

INDIVIDUALITY, HUMANISM, & HUMAN RIGHTS

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I. INTRODUCTION

I want to introduce this theme with reference to the events of global salience that have come to be referred to as the Arab Spring. These events are good starting point to underline one of the most central values implicated in the culture of human rights, namely, that the individual is a subject of human rights policy and practice. Additionally, some may see human rights as only words on paper which implicate symbols. There is a deeper meaning. The real meaning of human rights ultimately comes from the stakeholders, those who stand to benefit from human rights in practice and theory. And those stakeholders are the individual human beings of the planet. I would suggest that human rights would not have the dynamism that it has had, as a radically infectious global scheme of fundamental expectation, without the individual human rights agents generating human rights activism from theories generated by human rights scholars and professionals and implemented by ordinary person individuals. It would be appropriate for us to understand what it is that generates the activism from the individual human beings and how that activism may creatively appropriate symbols of communication to generate a sustained activist presence demanding that states and pressure groups conform their behaviors to human rights expectations.

One of the global events we experienced in the aftermath of the Second World War was a rising tide of elevated expectations about the fundamental values behind the idea of universal human dignity. The modern crisis that this rising level of expectation generated was an increased level of resistance to these expectations, generating what might be called, the global crisis of human rights. I suspect that the founders of the World Academy had an institutive sense of this problem and considered the matter to be of global salience which required, in part, the commitment of scholars unconstrained by parochial and chauvinistic practices of identity.

On December 17th 2010, a vegetable vendor from the village of Sadibouzi was confronted by a police official who confiscated his cart and his produce. Mohamed Bouazizi, was the vegetable vendor. He was 26 years old. Bouazizi was the sole income provider for a family of 8. Bouazizi tried to retrieve his car and his vegetables by willing to pay a small fine to the police officer. The response was official arrogance with insults directed at his deceased father. When Bouazizi went to the municipal office to complain and to retrieve his goods they refused to see him. Bouazizi was so angered by injustice, governmental repression and complete indifference that he returned to the governmental headquarters, doused himself with inflammable fluid and ignited himself.¹ Bouazizi's action had struck a nerve. It highlighted the abuses of a political dictatorship and its denial of individual self-respect and integrity. Bouazizi's action in destroying himself symbolized the frustration of a whole nation with its lost of dignity and self-respect and the regime's complete indifference to human rights. Bouazizi's act triggered widespread protests against the Tunisian dictatorship and the intensification of popular protests finally resulted in the fall of the dictatorship. Bouazizi, the individual, acting as an activist,

¹ Rania Abouzeid, *Bouazizi: The Man Who Set Himself and Tunisia on Fire*, TIME (January 21, 2011); See also Brian Whitaker, *How a man setting fire to himself sparked an uprising in Tunisia*, The Guardian (December 28, 2010)

generated a mass mobilization of ordinary people to demand the exit of President Zine El Abidine Ben Ali. The President ruled Tunisia with a ruthless iron fist since 1987. Although he was a dictator from the point of view of important Western powers, he was their dictator.

The success of the popular uprising against the Tunisian dictator had radiating effects on its immediate neighbor to the East. Egypt had been run by the dictator Hosni Mubarak for over 30 years. He too ruled with an iron fist and with a dislike for rule of law, democratic values. The Egyptian people were in a position roughly comparable to the repressed Tunisians. The Tunisian example inspired individual protesters to begin protesting the dictatorship of Mubarak. In the face of severe reaction and elements of state violence, the demonstrations grew in size and sustainability. Eventually, Mubarak was forced to leave by the activism of the Egyptian people.² The Arab Spring then began to develop traction in the gulf states of Arabia, including Yemen and Bahrain.³ The influence began to be felt in Libya and the concern of the Libyans that Ghaddafi's dictatorship needed to go.⁴ Elements of the Arab Spring also figured in renewed Palestinian demands for an end to the Israeli occupation.⁵ Most importantly, the Baathist dictatorship in Syria found itself under a major popular national insurrection demanding that the current dictator of that country leave.⁶

These acts of individual activism, inspiring the mobilization of ordinary people, began to have effects in states far removed from the Middle East. For example, Israel experienced a significant level of activism in which "occupiers" protested the social injustices that appeared to characterize the policies of the state.⁷ In the United States the economic crisis generated a concern for the deeper questions of political economy, fairness and social justice. The activists that gave these issues important political traction targeted Wall Street for sustained occupation demonstrations.⁸ That example spread throughout major cities of the U.S. and its immediate impact has been to radically shift the terms of political debate with a focus and insistence on fairness and greater equality. European cities had also been inspired by occupied activism.

