

Teaching Human Rights: Ambivalent Activism, Multiple Discourses, and Lingering Dilemmas

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I. WHAT ARE WE TEACHING AND WHY?

The law curriculum is filled with courses whose very title leaves little question as to what we are teaching and why: tax, anti-trust, international transactions, federal courts. With a little imagination or a semester's experience, students can anticipate the story of laws, interests, and arbiters that they will encounter in class. The role of the lawyer is easily imagined; the location of the class in a law career is obvious.

On the other hand, human rights is one of those subjects that has had to justify its place in the curriculum. It has no obvious place for courts or lawyers, no clear hierarchy of norms; no career track. The field can be characterized as legal regime, *zeitgeist*, discourse, or ideology. The applicable norms include domestic law, international law, U.N. declarations, or possibly codes of conduct. And a short list of institutional fora could include courts, public opinion, international gatherings, shareholder meetings, and bedrooms. Even the jobs that are available now are not more than a suggestive indication to students of what might be available in five or ten years. Anyone daring to teach human rights has to explain what this subject is doing in the curriculum and make choices about how it might be relevant to the student.

This is an Essay about teaching human rights from the perspective of the advocate. It is an effort to convey some of what I have been teaching in a clinical seminar on human rights, and why. In Parts I and II, I trace the history that has brought human rights into the law school curriculum and the frustration of being caught between the pristine fervor of the idealist and the destructive enthusiasm of the critic. In Part III, I explore the advantages of taking the perspective of an advocate, for whom the complexities and contradictions in human rights may simply serve to multiply the number of

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tools available for achieving particular goals. I highlight the multiple discourses of the human rights treaties, as opposed to promoting a vision of a single coherent whole, and explore the political and ideological dilemmas that are bound up with human rights activism.

Much of my approach is a response to frustration with critics who represent human rights as a single discourse and a two dimensional movement. As an advocate myself, I believe it is possible to remain personally engaged without sacrificing critical faculties. It is also my goal to show students how human rights advocates deal with or ignore the dilemmas. In the classroom, I rely heavily on case studies and exchanges with activists. Outside the classroom, each of the students is involved in clinical advocacy project. In Part IV, I detail how this balance of criticism (in the morning), advocacy (in the afternoon), and discussion (after dinner) has worked.

II. TEACHING AMBIVALENT ACTIVISM

Human rights is only a recent addition to the curriculum. Not long ago, leading U.S. scholars in human rights lamented the dearth of human rights courses in law faculties and the poverty of available resources for teaching. The lament, which continued into the early 1980s, was all encompassing: too few schools teaching human rights and too little consideration of human rights in related subjects; not enough student demand or faculty interest; and, finally, outdated textbooks that were either too ponderous or too activist.¹ The conclusion, by a group of leading U.S. human rights scholars, rather than to abandon the project, was to propose increased efforts on all fronts: more human rights courses at law schools, a greater integration of human rights law into other courses, especially international law, and more teaching materials.²

The effort by academics to integrate human rights into the curriculum coincided fortuitously with a period in which the human rights discourse was seeping into international law and politics. With the waning of the Cold War, human rights had already begun to emerge from a mire of politically polarized opportunism into effective campaigns targeting individual countries and widely ratified treaties covering a range of themes. With the end of the Cold War, the rise of human rights law and discourse appeared to be unstoppable: new Constitutions around the world, new and newly reinvigorated treaties and treaty bodies, world conferences, a growing array of

1. Richard B. Lillich, *The Teaching of International Human Rights Law in U.S. Law Schools*, 77 AM. J. INT'L L. 855, 858 (1983). There were two major textbooks published in the 1970s, LOUIS B. SOHN & THOMAS BUERGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS: CASES AND MATERIALS* (1973) and RICHARD B. LILlich & FRANK C. NEWMAN, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY* (1979).

2. Not surprisingly, the view of human rights in 1979 was still fairly narrow: a consensus of participants in a two-day conference on teaching international human rights law agreed that "while stressing civil and political rights," course offerings, "should consider economic, social, and cultural rights as well." Lillich, *supra* note 1, at 857.

professionalized, non-governmental organizations (NGOs), a U.N. High Commissioner for Human Rights, and seemingly inexorable pressure to incorporate human rights into health, trade, and development.

