders of the Khmer Rouge regime, which led to the death of 1,700,000 to 3,000,000 Cambodians. Our cases have helped make laws that advance international human rights. CJA integrates other innovative strategies to hold human rights abusers accountable. We pair our survivor-centered litigation with transitional justice projects, in which we work alongside in-country prosecutors to hold human rights abusers criminally accountable in national courts. We engage in policy advocacy to ensure that

global cooperation in the promotion of rights;⁸ multiplying challenges to sexual harassment and sex discrimination;⁹ significant international, regional, and national legal victories,¹⁰ however limited; and growing recognition of areas of human rights, such as the rights of persons with disabilities,¹¹ of peasants,¹² and of LGBTI persons;¹³ and rights in relation to crucial topics, such as the environment.¹⁴

there are civil and criminal remedies to hold human rights criminals accountable around the globe.” *Mission Statement*, CTR. FOR JUSTICE & ACCOUNTABILITY, <https://cja.org/who-we-are/mission-and-history/> (last visited Sept. 11, 2019) [<https://perma.cc/Q59Y-7EDP>] (archived Sept. 11, 2019).

8. For example, Arterial Network, a dynamic pan-African civil society network of artists, cultural activists, entrepreneurs, enterprises, nongovernmental organizations (NGOs), institutions, and donors, is active in Africa’s creative and cultural sectors. Its mission is to facilitate partnerships within civil society, beyond national borders and between African and international partners so as to develop a sustainable creative sector in a manner that contributes to *inter alia* human rights on the African continent. Arterial Network also monitors freedom of artistic expression. Its project ‘Artwatch Africa’ aims to assess, promote, and defend rights to creative expression for artists and cultural practitioners in Africa. See *Arterial Network*, U.N. EDUC., SCI. & CULTURAL ORG. (UNESCO), <https://en.unesco.org/partnerships/non-governmental-organizations/arterial-network> (last visited Sept. 11, 2019) [<https://perma.cc/UB5C-B7C7>] (archived Sept. 11, 2019) (describing the Arterial Network and its mission and goals).

9. See A/HRC/37/55, *supra* note 6, at ¶¶ 79–80.

10. See, e.g., *Motshidiemang v. Attorney General*, High Ct. of Bots., No. MAHGB-000591-16 (June 11, 2019) (decriminalizing homosexual relations); *Bachelet Welcomes Botswana High Court Decision De-Criminalizing Same-Sex Relations*, U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS. (June 11, 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24687&LangID=E> [<https://perma.cc/G4WL-42MD>] (archived Oct. 26, 2019) (reporting the U.N. High Commissioner for Human Rights’ reaction to *Motshidiemang*); Brief of Human Rights Watch as Amici Curiae Regarding Human Rights and the Environment, Corte Suprema de Justicia [C.S.J.][Supreme Court], “Chahuan Chahuan, Francisco c. Empresa Nacional de Petróleos, ENAP S.A” Rol de la causa: 5888-2019 (Chile) (arguing for the Court to be guided by framework principles on human rights and the environment developed by the U.N. Special Rapporteur on human rights and the environment); Marcos Orellana, *Chile’s “Clean Air” Ruling Offers Hope on World Environment Day*, HUM. RTS. WATCH (June 5, 2019, 10:28 AM), <https://www.hrw.org/news/2019/06/05/chiles-clean-air-ruling-offers-hope-world-environment-day> [<https://perma.cc/QN6J-MJSX>] (archived Sept. 11, 2019) (noting Chilean Supreme Court ruling in Francisco Chahuan Chahuan versus Empresa Nacional de Petróleos, ENAP S.A, Case No. 5888–2019, on constitutional right to a pollution free environment).

11. See OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES ADVOCACY TOOLKIT 1–6 (2008), https://www.ohchr.org/Documents/Publications/AdvocacyTool_en.pdf [<https://perma.cc/K2TU-CPC6>] (archived Sept. 11, 2019).

12. See G.A. Res. 73/165, at 1–4 (Dec. 17, 2018) (outlining the contributions of peasants and rural workers, and going on to reaffirm the rights of those groups).

13. Note the creation of the mandate of the Independent Expert on sexual orientation and gender identity. See *Independent Expert on sexual orientation and gender identity*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx> (last visited Sept. 11, 2019) [<https://perma.cc/924H-85JM>] (archived Sept. 11, 2019).

14. See *inter alia* the important work of the U.N. Special Rapporteur on Human Rights and the Environment in advancing the case for international recognition of the human right to a healthy environment, similar to that found in certain regional systems.

In 2019, any consideration of international human rights law must take into account all of these developments, and must weigh the meaning and nature of human rights broadly, both within the law and beyond the law. The field of human rights is not only a vital academic discipline; it also represents a critical set of tools in the struggle for human dignity, tools that are urgently needed around the world today at the international and the local levels. Theory needs to inform and be informed by practice as never before, and further cooperation, dialogue, and exchange are needed between practitioners and scholars, whose domains are and must be understood to be overlapping and mutually enriching.

Critical thinking can be a part of ensuring the best future course for global struggles for human rights.¹⁵ Human rights norms, and the practice of human rights institutions, organizations, and advocates, are not above criticism or scrutiny, are acceptable topics for debate, and should be held to the standards they themselves promote.¹⁶ Nothing in this Article is meant to suggest otherwise. Indeed, critical thinking is itself a key human right, art of the rights to freedom of expression, to thought and conscience, and to education and academic freedom, as well as being vital in the pursuit of knowledge, and to advancing debate and understanding.¹⁷ It can make human rights law work better. In this regard, it is a privilege to have an opportunity to comment on two thought-provoking keynote Articles engaged in the enterprise of critical thinking about the future of international human rights law. I am also grateful for the Symposium's commitment to

See John H. Knox (Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *Rep. of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, ¶¶ 11–16, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018).

15. *See, e.g.*, Malcom Langford, *Critiques of Human Rights*, 14 ANN. REV. L. & SOC. SCI. 69, 69 (2018) (“[W]ith an emerging postliberal order, and a deepened concern over respect for human rights in both democracies and autocracies, critiques and counter-critiques deserve consideration in ensuring that the political project of human rights is both effective and equitable.”).

16. The issue of the accountability of such actors has recently received justified media attention. *See, e.g.*, Karen McVeigh, *Amnesty International has toxic work culture, report finds*, GUARDIAN, Feb. 6, 2019, <https://www.theguardian.com/world/2019/feb/06/amnesty-international-has-toxic-working-culture-report-finds> [<https://perma.cc/8Z7F-CNGD>] (archived Sept. 11, 2019) (reviewing the working conditions at Amnesty International).

17. *See, e.g.*, Human Rights Comm., Gen. Comment 22, art. 18, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 35, ¶ 1, U.N. Doc. HRI/GEN/1/Rev.1 (July 1994) (“The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.”).

dialogue, as open discussion among people with different views is increasingly important and yet growing rarer in the current moment.

However, criticism has consequences. These are sometimes unintended consequences, as this criticism reverberates in fraught contexts. This dynamic must be carefully considered as a matter of ethics by those exercising the human rights related to the critical enterprise who are also concerned about advancing human well-being, equality, and justice. Questioning basic tenets of human rights has become *de rigeur* in many parts of the academy, especially at elite institutions in the West, and seems to be a way of establishing one's intellectual *bona fides*.¹⁸ (Sometimes this verges on *ad hominem* attacks on the entire discipline.¹⁹) Criticizing the field of human rights or international human rights law, from this vantage point and doing so in sweeping terms in 2019, as if it were the 1990s when human rights was arguably a dominant discourse of rising liberal internationalism, can have, to put it mildly, negative results. The same may be said of doing so without due regard to today's challenges and resulting possible consequences, or with inadequate consideration of the threats to human rights defenders and their work using and invoking international human rights law.²⁰ Rather than improving the

18. For an overview of such critiques, see Cesar Rodriguez-Garavito, *The Future of Human Rights: From Gatekeeping to Symbiosis*, 20 SUR-INT'L J. HUM. RTS. 499, 499-501 (2014). For selected examples, see also STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* 1-4 (Cornell Univ. Press 2013); SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (Harv. Univ. Press 2018); MAKAU MUTUA, *HUMAN RIGHTS STANDARDS: HEGEMONY, LAW AND POLITICS* 1-8, 177-83 (SUNY Press 2016); WIKTOR OSIATYNSKI, *HUMAN RIGHTS AND THEIR LIMITS* 187-88 (Cambridge Univ. Press 2009); NIKHIL AZIZ, *THE HUMAN RIGHTS DEBATE IN AN ERA OF GLOBALIZATION* 1 (1995), reprinted in *DEBATING HUMAN RIGHTS* 32 (Peter Van Ness ed., 1999); Duncan Kennedy, *The Critique of Rights in Critical Legal Studies*, in *LEFT LEGALISM/LEFT CRITIQUE* 178 (Wendy Brown & Janet Halley eds., 2002); Amy Bartholomew, *Human Rights and Post-Imperialism: Arguing for a Deliberative Legitimation of Human Rights*, 9 BUFF. HUM. RTS. L. REV. 25, 25-33 (2003); Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1937-42 (2002); Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 COLUM. HUM. RTS. L. REV. 259, 262 (2004) ("map[ping] the context of the human rights project over the past hundred years with a critical eye and as a cautionary tale" in which "human rights have been appropriated as an instrument of national policy, often to the detriment of humanitarian objectives.").