I suggest that at the back of the Arab Spring and the occupier activism is a deeper and more important element that is reflected in the role of the individual as a stakeholder in the

² Joshua Stacher, *Egypt's Democratic Mirage*, Foreign Affairs (February 7, 2011); See also Lee Sustar, *The roots of Egypt's uprising*, SocialistWorker.org (February 3, 2011); See also *Popular Uprising in Egypt Topples Mubarak Regime*, World Geography (February 2011)

³ Kareem Fahim, *Yemeni Uprising Opens a Door to Besieged Rebels in the North*, The New York Times (December 16, 2011); See also Tom Finn, *Yemen uprising: Sana'a rocked by night of fierce fighting*, The Guardian (October 17, 2011); See also Aryn Baker, *Yemen's Uprising: The Families on the Front Lines*, TIMES (October 10, 2011)

⁴ *Timeline: Libya's uprising against Muammar Gaddafi*, Reuters (August 22, 2011); See also *Libya's uprising: Time to leave*, The Economist Online (February 22, 2011)

⁵ Hossam el-Hamalawy, *How Palestine's uprising inspired Egypt's*, The Electronic Intifada (March 2, 2011); See also Jonathan Schanzer, *Palestinian Uprisings Compared*, Middle East Quarterly Vol. IX No.3, pp. 27-37 (2002); See also Zachary Lockman, *Intifada: the Palestinian uprising against Israeli occupation*, South End Press (1990)

⁶ Martin Chulov, *Syria uprising is now a battle to the death*, The Guardian (February 9, 2012); *Syrian forces renew bombardment in Homs*, USA Today (February 9, 2012)

⁷ Rema Hammami, *Palestinian NGOs Since Oslo: From NGO Politics to Social Movements?*, Middle East Report, No. 214, Critiquing NGOs: Assessing the Last Decade, pp. 16-19+27+48 (2000); See also Benjamin Gidron, Stanley Nider Katz, Yeheskel Hasenfeld, *Mobilizing for peace: conflict resolution in Northern Ireland, Israel/Palestine, and South Africa*, Oxford University Press (June 28, 2002)

⁸ James B. Stewart, *An Uprising With Plenty of Potential*, The New York Times (November 18, 2011); See also Farooque Chowdhury and Michael D. Yates, *The Occupy Wall Street Uprising and the U.S. Labor Movement: An Interview with Steve Early, Jon Flanders, Stephanie Luce, and Jim Straub*, Monthly Review Magazine (November 15, 2011)

important issues of our time. Indeed, at the back of the Arab Spring and the demands for social justice are the foundational questions behind the human rights values of the global community which add up to a demand for the universal recognition of equal respect and human dignity. Human rights represent the most agreed upon and defensible value system of the political and legal culture of the entire world community.⁹ Human rights are mentioned in several provisions of the United Nations Charter of 1945,¹⁰ and received fuller development in the Universal Declaration of Human Rights (UDHR) of 1948.¹¹ These two instruments represent the most carefully crafted framework for establishing, in political and juridical terms, the idea of human dignity founded on explicitly articulated human rights. What is crucial is that these instruments emerged and probably could *only emerge as a function of conflict and struggle*.

Human rights, as the struggle for dignity, did not begin or indeed end with the tragic events of World War II. The struggle for human rights historically has been about the struggle for essential dignity, decency, and justice.¹² In this context, struggle means a willingness to advocate, defend, promote, and, if necessary, die for these values. In his closing statement to the Supreme Court of South Africa, in the *Rivonia Trial* in 1964, Nelson Mandela explained to the Court and to the world, that he had struggled for the values of freedom and dignity and that if necessary, he was willing to die for those values.¹³ Mandela symbolizes every human rights activist regardless of time, culture, economic, social, national, or ethnic background. Cecil Day Lewis, in his famous poem, the “*Nebara*,” expresses a similar theme poetically;

“Freedom is more than a word, more than the base coinage of statesmen, the tyrants dishonored check or the dreamers mad inflated currency. She is mortal we know, and made in the image of simple men who have no taste for carnage, but sooner kill and be killed than have that image betrayed. Mortal she is, yet she rises always refreshed from her ashes to home, where man’s heart with seasonal warmth is stirred. Freedom is more than a word.”¹⁴