These elements formed the basis of a powerful triumph narrative for human rights: the age of human had arrived.³ The university took note. Human rights established itself as a separate course in the curriculum and permeated many traditional international law courses.⁴ Several new or revised textbooks, authored by some of the principal human rights figures in the United States, attempted to fill the gap in the course material.⁵ These are texts of human rights proponents, often sophisticated, but never agnostic on the question of whether human rights is a good thing. (In contrast, no tax law textbook would ever be expected to say the same thing.)

But neither the proponents nor the critics succeed for me in capturing the dynamic of the human rights movement. As the critics are quick to point out, the proponents often exaggerate the triumphs, ignore the inconsistencies, and gloss over negative consequences. The language of human rights has a tendency to erase power differentials, cast issues in terms of absolutes, and create categories of victim and violator that reclaim racist and patriarchal hierarchies. Perhaps what enrages the critics most profoundly is the sense of arrogance and absolutism that they associate with human rights advocates.

On the other hand, if the proponents sound naively idealistic, the critics consistently caricature the movement and render it two-dimensional. Paradoxically, they acknowledge its purported triumph when they locate it as a new citadel of power to be assaulted. David Kennedy goes so far as to lament the fact that human rights has "occupie[d] the field of emancipatory possibility,"⁶ by which he suggests that it has crowded out—delegitimized—other historical movements. He presents an image of the human rights movement crushing faith-based action, labor activism, or communitarian ideologies.

In their attack on the movement, the critics tend to present a bill of particulars that is outdated by the time it is published. For example, critics lambaste human rights for failing to deal with economic and social rights, or take on corporations and global capital at just the moment when the human rights movement is beginning to do so; they critique human rights inattention to local movements and community priorities after the human rights movement has started to explore those collaborations. Either they underes-

3. The image of "triumph" is frequently recalled in stories of human rights since World War II. See, e.g., LOUIS HENKIN ET AL., *HUMAN RIGHTS* 73 (1999).

4. See, e.g., LORI DAMROSCH ET AL., *INTERNATIONAL LAW* xix-xii (4th ed. 2001).

5. See DAVID S. WEISSBRODT ET AL., *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS* (3d ed. 2001); see also HENRY STEINER & PHILLIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* (2d ed. 2000); and HENKIN ET AL., *supra* note 3.

6. David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 *HARV. HUM. RTS. J.* 101, 108 (2002)

time the protean nature of the human rights movement—its multiple discourses, changing constituents, and internal dynamics—or their distaste for the movement is irrefutable.

The parameters of the field are so shaped by the opposition that I have seen students adopt either the resentment of the critics or the fervor of the proponents with nothing but a passing knowledge of human rights. It is quite telling that no matter who teaches the introductory human rights course at Harvard Law School, the course tends to garner not simply mixed, but strongly opposing, student reviews. I have heard similar tales from other law schools. It seems human rights classes are not always as stirring as one would expect, given the levels of commitment that students often bring.

So, in this context, how does one teach human rights without adopting the destructive enthusiasm of the critic or the pristine fervor of the idealist, without trumpeting the inexorable march to victory or trashing the unwitting naïf? And can the result be something more compelling than a taxonomy of interests, laws, promoters, and detractors?⁷

My approach includes assessing and reflecting not only on the work of human rights professionals but also on that of other activists accessing human rights for its salience, including many who have nurtured their activism in other movements—the women's movement, labor movement, Third World activism, Christian social justice, religious rights, and others. Ignoring both the triumph narrative and the critics, these activists continue to transform the field, achieving short-term goals and creating contradictions. As actors in the process, they work within and manipulate the pieces, rather than taking them as givens. Laws and institutions—fixed points in much of the law school curriculum—become variables to be arranged strategically. In fact, activists may see the complete absence of laws and institutions as incentive to invent rather than a bar to effective advocacy.

From the perspective of the advocate, the critique of human rights is a legitimate subject of internal debate. Some actors are pursuing the debate openly inside organizations while others are quite willing to defer or simply to ignore the problems of hidden bias and unforeseen consequences.