19. For examples from different perspectives, see ERIC POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* 79-122 (Oxford Univ. Press 2014); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201, 201-09 (2001).

20. When one makes categorical criticisms of human rights law, one should consider the impact on frontline human rights defenders like Qin Yongmin who have put their own rights on the line to defend and promote these norms, legal provisions which are often assailed by governments at the national and international levels. A prominent human rights defender in China, Qin was convicted in July 2018 of "subversion of State power" and sentenced to thirteen years in prison. Among the evidence presented against him by the prosecutor was a book in which he called on the Government of China to protect human rights in accordance with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. See Karima Bennouna (Special Rapporteur in the Field of Cultural Rights), *Rep. of the Special Rapporteur in the Field of Cultural Rights*, ¶ 36, U.N. Doc. A/73/227 (July 25, 2018) (examining threats

system and rights protection, this kind of criticism, especially when it is normalized in much academic discourse, risks undermining both.

Another question that must be asked is why many academics in the field of human rights seem to be more committed to criticizing human rights law and practice rather than suggesting or contributing to finding solutions to the problems they lament. Here I share the discomfort with exaggerated criticism of “rights-based theory” and the worry about its implications for those most in need of rights protection that was expressed by Patricia Williams in her thoughtful 1987 rejoinder to the Critical Legal Studies camp.²¹ As she noted, “[f]or the historically disempowered the conferring of rights is symbolic of all the denied aspects of humanity.”²² While Williams herself recognizes the importance of ongoing critical discourse about the limitations and failures of rights discourse and practice,²³ as do I, she also reminds us of the contributions this discourse and related constructions have made.²⁴ Ultimately, she warns that the deconstruction of, or overstated criticism of rights (and I would add of those seeking their implementation), without adequate consideration of the role of rights, can be harmful and can move people away from greater recognition of our shared humanity, rather than closer to it.²⁵ This kind of hypercriticism may be more comfortable for those who can presume their rights, than for those who recognize they have to fight for them every day.

In response to this concern, after considering the keynote Articles, I will also offer some modest thoughts of my own about the way ahead for human rights and international human rights law in the current fraught global environment. While I make these comments solely in my personal capacity, I do so both as a professor of human rights law and from the perspective of a long-time practitioner in the field in many different capacities, including as a former Amnesty International legal advisor and most recently as United Nations (UN) Special Rapporteur in the field of cultural rights.

to and proposing ways to reinforce universality, cultural diversity, and cultural rights) [hereinafter A/73/227]; *China Sentences Veteran Human Rights Defender Qin Yongmin to 13 Years in Prison*, NETWORK OF CHINESE HUMAN RIGHTS DEFENDERS (July 11, 2018), <https://www.nchr.org/2018/07/china-sentences-veteran-human-rights-defender-qin-yongmin-to-13-years-in-prison/> [<https://perma.cc/8GB6-M9VP>] (archived Sept. 12, 2019) (reporting the sentencing of Qin Yongmin); Indictment No. 107, The People’s Procuratorate of Wuhan City, Hubei Province, China, June 17, 2016.

21. Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.–C.L. L. REV. 401, 402–06 (1987).

22. *Id.* at 416.

23. *See id.* at 422–24.

24. *See id.* at 423–27 (recognizing that a broader acknowledgement of rights may confer benefits on those receiving the rights despite the failures of rights discourse).

25. *See id.* at 424–27.

II. RESPONSES TO THE KEYNOTE ADDRESSES

Turning first to the keynote addresses, both of them clearly force us to ask important questions about the field of human rights and international human rights law, and this questioning can be part of cultivating a healthy, self-critical, humble methodology. However, it is likewise worth noting that critique is always easier than creation. This is both a comment on the two Articles' tendency toward offering critique rather than alternative, which is an often dominant approach in the legal academy, but also a caveat to my own comments. Hence, I will point out what I appreciate and agree with in the papers, which is substantial, as well as where I take a different view, all in, of course, what governments call at the UN "a spirit of cooperation."

In particular, I will argue that critiques of international human rights or human rights law that are based on broad generalizations, and not on examples, or that are not grounded in the context of current challenges, or are made in isolation from what advocates are actually doing with human rights and human rights law on the ground, are limited in their utility for charting the future course of human rights. When exercising their essential critical functions to develop theory, academics can make a better contribution if they engage more fully with praxis and transcend the artificial boundaries between the two. As Catharine MacKinnon once noted acerbically, "[i]t is common to say that something is good in theory but not in practice. I always want to say, then it is not such a good theory, is it?"²⁶ Bearing these concerns in mind, I now turn to my assessment of some strengths and weaknesses of the keynote Articles.

A. *Samuel Moyn: Human Rights and Majority Politics*

I understand Samuel Moyn's central argument in this Article to be that "[h]uman rights need to be reconceived as a potentially majoritarian project, as well as embedded in larger packages of high-priority policy that can sufficiently appeal to majorities and are congruent with their interests."²⁷ I found it bracing to be forced to contemplate the consequences of strategic choices made by some human rights advocates in some contexts, and to consider the intersection of democratic politics and human rights commitments. Professor Moyn is undoubtedly correct that we need to grapple with the challenges arising from a certain kind of human rights politics that verge on what he calls "allowing minorities to substitute their policies for those of majorities."²⁸ I agree that what he terms "extraordinary

26. Catharine MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13, 13 (1991).

27. Samuel Moyn, *Human Rights and Majority Politics*, 52 VAND. J. TRANSNAT'L L. 1135, 1138 (2019).

28. *Id.* at 1143.

care” (paraphrasing Frankfurter) needs to be taken to ensure “proper use of human rights in politics and law.”²⁹ Moyn is doing nothing less than asking us to consider from a human rights perspective what it means to be a democrat (and here this word should be understood in light of the lower case “d,” as the term is used descriptively in French).³⁰ He is also forcing human rights advocates to remember that their project is not just to document abuses, change laws, and protect and support victims and survivors of violations, but also to change minds and indeed to contribute to the construction and reconstruction of majority commitment to human rights, to build or rebuild what Chetan Bhatt has called “a centrist human rights consensus,” something Bhatt has reminded us cannot be taken for granted today.³¹

Many human rights advocates are aware of this need for vastly increasing and nurturing human rights constituencies. Consider the words of former UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein in a different speech than that cited by Professor Tasioulas,³² his speech to the Jacob Blaustein Institute in New York, in which he noted that:

What is missing . . . —and what would change the trajectory, would be the existence of a much broader, indeed world-wide wave of popular support for universal human rights—pushing, prodding, holding their governments to the mark, and shaking-up the slumbering politicians. We must now intensify, greatly, our advocacy and expand our reach in a manner that is without precedent. . . . We need now to connect to tens of millions of people, and quickly.³³

The current High Commissioner Michele Bachelet is attempting to pursue this popularization through a new initiative of telling human rights stories and explaining the social value of human rights.³⁴

At its best, Moyn’s Article asks us to ponder the democratization of human rights politics, though he does not say enough about the concomitant need to imbue what we call democracy with human rights

29. *Id.* at 1147.

30. *See id.* at 1146–48 (assessing the relationship between democratic principles and human rights).

31. Chetan Bhatt, Former Director, Human Rights Studies Ctr., London Sch. of Econ., Remarks at Side Event: Facing Up to the Global Avalanche of Hate: The Impact of Fundamentalism and Extremism on Cultural Rights (Mar. 3, 2017).