Without human agency demanding justice, liberty, freedom, self-determination, and essential human dignity, it is difficult to imagine that humanity would have *any* rights, let alone human rights. The emphasis on demand is, in contemporary terms, the identification of the capacity for individuals and groups of individuals, however associated, to engage in the clarification and articulation of their fundamental interests. Without this clarification, activism

⁹ Jack Donnelly, *Universal human rights in theory and practice*, Cornell University Press (2003); See also Hannum, Hurst, *Status of the Universal Declaration of Human Rights in National and International Law*, 25 Ga. J. Int'l & Comp. L. 287 (1995-1996)

¹⁰ *United Nations Charter*, signed at the San Francisco War Memorial and Performing Arts Center in San Francisco, U.S., on 26 June 1945; See also *Basic Facts - About the U.N.*, U.N. Publication, Sales No. E.04.I.7; The U.N. officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the U.S. and a majority of other signatories. U.N. Day is celebrated on 24 October each year.

¹¹ UN General Assembly, *Universal Declaration of Human Rights*, Doc. 217 A (III) (December 10, 1948)

¹² Kanstroom, Daniel, *On Waterboarding: Legal Interpretation and the Continuing Struggle for Human Rights*, 32 B. C. Int'l & Comp. L. Rev. 203 (2009); Joseph Wronka, *Human Rights and Social Justice: Social Action and Service for the Helping and Health Professions*, SAGE (December 11, 2007); See also Richard A. Falk, *Human rights horizons: the pursuit of justice in a globalizing world*, Psychology Press (July 27, 2000); See also Betty Reardon, *Educating for human dignity: learning about rights and responsibilities*, University of Pennsylvania Press (1995); See also Ellen Messer, *Anthropology and Human Rights*, Annual Review of Anthropology, Vol. 22, pp. 221-249 (1993)

¹³ Jennifer Crwys-Williams, *In the Words of Nelson Mandela*, Bloomsbury Publishing USA (April 26, 2011)

¹⁴ Cecil Day Lewis, *Nebara*, in *The Complete Poems of C. Day Lewis* by Cecil Day Lewis, Stanford University Press (1995)

itself is blind and unguided. The clarification, recognition, and expression of demands and claims are therefore crucial to any strategic and tactical deployment of human resources to secure the access and benefits of those demands and claims. Interest articulation, therefore, is a critical aspect of humanistic dynamism and a critical foundation for the development of the most comprehensive culture of human rights on a global basis. Modern theories of justice are inspired by the humanistic dynamism of the struggle for human rights values. For example, Professor Sen has an approach which focuses on values in terms of needs, freedoms and capabilities.¹⁵ From this he distills an approach to justice in which there is an essential dynamism between human preferences, human capabilities and process freedoms. The expression of human capabilities requires the opportunity to acquire capability freedoms. However, the dynamism required to acquire the opportunity of capability freedoms is intricately related to the process aspect of freedom. In short, values require processes to secure the satisfaction of human wants and needs. Thus, process feeds opportunity and capability guides process. Moreover, these processes are rooted in human rights, advocacy and decision.

The further clarification, which targets the role of the individual in the theory of human rights and justice, is reflected in the recent work of Ronald Dworkin.¹⁶ Dworkin starts with the relationship of ethics and morality to individual action and responsibility. The ethical question for the individual is “what does it take for a life to go well.” This ethical principle is a focus on the nature of self-respect. Self-respect requires that the individual takes his own life seriously and appreciates that it is ethically important to make one’s life a successful experience rather than a wasted opportunity. This principle therefore reinforces the individual responsibility for self-respect and authenticity. The individual must be self-aware of the ethical responsibility to identify what counts in life as a success. The moral principle, which is derived from this, and which has global implications, is, if my ethical principle of self-respect is important to a life that it is not a wasted opportunity, then that is a principle that I can support with regard to all non-self others on the planet; in short, a principle of morality and justice for all of humanity. Both of these theories of justice root the essential dynamism of it in the individual as a starting point. There is a recognition, therefore, that the individual, in taking responsibility for a successful life, is essentially a transformative agent in the social process. For Sen, individuals have capabilities which they should recognize and the need for the demand for opportunity to fulfill those capabilities.¹⁷ Dworkin frames the issue slightly differently but in a way that is not incompatible with Sen.¹⁸ According to Dworkin;

“we need a statement of what we should take our personal goals to be that fits with and justifies our sense of what obligations and duties and responsibilities we have to others...