As a teacher, I want to convey this picture in its complexity, focusing on the creative process. In my course students explore the issues and dilemmas of the movement by critically examining the work of advocates, and, at the same time, engaging in active clinical projects with the organizations that these advocates represent. By bringing advocates into the classroom, as both case-studies and story-tellers, I try to draw students into the process of strategic decision-making in a realm of uncertainty. The purpose is to train students to be “ambivalent advocates”—committed to action, but alert to the

7. In thinking and phrasing this question, I have borrowed from an earlier article by David Kennedy about teaching international law. Kennedy explored, and eventually took an optimistic view on, the possibilities of learning international law “without cynical enthusiasm.” David Kennedy, *International Legal Education*, 26 HARV. INT'L L.J. 361. 378 (1985).

multiple consequences; to make them more sympathetic to the plight of people trying to do good, while at the same time more critical of those who do it without reflecting on the possible negative consequences.

For my seminar, students read human rights reports, studies of human rights campaigns, analyses of organizations, and critical articles about human rights. They meet activists who are themselves struggling with the issues. On occasion, I have felt that my strategy of teaching was a success. I have seen students challenge zealous advocates of criminal prosecution to explore troubling contradictions in and potential pitfalls of their work. And I have been convinced of the failure of my approach, as when a former student came to me to raise money for slave redemption in Sudan, without a second thought about how pouring cash into the hands of slave traders and a rebel economy was affecting slavery in the country.

III. VIEWING HUMAN RIGHTS ADVOCACY COMPLEXLY

By teaching human rights through the lens of human rights activism, I hope to show students that they are entering a realm of advocacy tools, not abstract truths—a dynamic amalgam of norms, procedures, and fora, full of tensions and contradictions. This attempt to highlight productive difference rather than unity runs contrary to the usual goals of both the proponents and critics of human rights, who tend to expound on the field as though it were a unified, coherent whole. Critics often refer to *the* discourse, or the *corpus*, or human rights *talk*.⁸ Perhaps they are simply accepting the very legalistic, “constitutionalist” vision of human rights that presumes the normative coherence of the system. Proponents make themselves vulnerable to critique, by elaborating a doctrine of interdependence and indivisibility in human rights that eschews any effort to make divisions or build hierarchies.⁹ Every time an activist says that human rights are “indivisible,” I want the student to consider the strategic purpose of such a statement and understand it as an effort to raise one set of often subordinated rights (usually economic and social) to the level of other, more hallowed ones (often civil and political).

In this Part, I explore two kinds of complexity in human rights: first, the multiple discourses that are rooted in the texts themselves and second, the tensions that result from human rights practice—often from successful campaigns that push the limits of human rights in new directions. These are complexities in the movement that are either overlooked in the effort to pre-

8. This is a theme that runs through the work of Makau wa Mutua and the recent writing of David Kennedy on Human Rights. See, e.g., Makau wa Mutua, *The Ideology of Human Rights*, 36 *VA. J. INT'L L.* 589, 591 (1996) (noting that “the seduction of human rights discourse has been so great that it has, in fact, delayed the development of a critique of rights”). In Kennedy’s critique, the human rights movement is similarly characterized as monolithic. See Kennedy, *supra* note 6, at 101.

9. Proponents often cite the language of the Vienna Declaration: “All human rights are universal, indivisible and interdependent and interrelated.” Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, U.N. Doc. A/Conf.15/24 (1993).

sent a unified vision or dismissed as proof of incoherence or hidden ideology in human rights.

A. *Multiple Discourses*

There is tremendous diversity and unresolved tension among treaties and even within the provisions of individual treaties. There are group rights and individual rights; rights to keep what is yours and to have a part of what belongs to someone else.¹⁰ And there is no grand court to balance, contrast, and resolve these tensions. For the moment, we can better understand the potentials of the movement by highlighting the differences and exploring how they enable certain kinds of activism and impede others.