32. Zeid Ra’ad Al Hussein, U.N. High Comm’r for Human Rights, Speech at the BIICL Annual Grotius Lecture: Is International Human Rights Law Under Threat? (July 26, 2017) (transcript available at the British Institute of International and Comparative Law).

33. Zeid Ra’ad Al Hussein, U.N. High Comm’r for Human Rights, Lecture at the Jacob Blaustein Institute: Why We Stand Up for Human Rights (Oct. 19, 2017) (transcript available at the Office of the U.N. High Commissioner for Human Rights website).

34. Michelle Bachelet, U.N. High Comm’r for Human Rights, Statement by the U.N. High Commissioner for Human Rights: ‘Good Human Rights Stories’ Initiative (Feb. 13, 2019) (transcript available at the Office of the U.N. High Commissioner for Human Rights website).

commitments. After all, the infamous “tyranny of the majority”³⁵ is not a positive outcome either, and as human rights law makes clear, there are certain values, such as the right not to be tortured, which cannot be overcome by popular fiat.³⁶ I also appreciate what I understand as Moyn’s appeal to take the long view in which international human rights law is ultimately about social change. This is exemplified by the single most ambitious article of human rights law, Article 5(a) of the UN Convention on the Elimination of All Forms of Discrimination against Women, cited approvingly as a “demanding norm” by Tasioulas,³⁷ which calls on states to

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³⁸

Social change is built into this kind of human rights law.

This brings me to some points of divergence with Moyn. I began to write this Article, as is often the case, on an airplane flight, during which I watched the film *Selma*,³⁹ in which civil rights marchers who ultimately succeeded in forcing President Johnson’s hand on the Voting Rights Act marched carrying both the United States and United Nations flags and making regular reference to that most basic of

35. See, e.g., LANI GUINIER, TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY 1–20 (Free Press 1994) (giving an overview of the “tyranny of the majority” concept); JOHN STUART MILL, ON LIBERTY 20–21 (Dover Publications 2002) (1859) (assessing and criticizing the concept of the “tyranny of the majority.”). See also criticism of this concept in ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 155–62 (Yale Univ. Press 1989) (analyzing the concepts of both majority and minority tyranny).

36. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 makes this point abundantly clear.

37. John Tasioulas, *Saving Human Rights from Human Rights Law*, 52 VAND. J. TRANSNAT’L L. 1167, 1198 (2019). Note that article 5, ¶ a of the U.N. Convention on the Elimination of All Forms of Discrimination against Women, the positive assessment of which I share with Tasioulas, has also come in for some criticism in the human rights academy in the past as a provision which goes too far. Theodor Meron argued that this essential provision could lead to violations of privacy, of freedom of opinion and freedom of religion. See THEODOR MERON, HUMAN RIGHTS LAW MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESS 66–67 (Oxford Univ. Press 1986).

38. United Nations Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, art. 5, ¶ a.

39. For an assessment of the historical accuracy of this film by a historian, see Alex von Tunzelmann, *Is Selma Historically Accurate?*, GUARDIAN, Feb. 12, 2015, <https://www.theguardian.com/film/2015/feb/12/reel-history-selma-film-historically-accurate-martin-luther-king-lyndon-johnson> [https://perma.cc/Q248-MMHC] (archived Sept. 12, 2019) (Her conclusion: “a well-researched, accomplished and fair-minded biopic . . .”); see also DAVID J. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965 31–161 (Yale Univ. Press 2015) (chronicling the events of the Selma protest and its aftermath).

human rights concepts: dignity.⁴⁰ The Civil Rights Movement in the United States in 1965 at the time depicted in the film was in some ways a countermajoritarian human rights struggle, though I also note as a limit on this assertion that in certain regional contexts African Americans constituted instead a disenfranchised majority.⁴¹

Watching the film reinforced my view that it is only possible to use a broad charge of countermajoritarianism as a critique of human rights advocacy if we dismiss or downplay the fears that many different minorities have of many kinds of majorities (Moyn nods to this in the Article⁴² but does not go far enough, in my view). Moreover, it is a critique that would have to be offered with an alternative suggestion about how to protect and support the rights of vulnerable minorities while majorities that support dignity and equality are (re)constructed. Technically, the Civil Rights Movement was, in some limited sense, “countermajoritarian,” and rightly so. Majorities can be wrong. As part of its strategic repertoire, and out of necessity, it appealed to the courts, and went beyond local and state processes and officials, calling for federal solutions, and understandably so in certain regions.⁴³ Civil rights activists also attempted to have recourse to international bodies, understanding the rampant racial discrimination and violence that they confronted to be matters of international human rights, and not only of domestic civil rights.⁴⁴

Yet, the movement was also about trying to appeal to and change the views of the nationwide majority. As King says in the movie *Selma*, the movement was trying to affect *both* black and white consciousness.⁴⁵ Human rights defenders often take this kind of oscillating stance, sometimes using what might be seen as tactical countermajoritarianism, sometimes aiming to build a new kind of majority view, often doing both at the same time. Attempting to make long-term change while facing exigent threats to human rights requires nothing less than this versatility. Moyn’s Article at its best

40. See the discussion of the Selma Protest in THOMAS BORSTELMANN, *THE COLD WAR AND THE COLOR LINE: AMERICAN RACE RELATIONS IN THE GLOBAL ARENA* 188–91 (Harv. Univ. Press 2001).

41. See Gabriel Jack Chin & Randy Wagner, *The Tyranny of the Minority: Jim Crow and the Counter-Majoritarian Difficulty*, 43 HARV. C.R.-C.L. L. REV. 65, 68–72 (2008).

42. See Moyn, *supra* note 27, at 1146–1148.

43. See, e.g., GARROW, *supra* note 39, at 31–161; Chin & Wagner, *supra* note 41, at 68–72.

44. See, e.g., W.E.B. Du Bois, *Introduction*, in NAT’L ASS’N FOR THE ADVANCEMENT OF COLORED PEOPLE, *AN APPEAL TO THE WORLD: STATEMENT ON THE DENIAL OF HUMAN RIGHTS TO MINORITIES IN THE CASE OF CITIZENS OF NEGRO DESCENT IN THE UNITED STATES OF AMERICA AND AN APPEAL TO THE UNITED NATIONS FOR REDRESS* 1–14 (W.E.B. Du Bois ed., 1947).

45. This view is also reflected in MARTIN LUTHER KING, JR., ET AL., *THE PAPERS OF MARTIN LUTHER KING, JR. VOLUME V: THRESHOLD OF A NEW DECADE, JANUARY 1959–DECEMBER 1960* 504 (Clayborne Carson et al. eds., 2005) (reproducing a typed draft of Rev. King’s address at the Golden Anniversary Conference of the National Urban League in 1960).

reminds us of the consequences when these strategic choices become out of balance. However, many contemporary events are all too timely reminders of why some majorities do have sometimes to be clearly countered if there is to be any human rights protection for those who need it most. Of course, the questions remain as to how best to do that and what are the long-term consequences of choices made about the methods utilized. Moyn is trying to get us to grapple with that latter issue, in particular.

However, Moyn's Article does not give specific examples, and it is difficult to assess the real-world implications of his argument without them. One does not have to reach back into history for an appropriate example. Based on an important caveat that he added in his oral presentation at Vanderbilt, Professor Moyn might reply that my next example would fit into his exception of "not good enough democracies" that fall outside of his argument, but it is the example that immediately came to mind while reading his Article. This is the case of Asia Bibi, a Christian Pakistani woman who had been recently condemned to death for blasphemy when I arrived in Pakistan on a research trip in 2010.⁴⁶ I watched small groups of courageous protestors, Pakistani Christians, Muslims, and atheists, demonstrate on the street against her death sentence, confronted by fundamentalist counterprotestors and the police.⁴⁷ They were clearly a small, embattled minority but determined to voice their support for her, nonetheless.⁴⁸

After Ms. Bibi spent nearly a decade in jail and at grave risk, the Pakistani Supreme Court acquitted her, in part due to what could be seen as minority human rights activism on her behalf at home, and support abroad.⁴⁹ Remember that large numbers of Pakistanis, including lawyers (so it was not a question of fearing the people and trusting elites as Samuel Moyn⁵⁰ puts it, because a significant part of the elite was involved), had also protested in support of the bodyguard who killed a Pakistani regional governor named Salman Taseer who

46. An account of this event can be found in KARIMA BENNOUNE, *YOUR FATWA DOES NOT APPLY HERE: UNTOLD STORIES FROM THE FIGHT AGAINST MUSLIM FUNDAMENTALISM* 234–43 (2014) [hereinafter BENNOUNE, *YOUR FATWA DOES NOT APPLY HERE*].