¹⁵ David A. Clark, *The Capability Approach: Its Development, Critiques and Recent Advances*, GPRG-WPS-032 (2005); See also Serena Olsaretti, *Endorsement and freedom in Amartya Sen’s capability approach*, St. John’s College, Cambridge, UK, Paper for the 3rd Conference on the Capability Approach, Pavia (September 7-9, 2003); See also Sakiko Fukuda-Parr, *The Human Development Paradigm: Operationalizing Sen’s Ideas on Capabilities*, *Feminist Economics* 9(2 – 3), 301 – 317 (2003)

¹⁶ Ronald Dworkin, *Justice in robes*, Harvard University Press (2006); See also Ronald Dworkin, *Sovereign virtue: the theory and practice of equality*, Harvard University Press (June 15, 2002); See also Ronald Dworkin, *Taking rights seriously*, Harvard University Press (1978)

¹⁷ *Supra* note 15.

¹⁸ *Supra* note 16.

Dworkin also requires capability and process freedoms, if life is not to be a ‘wasted opportunity.’ There is a genius in joining opportunity and capability with a responsibility to take one’s life seriously as an aspect of both personal and community morality. The idea that each individual has a right to a life of self-respect and authenticity – which must be given operational effect by capability and opportunity freedoms – moves from that of an ethical commitment to that of a moral principle, in the sense that self-respect, authenticity, capability and opportunity freedoms are encapsulated in the universal principle of human dignity. Dynamism is rooted in the responsibility and obligation of the person to respect oneself. Such respect is sustained by the idea that the self is truthful to the self and, therefore, expresses to the self its self-validating authenticity. This means that the subjects of the idea of justice are meant to be active participants in the shaping and sharing of justice, and, moreover, to be active participants in the transformational dynamics of the principle of justice.”¹⁹

These views about the essential relationship between human rights values and the idea of justice effectually require the individual human being to be a subject of justice and a stakeholder in the promotion of the idea of justice implied in the fundamental human rights values. We now consider more carefully the role of the individual as an asserter of demands in the dynamism of human rights and justice. The critical discourse of human rights should now carefully consider the entire process of claim assertion, of *demand advocacy*, as crucial to the promise of human rights. To suppress the human capacity to identify and assert fundamental interests, to undermine the institutionalized expression of institutions’ effective advocacy is effectually to suppress the possibility of developing human rights and making them real in a manner that promotes peace and defends the foundations of personhood. It is the melancholy history of human experience that the suppression of thought and communication makes human beings servile, unfulfilled, and without a capacity to realize fully their innate human capacity to experience dignity and human creativity in its most appropriate manner.²⁰ Ultimately, the suppression of the ability to express needs, claims and demands is thoroughly insidious in its depreciation of the human prospect. In short, such a process simply erodes the capacity for human genius to contribute creatively to the improvement of man and society.

If we read into terms such as *freedom, equality, justice* and *self-determination*, the principles of dignity and human rights, we capture the sense that these values can never be extinguished so long as man is willing to struggle for them. Whatever the difficulties and sufferings in the struggle for human rights and dignity, there is the idea of hope, resurrection, and

¹⁹ Winston Nagan, *Human Rights, Liberty & Socio-Economic Justice: Economic Theory and the Ascent of Private Property Values*, CADMUS, Vol. I No.2, pp.35-54 (April 2011)

²⁰ Sadiya Najmi, Daniel M. Wegner, Matthew K. Nock, *Thought suppression and self-injurious thoughts and behaviors*, Behaviour Research and Therapy Volume 45, Issue 8, Pages 1957–1965 (August 2007); See also Christine Purdon, *Thought suppression and psychopathology*, Behaviour Research and Therapy, Volume 37, Issue 11, Pages 1029–1054 (November 1999); See also Daniel M. Wegner, David J. Schneider, Brian Knutson and Sharon R. McMahon, *Polluting the stream of consciousness: The effect of thought suppression on the mind’s environment*, Cognitive Therapy and Research, Volume 15, Number 2, 141-152 (1991); See also James C. McCroskey, Virginia P. Richmond, John A. Daly, Raymond L. Falcione, *Studies of the Relationship between Communication Apprehension and Self-Esteem*, Human Communication Research, Volume 3, Issue 3, pages 269–277 (March 1977); See also James C. McCroskey, John A. Daly, Gail Sorensen, *Personality Correlates of Communication Apprehension: A Research Note*, Human Communication Research, Volume 2, Issue 4, pages 376–380 (June 1976)

a refreshed and progressive expectation in the commitment to the struggle. Thus, the focus of this contribution is on the idea of dynamic humanism as an indispensable and complementary component of the human rights process and the imperatives for realizing a global society committed to a global culture of universal respect and dignity. In the next section we clarify the basic values behind the formulation of contemporary human rights.