These four themes—the individual, the group, conservation, and transformation—constitute more than a discrete set of rights in the treaties, providing the bases of separate ideologies or discourses within the rights movement.¹¹ It is possible, for example, to say that human rights treaties privilege the rights of the individual against the group and to cite all of the major treaties, both for civil and political, as well as economic and social rights. In fact, a proponent of individual rights could sustain a serious argument that the primary goal of human rights is to protect the individual. Moreover, the proponent could refer to the individualistic focus of most human rights work performed by groups like Amnesty International during the first two decades of their existence.¹²

But proponents of group rights would be equally correct in saying something almost as strong, such as, group identity is a central feature of human rights; group rights must be respected in order for individual rights to have any meaning. The most powerful statement comes in article 1, which is common to the two major human rights conventions, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), declaring the right of “peoples” to self determination.¹³ Many individual rights assume the existence of a group: religious rights, association rights, and language

10. Detractors of the movement contend that human rights texts are a canon in the making. Yet, while human rights texts may all contain some common inspiration, church politics better explains why one book gets in and another is excluded. There was no divine law that determined that the human rights “corpus” would be composed of a treaty against genocide, another against torture, and one concerning violations of the rights of women.

11. I use the term “discourse” rather than simply “collection of treaty provisions” because I think it possible to sustain a range of arguments premised, for example, on the primacy of individual rights and all legitimately derived from the body of human rights treaties and other norms.

12. See generally HENRY STEINER, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT* (1991).

13. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 1, G.A. Res. 2200A (XXI), U.N. GAOR 21st Sess., Supp. No. 16, at 51, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 1, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

rights, for example. Entire sub-fields of human rights have emerged to address minority rights and indigenous rights. The Genocide Convention is in the same category: it defines a crime in terms of its injury to certain, defined groups.

Although group rights are generally perceived to be weaker than individual rights in terms of treaties, in practice, many group rights notions trump the individual or undifferentiated groups. It may be easier today, for example, to stop an oil pipeline if the pipeline project affects a small group of Pygmies than if it displaces a million other people who lack the same powerful group identity.

I have been working with a group of students on an advocacy project centered around an oil pipeline project between the central African countries of Cameroon and Chad. The pipeline may displace thousands, distort local development, create incentives for repression and corruption, but the pipeline also runs through a small section of Cameroon that is inhabited by Pygmies. Other tribal groups that are affected do not have the same status of indigenous people and consequently cannot invoke the group rights norms that the Pygmies can use to defend their land and their culture. The World Bank, a major backer of the project, is—by and large—more attentive to the rights of indigenous people than general human rights norms. If we focus our advocacy on the Pygmies, we might stall the project, but we risk alienating other activists and potential allies.¹⁴ The focus on one well-protected group may distort or devalue the importance of the pipeline and its impact on the rights of others.

Advocates face a similar conflict in the case of genocide. If an advocate wanted to call attention to the massive killing of people in a place far removed from the western press, the advocate might look for a way to call it “genocide.” Although no treaty says that genocide is worse than other crimes, the appellation clearly raises its status. The use of genocide is a fine tool for bringing attention to killing of Tutsis in Rwanda, but what about the Hutus who were killed in the Congo? The Hutus do not fit as easily into the definition of genocide—there are too many Hutus to support the clear intention of extermination—so their deaths are treated as lesser violations.¹⁵ These categories create implicit hierarchies.

In South Africa, to take another example, the tension between group rights and individual rights erupted at various times during the negotiations for an end to Apartheid. Defeating the efforts of the National Party (NP) to

14. I use this as an example and do not mean to suggest that the situation was as simple as this short description implies. See Genoveva Hernández Uriz, *To Lend or Not to Lend: Oil, Human Rights, and the World Bank's Internal Contradictions*, 14 *HARV. HUM. RTS. J.* 197 (2001).

15. The genocide label has more than rhetorical power; it is one of the few widely accepted crimes of customary international law. However, in these contexts, its import is more rhetorical than legal. Although genocide does refer to the intent to destroy “in whole or in part,” there is a general unwillingness to see the Huru slaughters as part of a genocide. Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).

put forward a group rights vision was an early triumph for activists of the African National Congress (ANC). In political terms, group rights were a proxy for continued racial privilege. The argument failed on those grounds but never disappeared. Arguments for group rights in South Africa continually resurface and find surprising allies when framed in terms of tribal rights and respect for customary practices.

South Africa also serves as an example for the tension between the discourses of conservation and transformation in human rights. While both the NP and representatives of the ANC used human rights as a tool of international advocacy and as a means of reassuring their own constituencies, it is clear that the ANC and the NP were invoking very different interests. For many Whites, individual human rights seemed to mean, "keeping what is ours," i.e., conservation. For the majority, human rights meant the opposite, "getting what we don't have," i.e., transformation.