47. *Id.*

48. *Id.*

49. For a review of the case, see Michael Sai & Shah Meer Baloch, *Asia Bibi arrives in Canada after leaving Pakistan*, *GUARDIAN*, May 8, 2019, <https://www.theguardian.com/world/2019/may/08/asia-bibi-arrives-in-canada-after-leaving-pakistan> [<https://perma.cc/DLM2-67DF>] (archived Sept. 12, 2019); Salman Masood & Mike Ives, *Asia Bibi, Christian Cleared of Blasphemy Charges Leaves Pakistan for Canada*, *N.Y. TIMES*, May 8, 2019, <https://www.nytimes.com/2019/05/08/world/asia/asia-bibi-blasphemy-pakistan-canada.html> [<https://perma.cc/FQ3Q-KERS>] (archived Sept. 12, 2019).

50. For various references to this concept, see Moyn, *supra* note 27, at 1137, 1146, 1148, 1153–54, 1162.

had defended Ms. Bibi.⁵¹ The Supreme Court recently heroically confirmed the acquittal notwithstanding massive street protests against that earlier decision and death threats against the judges—that is, against the view of a certain majority.⁵² To me this shows the incredibly important role the judiciary can play and illustrates that we have to be very careful of sweeping critiques of “juristocratic”⁵³ human rights when this issue is very context specific. In response to those who, as Martin Luther King, Jr. phrased it, “argue that legislation, court orders and executive decrees from the federal government are ineffective because they cannot change the heart,” and “the law may not change the heart, but it can restrain the heartless.”⁵⁴ Indeed, at times, judicial engagement is the only available option for urgent rights protection.

In Pakistan, fundamentalists have been so successful at transforming the views of the majority on the issue of “blasphemy” (a process facilitated by US support for the Islamizing dictatorship of President Muhammad Zia-ul-Haq (1978–1988) but also by transnational fundamentalist advocacy funded by Gulf States)⁵⁵ that the only immediate solution for saving Ms. Bibi’s life was to employ what might be termed “countermajoritarian” strategies, and the judicial remedies questioned by the Tasioulas Article. Meanwhile, the very sophisticated milieu of human rights defenders and NGOs in Pakistan have also never given up on their commitment to trying, in the longer term, to facilitate shifts back toward a more favorable consensus on the human right to freedom of religion or belief.⁵⁶ (Note that the first Foreign Minister of Pakistan defended the right to leave religion in the 1948 General Assembly debate about the adoption of the Universal Declaration of Human Rights, quoting the Qur’an, so this *would* indeed be a shift back.⁵⁷)

For an example of the longer-term strategy, I think of the great Sabeen Mahmud, founder of the vitally important cultural space T2F in Karachi, a place where one can attend a workshop about sexual

51. See Farhan Bokhair, *Execution of Governor’s Assassin Sparks Protest in Pakistan*, FIN. TIMES, Feb. 29, 2016, <https://www.ft.com/content/7eb659d2-dea6-11e5-b072-006d8d362ba3> [<https://perma.cc/3ZLJ-RHYL>] (archived Sept. 12, 2019) (reporting the circumstances and aftermath of the execution of Governor Taseer’s assassin); Jan Boone, *Thousands at Funeral of Pakistani Executed for Murdering Governor*, GUARDIAN, Mar. 1, 2016, <https://www.theguardian.com/world/2016/mar/01/funeral-pakistanimumtaz-qadri-executed-salmaan-taseer> [<https://perma.cc/WSS3-H32Q>] (archived Sept. 12, 2019).

52. See Masood & Ives, *supra* note 49 (detailing Asia Bibi’s blasphemy conviction, exonerated, and subsequent flight from Pakistan).

53. See Moyn, *supra* note 27, at 1159.

54. Martin Luther King, Jr., *An Address Before the National Press Club, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 100 (James Melvin Washington ed., 1986).

55. See BENNOUNE, YOUR FATWA DOES NOT APPLY HERE, *supra* note 46, at 62–69, 234–35, 239–43.

56. *Id.*

57. A/73/227, *supra* note 20, annex ¶ 7.

harassment, sing the poetry of Faiz Ahmad Faiz at a regular open mic, or even attend events challenging the blasphemy law.⁵⁸ Mahmud told me during my 2010 visit that “[c]hanging minds doesn’t happen in a week. What may be obvious to you and me is anathema to that person. You need that time and that engagement to hear out the other person as well as to present your viewpoint.”⁵⁹

This was why her strategy in opening T2F was that of the creation of cultural space for dialogue and exchange.⁶⁰ She paid with her life for doing this work, tragically assassinated in 2015 by a young man said to be a jihadist who had attended events at her café and had also been responsible for attacks on religious minorities.⁶¹ Sitting in T2F back in 2010, she had said openly: “The blasphemy law is something I really want to see gone in my lifetime. That is something that really needs more people to rise up and take a stand.”⁶² She and so many other Pakistani feminists, human rights defenders, trade unionists, journalists and others have taken this stand, using a range of strategies, both to protect victims from the views of the majority and to change those views.⁶³ That is precisely the sort of strategic flexibility that is required, and I think that the analysis in Moyn’s Article would be enhanced by further reflecting on this reality. As James Gathii pointed out in his presentation at the Symposium, courts are only one venue for diverse human rights action.⁶⁴

Some of the criticisms offered by both Moyn and Tasioulas are seemingly written in isolation from what human rights advocates are actually doing around the world. The Younis critique cited by Tasioulas, for example, suggesting that the human rights movement writ large has disregarded the need for social movements and engaged citizenry,⁶⁵ also overlooks some of this reality on the ground.⁶⁶ Human rights advocates in many places *are* working with, supporting and building social movements, and working to mobilize broader constituencies, sometimes risking their very lives.⁶⁷ They may not be

58. See BENNOUNE, YOUR FATWA DOES NOT APPLY HERE, *supra* note 46, at 62–73.

59. *Id.* at 65.

60. *Id.*

61. Imtiaz Ali, *IS-inspired militants behind Safoora Carnage, Sabeen Mahmud murder*, DAWN (July 1, 2015), <https://www.dawn.com/news/1191660> [https://perma.cc/EAZ3-WKDU] (archived Sept. 11, 2019).

62. BENNOUNE, YOUR FATWA DOES NOT APPLY HERE, *supra* note 46.

63. *Id.* at 62–69, 234–35, 239–43.

64. James T. Gathii, *Beyond Samuel Moyn’s Counter-majoritarian Difficulty as a Model of Global Judicial Review*, 52 VAND. J. TRANSNAT’L L. 1237, 1271 (2019).

65. Tasioulas, *supra* note 37, at 1206 n.157 (citing Mona Younis, *Back to the Future: Returning to Human Rights*, OPEN GLOB. RIGHTS (Nov. 1, 2018) <https://www.openglobalrights.org/Back-to-the-Future-returning-to-human-rights/> [https://perma.cc/4KAL-6RFU] (archived Sept. 11, 2019)).

66. *Id.* at 1206.

67. For a contemporary example of this, consider the role of human rights organizations and lawyers related to the 2019 popular movement for substantive democracy in Algeria. See, e.g., Mustapha Benfodil, *Les détenus d’opinion, ce premier*

doing enough, but they are doing what they are, and with relatively limited resources, often facing an uphill battle. It might be an idea for academics, rather than simply criticizing them and the human rights ideas and norms that they use, to theorize how we might do more to support them.

B. John Tasioulas: Saving Human Rights from Human Rights Law

This brings me to the Tasioulas Article. Professor Tasioulas asserts under the rubric of his marvelously acronymed FAT or Formative Aim Thesis that the “essential point of IHRL [international human rights law] is to give expression and effect to an underlying morality of human rights, insofar as it is appropriate to do so, through the medium of individual legal rights ascribed to all human beings.”⁶⁸ One of his most important insights in the Article, from my perspective as Special Rapporteur on cultural rights, is that there is a sort of lived reality of human rights underlying human rights law.⁶⁹ As he says, “human rights [are] embedded in the ‘moral operating systems’ of a striking number of people throughout the world irrespective of the place they occupy in any given social hierarchy.”⁷⁰ Moreover, he is absolutely correct to say that this understanding is an important means for responding to critiques of human rights as an “elite discourse.”⁷¹ This is a critical point. I have also tried to convey this view about the culture of human rights in my UN capacity.⁷² Recognition of human dignity, equality and justice, as well as abuses of rights, often takes place through the mode of lived experience.⁷³ In other words, the rights-versus-culture debate misses the mark as rights are a part of cultures and vice versa.