II. THE HUMANISM OF BASIC RIGHTS AND THEIR CENTRAL VALUES

The UN Charter and the UDHR were the global community's response to the most-bitter war in human memory, distinguished as it was by the concept of total war, which characterized Hitler's Germany.²¹ It was a war that targeted civilians as well as members of the armed forces and a war that made the extinction of certain civilian groups a major strategic and tactical objective.

The struggle for a global rule of law, which could make peace a major and critical expectation for all peoples of the world, had a founding moment with the adoption of the UN Charter and later the UDHR in 1948.²² This immediate background to the current structure and process of human rights holds a powerful insight; human rights and peace are things for which ordinary decent people have had to struggle.

Struggle did not begin or end between 1939 and 1945. From time immemorial, human beings have been involved in struggle and conflict.²³ Invariably, struggle has pitted the powerful against the powerless, and the powerful against the powerful, with the powerless caught in the middle. Across time and culture, the powerless have never given up on the idea that there is some dignity and worth in their own self-consciousness of being. The poor and the weak, the colonized and the dominated, the slave and the serf, the Semite in racial terms, and the Harijan in caste terms, all have sought to challenge the powerful to expropriate their humanity and dignity.

Today, there is a widespread acceptance of the centrality of the human rights principle as an indispensable part of international law and morality, and that this principle is meant to represent the appropriate basis of the organization of the global social and political process.²⁴ This does not mean that there is precise agreement about exactly what human rights are and what they mean, both substantively and procedurally.²⁵ The fact that there are as yet no conclusive answers to many questions about the nature of human rights does not mean that there is not a great deal that can be profitably learned from what is already known, both in terms of standard-setting and the processes of implementation.

²¹ Johannes Morsink, *The Universal Declaration of Human Rights: origins, drafting, and intent*, University of Pennsylvania Press (1999)

²² Brian Z. Tamanaha, *On the rule of law: history, politics, theory*, Cambridge University Press (2004)

²³ *Supra* note 9, 12, and 19; See also Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press (June 2, 2008)

²⁴ *Id.*

²⁵ George Myconos, *Reforming the United Nations Organisation: philosophical and practical underpinnings*, Global Change, Peace & Security Vol. 21, Iss. 2 (2009); See also Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism*, SAGE (1990); See also Cranston, Maurice William, *What are human rights?* (1973)

In a cross-cultural, diverse world of interdependent states, groups, associations, and persons, there will be divergent views about the ultimate source and precise methods of justification of core, basic, or fundamental rights designated *human rights*. What *is* constant about the human rights expectation is that, in the focal lens of human rights, every human being is a stakeholder in its promise. If that promise is symbolized by the term *human dignity*, then all human beings must be stakeholders in demanding, defending, and promoting human rights to secure their essential dignity.

A. FUNCTIONAL OR WORKING VALUES THAT GUIDE HUMANISTIC DEMANDS FOR HUMAN RIGHTS

There is considerable controversy concerning whether universal human rights are at all possible.²⁶ To the extent that such a controversy still influences important institutions of global power, it is also important to recognize that—prior to the assumption of the juridical and/or moral dimensions that justify any fundamental human right—it is critical that we are able to formulate normative claims and expectations that are clearly observable, and which may be functionally as well as analytically expressed by human agents of claim and demand. The practical reason behind this is that human beings generate problems in their relationships with other human beings. The problems invariably involve claims and the resistance to claims. The claims are about the values that human beings deem important and thus are desired. Those desires are invariably expressed as claims or demands involved in conflicting understandings and assertions of values and their importance.