The conservationist aspects of human rights can be found throughout the human rights texts; they are rooted in the deeply held conviction that disturbing the entitlements granted by the status quo violates human rights, unless there is due process or compensation. This approach to human rights is consistent with the conviction, particularly strong in the United States, that human rights are primarily negative rights—injunctions against state interference. In an article about the primacy of human rights in South Africa, Makau wa Mutua argues very emphatically that a human rights approach, itself, prevents transformation. For him, the requirements of due process and the protections of property rights impede long-term empowerment of the majority.¹⁶

But the salience of the transformative discourse in human rights cannot be underestimated. The ICESCR places obligations on the state to create a society that provides for the health and welfare of citizens.¹⁷ The Convention for the Elimination of Discrimination against Women and Convention on Elimination of Racial Discrimination have a much more emphatic call on states to change the attitudes of private citizens.¹⁸ The Convention on the Rights of the Child constrains the relationship of parents and children.¹⁹

16. Makau wa Mutua, *Hope and Despair for a New South Africa: The Limits of Rights Discourse*, 10 HARV. HUM. RTS. J. 63, 68–69, 92–93 (1997).

17. See, e.g., ICESCR, *supra* note 13, art. 7 (right to work with just and favorable conditions, including rest, leisure and periodic holidays with pay), art. 9 (right to social security), art. 11 (adequate standard of living, adequate food, clothing, and housing, including "the continuous improvement of living conditions").

18. Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR, Supp. No. 46, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981); International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, G.A. Res. 2106A (XX), U.N. GAOR, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969). In one of the most powerful statements, CEDAW provides, that "State Parties shall take all appropriate measures: (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and . . . all other practices which are based on the idea of . . . inferiority . . ." *Id.* art. 5.

19. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, G.A. Res. 44/25, 44

The entire notion of negative rights has been assaulted by advocates who stress the affirmative duties of states to "respect, protect and to fulfill" the obligations of the treaties.²⁰ In other words, advocates argue that, the state has an affirmative obligation to transform society when it is inconsistent with the treaties.

These are just four of the multiple discourses that grow out of human rights treaties, but understanding these four is fundamental to current human rights struggles. My project as a teacher is, first, to show that the discourses exist and, then, to explore the ramifications. The consequence of multiple discourses may be to open the field of human rights to new constituencies or to disguise deep underlying differences in how we conceptualize human rights at different times and places.

B. Activism and Ideological Implications

There is another level of complexity in human rights that is often overlooked or attacked with great relish. It goes beyond the language of the treaties to the political and social implications of the human rights movement. What does it mean, for example, to accuse the human rights movement of being anti-sovereignty, neo-liberal, or pro-western—all common accusations? It is not so much an accusation about the provisions of treaties, as the way in which the movement operates politically. In answer, it may be more significant that the human rights movement views itself as anti-sovereignty, or allies itself with other anti-sovereignty forces, than the fact that its legal force is built on treaties ratified by states.

Rather than ignoring these themes as irrelevant to a human rights class, I think it is important to expose and explore the links between human rights activism and current ideologies. It is not unfair to identify the actors and authors of the arguments, as Makau wa Mutua does, in order to highlight the personal links.²¹ It is also useful to scrutinize the activities of human rights advocates to see how those positions might—intentionally or inadvertently—support one ideological position or another.

In this Part, I take as an example the attitude of the human rights movement to sovereignty, which has been a source of contention for the entire post-war history of the movement. The movement grew to be viewed—and often to view itself—as opposed to state sovereignty. But, today, this position is in flux as many seek to use human rights to strengthen the state through programs of technical cooperation and battles over globalization.

U.N. GAOR, Supp. No. 49, at 166, UN Doc. A/44/49 (1989) (entered into force Sept. 2, 1990). See *id.*, art.12 (right of child to be heard and have views given "due weight").

20. See, e.g., Committee on Economic, Social and Cultural Rights, General Comment 14, U N Doc. E/C.12/2000/4 (2000).

21. See Mutua, *supra* note 8, at 614–15 (discussing the political and personal affiliation of board members for major international human rights NGOs); see also Part IV, *infra*.