I also concur with his timely reminder that human rights law and human rights are noncontiguous. All too often human rights lawyers do not recognize that human rights is a much broader language, a set of strategies and concepts that cross many disciplinary boundaries, and we pay insufficient attention to nonlegal aspects of human rights. However, I also think that human rights scholars and advocates who are not lawyers sometimes downplay the importance of law and legal guarantees, which make up one set of tools—and sometimes a critical one—in the human rights toolbox.

On another topic, I appreciate Professor Tasioulas’s point about human rights concerns being embodied in other areas of international

obstacle au dialogue, EL WATAN (July 8, 2019), <https://www.elwatan.com/edition/actualite/les-detenus-dopinion-ce-premier-obstacle-au-dialogue-08-07-2019> [<https://perma.cc/9Y52-4P6F>] (archived Sept. 11, 2019).

68. Tasioulas, *supra* note 37, at 1169.

69. See A/73/227, *supra* note 20, at ¶¶ 43, 45.

70. Tasioulas, *supra* note 37, at 1178.

71. *Id.*

72. See A/73/227, *supra* note 20, at ¶ 65.

73. *Id.* at ¶ 43.

law beyond international human rights law, including the *jus ad bellum*.⁷⁴ In fact, I think it was precisely such a holistic view which underpinned the late Kofi Annan's efforts as UN Secretary General to mainstream human rights across the UN system, a welcome trend which is being increasingly reversed today.⁷⁵

This said, I also have some points of disagreement with the Tasioulas Article. Professor Tasioulas sets out to "sav[e] human rights from the way in which they have been distorted by human rights law that has transgressed its proper bounds."⁷⁶ This seems to have occurred, in his view, because human rights law is simultaneously too expansive and too vague, and too legalized and judicialized. It seems to me that these two points are somewhat contradictory. If the complaint is that rights are too aspirational, it would seem that the provision of specific legal remedies, including through judicial means, would be essential. If the complaint is that the rights holder does not have much in the way of rights, it seems that saluting the decision of the judiciary to avoid affording a remedy does not make a great deal of sense.⁷⁷

Dovetailing with Professor Moyn's Article, Tasioulas queries whether or not what he terms "populism" has indeed the exclusively negative characteristics ascribed to it by some in the human rights camp, a view that he sees as "an unrealistically Manichean template for interpreting political realities."⁷⁸ However, he does not make an empirical case for his argument. When looking at the impact of diverse forms of fundamentalism and extremism⁷⁹ on cultural rights, including

74. Tasioulas, *supra* note 37, at 1179.

75. See U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, 12–18, U.N. Doc. A/59/2005 (Mar. 21, 2005); Mac Darrow & Louise Arbour, *The Pillar of Glass: Human Rights in the Development Operations of the United Nations*, 103 AM. J. INT'L L. 446, 446–501 (July 2009); Kofi Annan, U.N. Sec'y-Gen., Address to the U.N. Commission on Human Rights (Apr. 7, 2005).

76. Tasioulas, *supra* note 37, at 1173.

77. See *id.* at 1201–04.

78. *Id.* at 1171.

79. On defining fundamentalism and extremism, see Karima Bennoune (Special Rapporteur in the Field of Cultural Rights), *Rep. of the Special Rapporteur in the Field of Cultural Rights*, ¶¶ 4–18, U.N. Doc. A/HRC/34/56 (Jan. 16, 2017) [hereinafter A/HRC/34/56] (fundamentalisms may be understood as "political movements of the extreme right, which in a context of globalization... manipulate religion, culture or ethnicity, in order to achieve their political aims"); Marieme Hélie-Lucas, *What is your tribe? Women's struggles and the construction of muslimness*, in DOSSIER 23–24, 49, 51 (Harsh Kapoor ed., 2001). To paraphrase the work of Jessica Horn, they usually articulate public governance projects, in keeping with their theocratic visions, and impose their interpretation of religious doctrine on others as law or public policy, so as to consolidate social, economic and political power in a hegemonic and coercive manner. JESSICA HORN, CHRISTIAN FUNDAMENTALISMS AND WOMEN'S RIGHTS IN THE AFRICAN CONTEXT: MAPPING THE TERRAIN 1 (2013). Fundamentalisms have emerged out of all of the world's major religious traditions, including Buddhism, Christianity, Hinduism, Islam and Judaism, and others. Given the religious claims of their proponents, they are especially difficult and dangerous to contest. In each case, they represent a minority phenomenon distinct from the broader religious tradition itself, although drawing

the impact of ideologies espoused by some movements labeled “populist,” in my capacity as UN Special Rapporteur, I was struck by the widespread threat these ideologies are posing to basic notions not only of human rights but of humanity itself.⁸⁰ This is occurring in virtually every region of the world in different forms, such as the rise of Hindu fundamentalism, currently in power in India, burgeoning Muslim fundamentalism in and out of power across Muslim majority regions, Buddhist fundamentalism motivating abuses in Myanmar and Sri Lanka, Christian fundamentalism spreading across Africa and Latin America, far right extremism growing in Europe and North America, and far left extremism in a smaller number of places, but still having a negative impact in countries like Venezuela, and on some college campuses.⁸¹

Frankly, I am frustrated by the extent to which human rights academics (with a few exceptions like Chetan Bhatt whom I cited) have failed to respond or even recognize the global danger these movements and ideologies, taken together, pose. While I think it is important to understand the motives that are driving people to such extremes, and toward such movements that manipulate their grievances, and to note how human rights advocates need to better respond to their underlying concerns, I sympathize entirely with those like Zeid and Philip Alston who are criticized on this point by Tasioulas. I understand why some (actually not enough) voices in the human rights camp have presented fundamentalist and extremist forces and the threats they pose to human rights in stark terms and as nothing less than a choice of contrasting worldviews. We have to counter their ideologies with a vigorous human rights response, and one that seeks to offer

selectively from it. No religion is inherently fundamentalist nor should fundamentalist views be imputed to all adherents of any religion. See A/HRC/34/56, *supra* note 79. Extremism is a broader and more fluid concept than fundamentalism but also more vague and liable to abuse. Some forms of contemporary extremism that have a particular impact on human rights focus on myths of a homogenous nation, claims of ethnic or racial superiority or purity, and populist ultra-nationalism directed against liberal and pluralistic democracy. Much of the contemporary assault on rights from extremism emanates from the far right of the political spectrum, which is ascendant or in power in many places. *Id.* at paragraph 13. A set of indicators to aid in recognition of extremism were distilled from social scientists by the former Officer-in-Charge of the Terrorism Prevention Branch at the United Nations Office on Drugs and Crime. The most relevant include that: “Extremists tend to . . . seek to . . . (re-)establish what they consider the natural order in society — whether . . . based on race, class, faith, ethnic superiority, or alleged tradition; are usually in possession of an ideological programme or action plan aimed at taking and holding communal or state power; . . . reject universal human rights and show a lack of empathy and disregard for rights of other than their own people; . . . reject diversity and pluralism in favor of their preferred mono-culture society; . . . [and] portray themselves as threatened . . .” A/HRC/34/56, *supra* note 79, at ¶ 14 (quoting Alex P. Schmid, *Violent and Non-Violent Extremism: Two Sides of the Same Coin?*, INT’L CTR. FOR COUNTERTERRORISM—THE HAGUE 21–22 (May 2014), <https://www.icct.nl/download/file/ICCT-Schmid-Violent-Non-Violent-Extremism-May-2014.pdf> [<https://perma.cc/A757-FZPN>] (archived Oct. 2, 2019).

80. See A/HRC/34/56, *supra* note 79, at ¶ 14.

81. *Id.* at ¶¶ 84, 87.

alternatives.⁸² I think that this is one of the many central challenges that must be addressed to ensure the future of the human rights project in today's world.