However, whether human rights originate from *a priori* contemplations or bitter experience makes little practical difference if they secure empirically-based expectations that ground the principle of human dignity. Whatever the theoretical basis is for the UDHR, an observer's view of the claims may implicate the decision challenges they provoke; and the consequential promise they hold for human dignity are quite self-evident. The conceptual rights in the UDHR can be translated into functional value categories with the challenges they pose to global society and its constitutional scheme based on the UDHR. That is to say, there are a cluster of complex claims concerning the main values in the Declaration, and those values may be functionally identified and expressed.

- 1. The value of life.** This is a centrally valued human subjectivity.²⁷ It is referred to not in the “pro-life” sense (that a pregnant woman must bear a child), but in the Bill of Rights sense (that a person has right to personhood and autonomy). The value of life, therefore, includes the respect and deference given to the individual in the global community.²⁸
- 2. The status of the value of power and security.** Should it be narrowly or widely shared? Is the common interest of all honored in a system that seeks to secure the widest possible

²⁶ *Id.*; See also C. A. Gearty, *Can human rights survive?*, Cambridge University Press (2006)

²⁷ Nikolas Rose, *The Politics of Life Itself*, Theory, Culture & Society, Vol. 18 No. 6 1-30 (December 2001); See also John Harris, *The value of life*, Psychology Press (December 31, 1990)

²⁸ *Id.*

participation in all key areas the power process? One of the central values identified in the Atlantic Charter was the freedom from fear.²⁹ This concern for freedom has evolved so that today no one denies that there is a critical interdependence between the concept of peace as a human right and all the other values in the UDHR. Peace and security might well be included under the functional category of power.³⁰ However, peace is recognized as a complex peremptory component of the human rights value system.³¹ It is of value to again recognize that there are complex ways all human rights values have an influence on peace and security, recognizing as well that peace and security at all levels are critical conditions for the effective mobilization of human rights values. A central aspect of the values of peace and security relates to the connection between the mobilizing force of strategy for the realization of human rights' goals and the realization of these goals themselves.³² For example, is it appropriate to deploy violent strategies of action to achieve human rights' objectives? Is it appropriate to disengage the value discourse involving strategy and struggle on the one hand and idealistic value objectives on the other hand? Gandhi, for one, insisted that the morality of struggle was even more important than the morality of distant idealistic objectives.³³ Indeed, he also insisted that a disconnect between struggle, strategy, and goals was morally indefensible.³⁴

3. **The status and value of economic and wealth processes.**³⁵ Is the common interest of all better secured by optimizing the capacity to produce and distribute wealth or the opposite?
4. **The status and value of respect and equalitarian values.**³⁶ Should invidious discrimination be fully prohibited (covering all areas of race, gender, alienage, etc.)? Can equality be meaningful if it is only a formal, juridical idea without regard to the legacy of exploitation, repression, and discrimination?
5. **The status and value of educational and enlightened values.**³⁷ Should these values be widely produced and distributed or narrowly experienced?

²⁹ *Atlantic Charter*, signed by President Roosevelt and Prime Minister Churchill in August 14, 1941; See also Douglas Brinkley, David Richard Facey-Crowther, *The Atlantic Charter*, Palgrave Macmillan (1994); See also W. Arnold-Forster, *The Atlantic Charter*, *The Political Quarterly*, Volume 13, Issue 2, pages 144–159 (April 1942)

³⁰ Barry Buzan, *Peace, Power, and Security: Contending Concepts in the Study of International Relations*, *Journal of Peace Research*, Vol. 21 No. 2, 109-125 (June 1984); See also Hans. J. Morgenthau, *Politics among nations: The struggle for power and peace*, New York: Alfred Knopf (1973)

³¹ Theodore Meron, *On a Hierarchy of International Human Rights*, *The American Journal of International Law* Vol. 80, No. 1, pp. 1-23 (January, 1986)

³² Myres S. McDougal, Harold D. Lasswell and Lung-chu Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, *The American Journal of International Law*, Vol. 63, No. 2, pp. 237-269 (April, 1969)

³³ Balakrishnan Rajagopal, *The Role of Law in Counter-hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India*, *Leiden Journal of International Law*, 18, pp 345-387 (2005); See also Rachel MacNair, *The psychology of peace: an introduction*, Greenwood Publishing Group (2003); See also

³⁴ *Id.*

³⁵ *Supra* note 19; Alston, Philip, *Making Space for New Human Rights: The Case of the Right to Development*, 1 *Harv. Hum. Rts. Y.B.* 3 (1988)