It may seem ironic to characterize human rights as anti-sovereignty since international law, including international human rights law, is *premised* on state sovereignty. Certainly, human rights advocates fought to condition the rights of sovereignty (at the U.N., for example) on respect for human rights. But the thrust of the human rights activism since the beginning of the Cold War has been to pitch human rights advocates against claims of sovereignty. The paradigmatic cry of human rights organizations to third world states is "Stop that now!" And the paradigmatic response is "Stay out of our affairs." This opposition held true to such a degree that the human rights movement appeared comfortable with the anti-sovereign label. At an event celebrating his contribution to international law, Louis Henkin was asked to name the two contributions to the field of which he was most proud. He cited two sentences that he had written, one of which was "Away with the 'S' word."²²

One way of characterizing the movement is to say that the *emancipatory* impact of human rights came when it broke through the barrier of sovereignty—the barrier, which traditional views of sovereignty placed between the international community and the citizen of an individual state. The goal of human rights activists was to take human rights out of the exclusive jurisdiction of the individual state.

Intentionally or not, this anti-sovereignty approach put human rights activists in the same league with other forces that worked to weaken the state in the third world. U.S.-based activists, for example, campaigned vigorously for the withdrawal of foreign aid from "third world despots" and initially celebrated the disengagement that accelerated through the 1980s and 1990s. While U.S.-based activists regularly lobbied for decreased military aid to rights violators, these advocates had no strategy to support aid, even to areas where the aid was necessary for the protection of human rights. Such advocacy was not in their mandate. I do not mean to suggest that the human rights movement is responsible for contributing to the collapse of states in the third world. But the approach of these U.S.-based advocates might provide part of an explanation for why some third world activists and scholars view the human rights movement as inherently supportive of neo-liberal economic policies, including free movement of trade and investments.

More recently, many of the new human rights advocacy campaigns require a much more subtle and varied relationship to sovereignty. In the anti-globalization movement, the debt relief movement, and, generally, in the application of economic and social rights, empowering the state is seen not only as consistent with, but as essential to human rights. The movement finds itself in an awkward situation: which states does it want to empower? How can human rights advocates reconcile the contrasting rhetoric?

A couple of years ago, a group of students faced this question when they confronted the human rights implications of a draft economic globalization

22. American Society of International Law, *International Law in a World of Multiple Actors: A Conversation with Louis Henkin and Louis B. Sohn*, 92 AM. SOC'Y INT'L L. PROC. 248, 249 (1998).

treaty.²³ The students thought through elegant arguments for defending the state's role in allocating resources in fulfillment of its obligations under the ICESCR and presented them to a group of NGO activists in Washington. There, a number of long-time human rights activists responded with evident discomfort at the perception that human rights would now re-empower the very states that the movement had attacked for forty years. (It did not help that one of the model states under discussion was Malaysia, a leader in opposition to universal human rights.)

The current tension in the movement revolves around the question of how far to go towards reclaiming a traditional notion of sovereignty in order to promote the state's capacity to protect, respect, and fulfill human rights. By forming links with traditionally protectionist organizations like national labor unions and national producers, human rights activists may risk losing hard fought gains. For some in the movement, it is simply difficult to recast their positions on sovereignty. But none of this prevents advocates from using the human rights tool in a way that challenges the perceived ideology of the movement.

IV. THE CLINICAL SEMINAR

Over the past three years, I have tried to incorporate this vision of engaged ambivalence and complexity into a clinical seminar on human rights advocacy at Harvard Law School. I have the advantage of selecting students from among those who have already had relevant experience, either some type of fieldwork or a basic course in international law or human rights. The seminar involves heavy quantities of theoretical and historical readings, followed by case studies that explore many of the issues and concepts raised above.

My sense is that students intuitively understand the critique of human rights, but want to find a place for the real experience of success. This is my own dilemma, as well. I try to address it by insuring that the real world experience and the critical scrutiny are never separated for long. Many of the case studies are introduced by professional advocates who are themselves struggling with the issues raised by critics. I have found that even the hardened opponent of human rights imperialism is able to empathize with the ambivalent activist, willing to engage in self-criticism along the way.

The seminar also has a clinical portion, which serves as a separate teaching tool and an adjunct to the classroom. With support from the Harvard Law School Human Rights Program, I coordinate all the clinical projects with NGOs or multilateral agencies. All of the projects involve research, writing, and an opportunity to explore strategy with organizations and individuals who are fully engaged in public interest advocacy or legal work.