Readers interested in further information about these issues could consider the two reports on the topic which I prepared for the UN in 2017,⁸³ as well as the contribution by the Special Rapporteur on the right to freedom of peaceful assembly and association the year before.⁸⁴ As I noted in my reports, there are common themes across fundamentalist and extremist abuses of cultural rights.⁸⁵ Such abuses often involve attempts at cultural engineering aimed at redesigning culture based on monolithic world views, focused on "purity" and enmity toward "the other," policing "honour" and "modesty," claiming cultural and moral superiority, imposing a claimed "true religion" or "authentic culture" along with dress and behavior codes often alien to the lived cultures of local populations, stifling freedom of artistic expression and curtailing scientific freedom.⁸⁶ Diverse fundamentalists and extremists today also aim to limit the enjoyment of women's human rights and restrict the sexual and reproductive rights of all.⁸⁷ Fundamentalist and extremist groups often seek to quash the expression of cultural opposition to their own agenda.⁸⁸ Diverse religious fundamentalists have sought to punish cultural expression antithetical to their interpretations of religion through blasphemy laws, gender-discriminatory family laws, campaigns of harassment, education that does not conform to human rights standards, a wide range of other human rights abuses and outright violence, and in many cases have succeeded in doing so.⁸⁹ Extremists often harass and target members of minority groups and lesbian, gay, bisexual, and transgender persons who seek to enjoy their equal human rights, including cultural rights.⁹⁰

82. See, e.g., CASSANDRA BALCHIN, TOWARD A FUTURE WITHOUT FUNDAMENTALISMS 57–99 (Association for Women's Rights in Development 2011); FARAH PANDITH, HOW WE WIN: HOW CUTTING-EDGE ENTREPRENEURS, POLITICAL VISIONARIES, ENLIGHTENED BUSINESS LEADERS, AND SOCIAL MEDIA MAVENS CAN DEFEAT THE EXTREMIST THREAT (2019).

83. See Karima Bennoune (U.N. Special Rapporteur in the Field of Cultural Rights), *Fundamentalism, Extremism and the Cultural Rights of Women*, U.N. Doc. A/72/155 (July 17, 2017) [hereinafter A/72/155]; A/HRC/34/56, *supra* note 79 (describing instances of women's human rights defenders being targeted by fundamentalists).

84. U.N. Special Rapporteur, *The Rights to Freedom of Peaceful Assembly and of Association*, 5th Thematic Rep., U.N. Doc. A/HRC/32/36 (Aug. 10, 2016).

85. See A/HRC/34/56, *supra* note 79.

86. *Id.* at ¶ 3.

87. See A/72/155, *supra* note 83, at ¶¶ 7, 43, 57, 70–72.

88. See A/HRC/34/56, *supra* note 79, at ¶ 3.

89. *Id.*

90. See *id.* (citing U.N. High Comm'r for Human Rights, *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, U.N. Doc. A/HRC/29/23 (May 4, 2015); U.N. High Comm'r for Human Rights, *Discriminatory Law and Acts of Violence Against Individuals Based on their Sexual Orientation and Gender Identity*, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011)).

Moreover, I would dispute a point Tasioulas has now wisely consigned for the most part to a footnote (and which Moyn mentioned in passing), which suggests that human rights has become somehow synonymous with a “robust commitment to military intervention” in the event of gross violations of human rights.⁹¹ This concern seems decidedly 2003 and seems to diverge from the complex reality in the field. In fact, what has been “robust” is the debate among human rights advocates over the question of military intervention.⁹² But an even more stark factual counter to his claim comes from watching events in Myanmar or South Sudan (something which of course we can almost never do in the United States as our televisual media has resolutely decided not to cover these countries).⁹³ While I share Moyn’s apprehension about the human rights impact of armed conflict,⁹⁴ at the same time I fear that the pendulum has swung too far in the other direction, and instead we are increasingly quiescent about massive violations of human rights and would almost never countenance intervention under virtually any circumstances, including in the face of crimes against humanity and genocide. I recently heard the

91. See Tasioulas, *supra* note 37, at 1179 n.37.

92. For example, Amnesty International undertook lengthy internal policy debates on these very questions in 1997–2001, and again in 2004–2005. This author took part as a consultant in the extensive 2004–2005 process. See also INTERNATIONAL COUNCIL FOR HUMAN RIGHTS POLICY, HUMAN RIGHTS CRISES: NGO RESPONSES TO MILITARY INTERVENTIONS (2002), <https://reliefweb.int/sites/reliefweb.int/files/resources/0E6015150D76455249257418000DE208-115.pdf> [<https://perma.cc/K7C4-88CU>] (archived Sept. 12, 2019) (describing and analyzing the debate within and among human rights NGOs on the use of force). For a small selection of the vigorous decades long debate in the academic literature and policy documents from diverse points of view, see, e.g., *The Responsibility to Protect*, INT’L COMM’N ON INTERVENTION & STATE SOVEREIGNTY XI (2001); Fenando Tesón, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY (2d ed. 1988); Simon Chesterman, JUST WAR OR JUST PEACE: HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW (Oxford Univ. Press 2001); Abdullahi A. An-Na’im, *NATO on Kosovo is Bad for Human Rights*, 17 NETH. Q. HUM. RTS. 229, 231 (1999); Antonio Cassese, *Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?*, 10 EUR. J. INT’L L. 23 (1999); Thomas M. Franck & Nigel S. Rodley, *After Bangladesh: The Law of Humanitarian Intervention By Military Force*, 67 AM. J. INT’L L. 275, 302 (1973); Ved Nanda et. al, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia – Revisiting the Validity of Humanitarian Intervention Under International Law*, 26 DENV. J. INT’L L. & POL’Y 827 (1998). For an overview of the debate, see Karima Bennouna, ‘Sovereignty vs. Suffering?’ *Re-Examining Sovereignty and Human Rights through the Lens of Iraq*, 13 EUR. J. INT’L L. 243, 254 (2002).

93. See, e.g., Human Rights Council, *International Fact-Finding Mission on Myanmar*, U.N. Doc. A/HRC/39/64 (Sept. 12, 2018); Rep. of the Comm’n on Human Rights in South Sudan, <https://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx> (last visited Sept. 13, 2019) [<https://perma.cc/T28P-DWGH>] (archived Sept. 13, 2019).

94. See Karima Bennouna, *A Peace of Her*, 19 UCLA J. INT’L L. & FOREIGN AFF. 63, 63–88 (2015); Karima Bennouna, *Toward a Human Rights Approach to Armed Conflict: Iraq 2003*, 11 U.C. DAVIS J. INT’L L. & POL’Y 171, 171–228 (2004).

Rwandan Minister of Justice make a compelling plea to rethink this stance.⁹⁵

I would also like to encourage Professor Tasioulas to rethink an aside in his Article about human rights law not appropriately covering what he terms “private” matters like the distribution of domestic tasks.⁹⁶ For me, this is a *non sequitur* that, perhaps inadvertently, undercuts the entire subdiscipline of women’s human rights—that is, the human rights of half of humanity. Experts on women’s human rights have consistently challenged this arbitrary public/private distinction, understanding that the late Rhonda Copelon was correct to assert that “patriarchy constitutes men as a parallel state in many women’s lives.”⁹⁷ This means that a genderblind vision of “privacy” cannot be a shield against expressing human rights concern.⁹⁸ There can be no future for human rights without the mainstreaming of women’s human rights and responding to harms faced by both women and men and the specific ways in which they manifest, as Christine Chinkin and Hilary Charlesworth have insisted. “They should be genuine human rights, not male rights.”⁹⁹

This brings me to the end of my specific comments on the keynote Articles. Let me now offer a few thoughts of my own about the state of international human rights law scholarship, and about the future of that body of scholarship, and of human rights itself.

III. IN DEFENSE OF HUMAN RIGHTS

As an academic who also spends a lot of time in practice, I am frequently frustrated by academic discourse across our field. A significant percentage of the academic human rights and human rights law literature is not about how to implement these rights in the lives of people, or protect the UN or regional human rights systems from the attacks they now face, or even how to improve these systems, but about critiquing core aspects of human rights.¹⁰⁰ These critiques are recycled, cited, and cross-cited. They often echo, are echoed by, and sometimes

95. Johnston Busingye, Rwandan Minister of Justice & Att’y Gen., Presentation at the University of California, Davis School of Law: The Collective Memory of Genocide (Nov. 5, 2018).

96. See Tasioulas, *supra* note 37, at 1175 (“Even if human rights morality requires a just distribution of domestic chores, for example, it is not the law’s proper business to get involved with private matters of this kind.”).

97. Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence As Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 299 (1994).

98. *Id.*

99. Hilary Charlesworth & Christine Chinkin, *The Gender of Jus Cogens*, 15 HUM. RTS. Q. 63, 75 (1993).

100. For an overview of such critiques, see *supra* note 18.

even reinforce what some governments say when attacking human rights at the UN,¹⁰¹ even if that is not the intention of these authors.

Professor Tasioulas criticizes Alston, Zeid, and others for focusing on the external pressures on human rights.¹⁰² Academics, however, have been obsessed with what they deem as the internal pressures and problems of human rights, and often seem much more comfortable arguing about those internal dynamics than figuring out how to advance the goals of human rights in the world we live in.¹⁰³ Too often we take human rights for granted and feel that we are only saying something worthwhile if we rise to criticize them. Given the realities of 2019, adopting this stance is both a luxury and very risky in a world where a decreasing number of states are actively defending human rights in fora such as the UN Human Rights Council and the General Assembly, and where the governments of an increasing number of states are actually attacking basic human rights concepts.¹⁰⁴

Critiquing, debating, and asking questions are always important, and developing theory is a worthwhile enterprise. However, I wish that human rights academics would spend more time, for example, lending their expertise to advocacy on specific cases, or at least theorizing a human rights system that would make it more likely to succeed in advancing rights in those cases, such as those of the many Sudanese academics, our colleagues, who were arrested in the protest movement in that country shortly before we convened at Vanderbilt.¹⁰⁵ Engaging in such activities would also give a practical context to ground our theorizing. While there are some individual academics who engage

101. A striking example of this was the hosting in Tehran by the Iranian government backed NAM Center of Western scholars criticizing human rights. See *Cultures in Support of Humanity*, 1 NAM Y.B. ON HUM. RTS. & CULTURAL DIVERSITY (Kamran Hashemi & Linda Briskman eds., 2012).

102. Tasioulas, *supra* note 37, at 1170, 1192.

103. See *supra* note 18.

104. Note, for example, the Trump administration's new "Natural Law" initiative. See Nahal Toosi, *Trump's 'Natural Law' Human Rights Panel Readies for Launch*, POLITICO (July 3, 2019, 8:17 PM), <https://www.politico.com/story/2019/07/03/human-rights-panel-1398636> [<https://perma.cc/T8EM-K9Q3>] (archived Sept. 13, 2019). Some of the supporters of this project also claim to be concerned with the "overbreadth" of human rights law and will reportedly seek to redefine and narrow international human rights in accordance with natural law. "We've seen a proliferation, and consequent dilution, of human rights When human rights advocates campaign for a 'human rights to sanitation,' it diverts our attention from basic rights like freedom of speech or freedom from torture." *Id.* Human rights advocates fear that these efforts will be particularly aimed at weakening and rejecting protections for women's human rights, including sexual and reproductive rights, LGBTI rights and economic, social and cultural rights. Rebecca Hamilton, *Exclusive: Draft Charter of Pompeo's "Commission on Unalienable Rights" Hides Anti-Human Rights Agenda*, JUST SECURITY (June 5, 2019), <https://www.justsecurity.org/64430/exclusive-draft-charter-of-pompeos-commission-on-unalienable-rights-hides-anti-human-rights-agenda/> [<https://perma.cc/5FXR-EH2C>] (archived Sept. 13, 2019).

105. See, e.g., *Sudan: Professors Detained in Anti-Bashir Protest*, DEUTSCHE WELLE (Dec. 2, 2019), <https://www.dw.com/en/sudan-professors-detained-in-anti-bashir-protest/a-47483567> [<https://perma.cc/QN7K-8732>] (archived Sept. 12, 2019).

with the UN system, in particular through Non-governmental Organizations, why is there no coalition of human rights academics active at the UN, for example, to systematically offer expert input, attempt to defend the system when it comes under attacks, and work to improve it? If we criticize human rights defenders for failing to have transformative human rights politics, we must also ask how transformative our academic stances have been. We possess many more resources than they do and many of us face far less danger than many of them do.

The limited geographic and referential scope of much human rights scholarship is an additional drawback that should be remedied. All too often we engage in a literature in the United States and Europe that only or mostly cites other American or European scholars without a sense of the global dimensions of human rights history, thought, and practice, and we then transpose those views to human rights as a whole. The thing called human rights that we attack is so often what Aryeh Neier says it is, or Michael Ignatieff says it is. In this framing, human rights is not what Dalit rights advocates like the Jan Sahas Social Development Society¹⁰⁶ in India says and does, or what Mozn Hassan,¹⁰⁷ the embattled head of Nazra for Feminist Studies in Egypt, says and does, or even what is found in the discourse or practice of NESRI, the National Economic and Social Rights Initiative working for the rights of poor people in the United States.¹⁰⁸ If human rights academics do not reverse course on many of these issues, broaden and deepen our perspectives, and rethink our relationship to the field, the future of international human rights and international human rights law may unfold in spite of our work, not at least in part, because of it.

This brings me to a few thoughts of my own on the question of the future of human rights. I will draw in particular from two reports that I have prepared, one presented to the UN General Assembly in 2018 on universality, cultural diversity, and cultural rights,¹⁰⁹ and one that I presented shortly after the Vanderbilt meeting in 2019 to the UN Human Rights Council for the tenth anniversary of the UN mandate that I hold.¹¹⁰

Just over seventy years ago, on December 10, 1948, the UN General Assembly adopted the Universal Declaration of Human Rights.¹¹¹ The anniversary represented a critical moment to assess

106. See JAN SAHAS, SOCIAL DEVELOPMENT SOCIETY, <https://jansahasindia.org/> (last visited Sept. 12, 2019) [<https://perma.cc/96FQ-CWPM>] (archived Sept. 12, 2019).

107. A/73/227, *supra* note 20, at ¶ 35. Hassan has been subjected to a travel ban, has had her assets frozen, and has been summoned for interrogation on the basis of charges including “changing the cultural values of women and inciting the irresponsible liberation of women in society.” *Id.*

108. See NAT’L ECON. & SOC. RTS. INITIATIVE, <https://www.nesri.org/> (last visited Sept. 12, 2019) [<https://perma.cc/R7DQ-25XQ>] (archived Sept. 12, 2019).

109. A/73/227, *supra* note 20.

110. A/HRC/40/53, *supra* note 1.

111. See A/73/227, *supra* note 20, at ¶¶ 1, 12.

past achievements and defeats and to look to the future of human rights.¹¹² To maximize the positive developments, and counter the negative ones, we need to get back to defending in an unabashed way certain primordial human rights concepts, such as the universality of human rights.

The universality of human rights is one of the most important principles codified in international law during the twentieth century.¹¹³ It is the central idea of the Universal Declaration of Human Rights and a foundational aspect of the entire human rights system.¹¹⁴ Universality means that human beings are endowed with equal human rights simply by virtue of being human, wherever they live and whoever they are, regardless of their status or any particular characteristics.¹¹⁵ In practice, universality is a critical tool for the United Nations human rights system, diverse regional human rights mechanisms, and human rights defenders around the world.¹¹⁶

However, universality is currently under sustained attack from many directions, including from some governments, from some on the political right and left, from some nonstate actors, including extremists, fundamentalists and populists around the world, and even from some quarters in academia as part of the critical literature referenced above.¹¹⁷ Some of these attacks misuse culture and cultural rights justifications.¹¹⁸

In view of these attacks on universality, if we are to chart a positive course for the future of human rights, we need more than either supportive platitudes or decontextualized critical theory. We need a foundational renewal of universality, one that looks back to key standards, histories, and achievements, and also looks forward to sustaining and reinvigorating itself in the future with a broad youth constituency.¹¹⁹ Human rights advocates and experts must redouble their efforts to defend the universality of human rights. We must stand up for human rights. If we do not, who will?

In contradistinction to the negative views expressed about courts in the keynote Articles, I believe that the law is an important source of norms guaranteeing universal human rights, and courts have not the only role, but an important role to play in defending them. I laud, for example, an important recent judgment in the United Kingdom, *Children's Services and Skills v. The Interim Executive Board of Al-Hijrah School*, shaped by the

112. *Id.*

113. *Id.* at ¶ 1.

114. *Id.*

115. *Id.* at ¶ 2.

116. *Id.* at ¶¶ 2, 33.