23. The draft treaty, the Multilateral Agreement on Investment, was never completed

Unlike many law school clinics, the client, applicable law, and forum of adjudication are typically variables for the human rights clinic. While some students have worked on appellate briefs, most projects do not involve courts directly. Instead, the target might be a World Bank meeting, an NGO forum, or U.N. conference. Even the litigation projects—such as a brief in an alien tort action against an oil company or another in support of a Massachusetts selective purchasing law that targeted Burma—are linked to broader advocacy campaigns.²⁴ As for the law and the client, it often depends on the strategy that is developed. The client may begin as one NGO and extend to include a number of them. The law may be domestic, comparative, international, or some “soft” law variant.

Many of the projects over the years have been directly linked to a critical rethinking of law or a creative, strategic response to an existing problem. In recent years, several students worked on mapping and re-casting World Bank issues in terms of human rights; others worked with a former student and journalist to help develop a news wire service to report on human rights violations by business. At other times, a relatively straightforward project provides the basis for critical thinking after the project is complete.

For the rest of this Part, I focus on a snapshot of the classroom that typifies for me the way in which the themes of this Essay come together and the way in which students have responded.

A. Israel, Objectivity, and U.S.-Based Human Rights Groups

In order to tell the story of how the tensions described in this Essay manifest themselves within U.S.-based human rights groups, I use a case history built around reporting on Israel in the period leading up to and immediately following the first Intifada that began in 1987.

Israel presented an obvious problem for U.S.-based human rights groups at a moment in time when they were building legitimacy around “objective” reporting on Eastern Europe, Central and South America, and countries like the Philippines or Zaire: Unlike most of their target countries, Israel had a powerful constituency in the United States. Board members were often resistant, funders were scared, and the government of Israel was ready to scrutinize every charge.

Out of obvious conflict within the movement came “real” successes—vastly improved reporting by the U.S. Department of State, a powerful movement against legalized torture in Israel, and good collaboration among Palestinian, Israel, and U.S.-based human rights NGOs. But there are also obvious shortfalls; few human rights activists or analysts in the world would say that Israel is subject to the same standards as most other countries.

24. In the Massachusetts-Burma case, for example, one of the major accomplishments of the project was to bring together more than sixty non-governmental groups, as widely varied as Human Rights Watch, the Rukus Society, and the Ursuline Sisters of Tildonk, on one brief.

For class, I assign the self-presentations of human rights organizations, the reports of the U.S. Department of State, anti-semitic excerpts from U.N. debates, and internal debate from human rights organizations struggling to report on Israel. On one occasion, we had a Palestinian activist in class; on another occasion, we had the former head of the Israeli NGO B'Tselem.

Israel occupies a special niche in the story of human rights for a variety of reasons, not least of which are the importance of World War II and the genocide to every facet of the modern human rights movement. But a similar story could be told for other countries with a U.S.-based constituency, including for example, Northern Ireland or Nicaragua. I chose Israel for another reason: to create a safe space around the discussion of subjects that are often taboo. As an American Jew with my own ties to Israel, I thought I could invite students into talking about the place of Jews in the human rights movement and hoped that the initial breaking of the taboo would lead to frank debate later about the particular role of race groups, ethnic communities, and gay men and lesbians.²⁵

Yet, the strategy does not always succeed as I intend it. This year, for example, most of the students who spoke comfortably during that class were Jewish and/or profoundly knowledgeable about Arab-Israeli issues. During the two weeks following, I had clinical meetings with most of the members of the seminar and drew them out on what had happened in class. Many felt that it was too early in the semester for a group that did not know each other well to cross into a zone of such public sensitivity. But what I failed to accomplish on my own was largely achieved when Eitan Felner, the former director of B'Tselem, came to class and described with great forthrightness the struggles of an Israeli human rights group to deal with many of the same problems.