117. *Id.* at ¶ 3.

118. *Id.* at ¶ 3.

119. *Id.* at ¶ 5.

intervention of women human rights defenders, which rejected religiously justified gender segregation in education, including in the name of defending the human rights of children.¹²⁰

Another positive example is the recent innovative citation of the Convention on the Rights of the Child by a judge in an appeals court in Mazandaran province in the Islamic Republic of Iran when denying the petition of a man seeking to revoke his former wife's child visitation rights because she remarried.¹²¹ Every effort must be made to facilitate such use of the courts and the law to defend universality, including by facilitating the legal participation of human rights defenders.

There are other signs of positive human rights developments at the national and international levels in recognizing the equal and universal rights of those facing systematic discrimination, including with regard to their intimate lives, identities, and choices. For example, a significant step forward in rights protection was the overwhelming success of the Irish referendum in 2018, which abrogated the eighth amendment to the constitution, paving "the way for the development of a new legislative and regulatory framework for access to abortion services" that is more conducive to guaranteeing women's equal right to the highest attainable standard of health.¹²² This did not happen in a vacuum, but was the fruit of the labors of women human rights defenders and their allies on the ground, and represents the very interaction between social movements and legal change in advancing human rights that many argued for during the Vanderbilt Symposium. Another excellent example is the recent groundbreaking case from the Indian Supreme Court striking down the country's sodomy laws, after a protracted human rights and legal battle by advocates, again the product of extensive advocacy, this time by LGBTI rights defenders in India.¹²³

However, there are also worrying signs of a backlash against universality, such as well-resourced and orchestrated efforts by

120. *Children's Services and Skills v. The Interim Executive Board of Al-Hijrah School* [2017] EWCA (Civ) [156] (Eng.).

121. IRANIAN STUDENT NEWS AGENCY, www.isna.ir/news/95101911493/سابقه-بی-رای-سند-مازندران-در-دادگاه-یک (last visited Sept. 13, 2019) [<https://perma.cc/3PUL-CZQL>] (archived Sept. 13, 2019); A/73/227, *supra* note 20, at ¶ 28 (citing Omid Salimi Bani, *The Judiciary: In Mazandaran Court, A Judge Appeals to International Law*, HUM. RTS. & DEMOCRACY FOR IRAN (Jan. 7, 2017), <https://www.iranrights.org/library/document/3321> [<https://perma.cc/D8JU-ZC5H>] (archived Sept. 13, 2019)).

122. Press Release, Irish Human Rights & Equal. Comm'n, Oireachtas Must Now Legislate to Vindicate the Human Rights of Women and Girls in Accessing Healthcare (May 26, 2018); *see also* Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland, 10, U.N. Doc. CEDAW/C/IRL/CO/6-7 (Mar. 9, 2017).

123. *See Navtej Singh Johar & Ors. v. Union of India* Thr. Secretary Ministry of Law and Justice (2018) SC (India).

some governments, government-backed groups, international organizations, and civil society groups to campaign internationally against universality. This includes orchestrated campaigning by governments like Iran against universal human rights, proudly announced on the website of its “Human Rights High Council.”¹²⁴ It also includes the US withdrawal from the UN Human Rights Council, which, considering the language used by National Security Advisor Bolton to explain the move, was justified in similar terms to those used by Iran in rejecting international scrutiny.¹²⁵

To ensure that the next seventy years of the history of the Universal Declaration of Human Rights sees continued and greater progress in implementing the rights it contains, to take human rights into the future, given the present we now face, we must defend and promote the core principle of universality. We must promote this message holistically through scholarship, advocacy, policy, law, arts, culture, through courts, and mobilization. And legal academics, especially those specializing in international human rights law, need to play a more active and constructive role in this process.

I will now address the tools we need to achieve these goals. These include much greater development of implementation mechanisms and accelerated discussion of and strategizing around implementation and popularizing the human rights message. More funding is also urgently needed for the work on promoting and applying international human rights law.¹²⁶ The UN human rights system is being starved of funds needed to perform basic functions, and regional human rights systems face budget crises as well.

Perhaps, most importantly, we must stop trying to contend with twenty-first century human rights challenges using twentieth-century tools.¹²⁷ These tools all need updating.¹²⁸ One of the most significant

124. According to the website of the “Human Rights High Council” of the Islamic Republic of Iran, this official body campaigns “aggressively” at the international level against the worldview it ascribes to universal norms, rejecting the application of international human rights to Iran by international bodies. *A/73/227*, *supra* note 20, at ¶ 39 n.28.

125. For the official statement, see Mike Pompeo, U.S. Secretary of State, & Nikki Haley, U.S. Permanent Representative to the United Nations, Remarks on the United Nations Human Rights Council (June 19, 2018). In a radio interview that same day on a programme with some seven million listeners, the U.S. National Security Adviser, John Bolton, explained the decision of the United States as follows: “Fundamentally . . . this is a rejection of the notion that multilateral organizations are in a position to judge representative Governments like the US, or to try and impose their view of what an adequate human rights performance is.” *Audio Rewind*, The Mark Levin Show (June 19, 2018), <https://omny.fm/shows/mark-levin-audio-rewind/mark-levin-audio-rewind-6-19-18> [<https://perma.cc/9CTM-Z7QU>] (archived Sept. 13, 2019).

126. See *supra* note 3.

127. See *A/HRC/40/53*, *supra* note 1, at ¶¶ 51–52 (discussing that tools need to be updated in order to reach and interact with a larger audience).

128. *Id.*

difficulties human rights advocates face in terms of available tools is how to mobilize shame in an increasingly shame-free political world, where sometimes even discrimination, hate speech, and open defence of human rights violations, even at the highest levels, have been normalized.¹²⁹

Sometimes it seems as if every effort is made to make the UN human rights system uninteresting and inaccessible at the popular level, and to keep it stuck in the past. For example, the reports produced cannot contain graphics or images, nor can Special Rapporteurs use these when presenting their reports. To reach a worldwide audience, including young people, and ensure more effective implementation and greater grassroots engagement with human rights in the turbulent world of 2019 and beyond, those of us working in the field of international human rights law must make better use of social media and new communications technology and develop a new twenty-first century toolkit.

IV. CONCLUSION

Wole Soyinka, the first African writer to win the Nobel Prize for literature, took part in an event with me to launch my 2018 report as Special Rapporteur in the field of cultural rights on universality and cultural diversity.¹³⁰ He stressed the need for us all to choose whether we stand “on the side of principles which elevate humanity, rather than degrade humanity,” and asserted that we should dedicate the rest of this century to enabling the realization of the Universal Declaration of Human Rights.¹³¹ Human rights law, like culture, is not static, it is what human beings make of it, so Soyinka’s challenge is vital. The key question is not the last seventy years of the Universal Declaration, but its next seventy years, and how we keep alive, defend, update, and magnify its message.

In this Symposium, we have debated many issues, and readers will have to consider many good, sometimes conflicting, arguments to decide what they think about these questions. But it is not enough just to lob criticisms from the sidelines. It is not enough to propound critiques without grounding them in realities. And it is not enough to

129. One example of this broader phenomenon can be found in the sexist and racist verbal attacks openly unleashed on the U.N. Special Rapporteur on Summary, Arbitrary and Extra-judicial Executions and the Prosecutor of the International Criminal Court on the eve of International Women’s Day 2018 by President Duterte of the Philippines. See *Duterte Attacks Rights Officials Callamard and Bensouda*, AL JAZEERA (Mar. 9, 2018), <https://www.aljazeera.com/news/2018/03/duterte-attacks-rights-officials-callamard-bensouda-180309091927105.html> [<https://perma.cc/8KU6-N3RT>] (archived Sept. 13, 2019).

130. A/73/227, *supra* note 20.

131. Wole Soyinka, *The Universality of Human Rights and Cultural Rights*, ARTISTS AT RISK CONNECTION (Oct. 23, 2018), <https://artistsatriskconnection.org/story/wole-soyinka> [<https://perma.cc/B3KD-J9YY>] (archived Sept. 13, 2019).

offer a critique without offering a proposal for a better way forward. We have an ethical responsibility to engage in a way that will help realize the foundational principle articulated in the first article of the Universal Declaration: “All human beings are born free and equal in dignity and rights.”¹³² After all, as history shows, the future of human rights is not a foregone conclusion, its course is not inevitable. The future of human rights is up to us all.

132. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948).