B. Dilemmas Inside the INGO ("International" NGO)

After exploring the recent history and critique of the human rights movement, I have focused the class on the recent work of prominent organizations like Human Rights Watch. My approach is certainly a sympathetic one. Human Rights Watch is often accused of setting its own agenda on the basis of Washington politics and the *New York Times*. And yet, there are multiple stories of internal debate that yield unexpected changes. Several years ago, for example, Human Rights Watch explicitly confronted the question of its responsibility to the international human rights movement and added economic and social rights to its mandate. It was a tentative gesture, still criticized for not going far enough, and yet a major move towards

25. In what I valued as a great moment in class, one year an Asian American student asked a guest speaker to comment on the seemingly disproportionate number of Jews and lesbians in leadership positions in human rights. It was perfectly appropriate to a setting where the speaker was active as a lesbian, and the class included many who were comfortable mobilizing within ethnic, religious, or sexually identified communities.

recognizing a constituency outside the mainstream of the North. More impressive was the process that yielded a position in favor of the right of return for Palestinian refugees, a right that is not clearly defined in any major human rights treaty. It was a process that could not have happened a decade ago and an outcome that defied any simple assumptions about U.S.-based NGOs.

I assign sections of human rights reports for close reading and invite two or more writer-researchers from major INGOs to my seminar each year. We have tended to focus on the relationship of the U.S.-based organization to people and organizations in the countries that were the subject of reports and advocacy. One example is the 1995 report on sexual violence during the genocide in Rwanda. The researchers set out to document and report cases of sexual violence during the genocide, with a view to bringing the cases to the International Criminal Tribunal for Rwanda. What they found were women's organizations that were already wary of sensationalizing rape and were not particularly interested in the Tribunal.

One of the researchers for the report, Binaifer Nowrojee, has come to the class and presented the dilemma that the researchers faced: do they turn around and go home, disguise their mission, change their mission, or change the attitudes of the women's groups? In any event, does Human Rights Watch accept their decision? Moreover, in the event that the women do not consent to documenting their stories, would it be legitimate to write the report, anyway, in order to pursue the goals of advancing international justice when it requires the collaboration of uncertain or unwilling victims?

In this case, the researchers succeeded in balancing the requests of the women's groups with the goals of Human Rights Watch. Criminal indictments were amended to include counts of rape, and the first conviction for genocide by an international tribunal was reached in a sexual violence case. Still the researchers have reservations, which Binaifer shared with students, about the entire project, the "constituents" it served and the position in which it put Rwandan women.

On occasion, I have presented less ambivalent, more self-satisfied, speakers to the class, though not intentionally. In one case, a speaker triumphantly described the use of criminal prosecution to end female genital mutilation in France. The result was almost complete disconnect, near total silence from the students. Judging from later comments, it was apparently a good experience, if only to confront an entirely different attitude to the field, although I would not purposefully inflict the experience on a visitor. At the time, I was not sure what was happening and tried to draw out both the students and speaker, assuming that there was some need for explanation or translation of ideas. But as a number of students explained later, they simply could not believe that anyone would proclaim criminal prosecution with the threat of long-term incarceration to be the solution to a culturally inscribed activity viewed as necessary by some and heinous by others. Without any

expression of doubt from the activist in question, the students had nowhere to enter the conversation.

V. CONCLUSION

Human rights is often discussed in terms of "generations"—the first generation of civil and political rights, the second generation of economic and social rights, and so forth. Perhaps it is now possible to talk about generations of human rights teaching: In order to secure a place in the curriculum, the first generation had to prove the relevance of the field. The end of the Cold War and the emergent prominence of human rights helped it to achieve its goal. Its triumph engendered a new generation of critics.

But much of teaching still seems caught up in the first generation struggles. Both proponents and critics of human rights tend to focus on human rights as a unified, integrated whole, treating variety within the field as an interim stage or a sign of incoherence. My approach is the opposite, to draw out the myriad possibilities within human rights: the multiple discourses, divergent ideologies, and vast array of possible fora.

By doing this, I hope to bring the student closer to the perspective of the advocate. The human rights field is one of normative and strategic entrepreneurs, who use human rights as a tool of social change, of individual emancipation. They mine the discourses that are made possible by the human rights texts and, like advocates in any field, they push arguments beyond established boundaries. But unlike most other legal disciplines, human rights has no ultimate arbiter. Hence, diversity is likely to remain an essential element of the field for the foreseeable future. The goal of my teaching is to capture and convey the dynamism and diversity of the field.