³⁶ *Id.*; See also *Supra* note 9; See also Katherine Covell, R. Brian Howe, *Moral Education through the 3 Rs: Rights, respect and responsibility*, *Journal of Moral Education*, Vol. 30, Iss. 1 (2001)

³⁷ Richard Giulianotti, *Human Rights, Globalization and Sentimental Education: The Case of Sport*, *Sport in Society* Vol. 7, Iss. 3 (2004); See also Tove Skutnabb-Kangas, *Linguistic genocide in education, or worldwide diversity and human rights?*, *Psychology Press* (February 1, 2000); See also Marks, Stephen P., *Emerging Human Rights: A New Generation for the 1980s*, 33 *Rutgers L. Rev.* 435 (1980-1981)

6. **The status and value of skill and labor values.** The centrality of labor and skills values to the human condition indicates that these are central and fundamental values implicated in the rights and expectations of those who seek to create and sustain these rights and labor values.³⁸ Should these rights and expectations be widely shaped or narrowly shared?
7. **The status and value of health and well-being values.** The delivery of reasonably formulated and accessible healthcare and social services to all is now widely regarded as crucial entitlements, if the most basic standards of decency in politics and society are valued.³⁹ Today, unemployment aid, social security, medicare, and other social services are considered crucial to a society that cares for its people.
8. **The status and value of the family and other affective values.** Because the family is the basis of collective existence and is central to the human rights of children, the public policies of a society that destroys family (and other affective ties) pose a problem for the wide generation of affective values including the loyalty values of patriotic deference.⁴⁰
9. **The status and value of moral experience and rectitude.** A system that endorses the centrality of moral experience to the legal and political culture and seeks to maximize the spiritual freedom of all is yet another of the central themes of the human rights agenda.⁴¹ How do we translate expectations of care or fundamental moral experience into the practical prescription of law and policy?
10. **The status and value of cultural and aesthetic experience.** The term *cultural* includes the concept of the aesthetic.⁴² In fact, the word “cultural” could encompass all the value preferences that we might extract from the UDHR. There is, however, a narrower meaning that the term *culture* might carry. That meaning ties in with the notion of human rights as also emblematic of the diversity of human experience, experience that reflects the cultural richness of humanity as a global community. There is great controversy about the issue of culture and tradition, culture and creativity of the present, culture and the elaboration of the aesthetic, which may capture and nurture the cultural narrative of creativity and beauty which may in fact be the critical psychological view of how the glue of social solidarity promotes creativity.⁴³ The boundaries of this discourse are controversial. Sensitive matters of sexual regulation which may differ widely may be justified by culture and yet here the culture of

³⁸ Simon Mohun, *Abstract Labor and Its Value-Form*, Science & Society, Vol. 48, No. 4, pp. 388-406 (Winter, 1984/1985); See also C. Joseph Clawson & Donald E. Vinson, *Human Values: A Historical and Interdisciplinary Analysis*, Advances in Consumer Research Volume 5, Pages 396-402 (1978)

³⁹ Bruno S. Frey, Alois Stutzer, *Happiness and Economics: How the Economy and Institutions Affect Human Well-Being*, Princeton University Press (November 12, 2001); See Lawrence O. Gostin, *Public Health, Ethics, and Human Rights: A Tribute to the Late Jonathan Mann*, The Journal of Law, Medicine & Ethics, Volume 29, Issue 2, pages 121–130 (June 2001); See also Jonathan M. Mann, et al., *Health and Human Rights*, Health and Human Rights, Vol. 1, No. 1, pp. 6-23 (Autumn, 1994)

⁴⁰ *Supra* note 32; See also Harry Brighouse and Adam Swift, *Parents' Rights and the Value of the Family*, Ethics Vol. 117, No. 1, pp. 80-108 (October 2006); See also Milton Rokeach, *Understanding Human Values: Individual and Societal*, Simon and Schuster (July 1, 2000); See also Çiğdem Kâğıtçıbaşı, *Family and human development across cultures: a view from the other side*, Psychology Press (1996)

⁴¹ *Supra* note 32.

⁴² *Id.*; See also Jane K. Cowan, Marie-Bénédicte Dembour, *Culture and rights: anthropological perspectives*, Cambridge University Press (2001); See also Michael J. Perry, *The idea of human rights: four inquiries*, Oxford University Press (February 24, 2000); See also Homi K. Bhabha, *The location of culture*, Psychology Press (1994)

⁴³ *Id.*

tradition may not be compatible with the culture and creativity of the present or the future in human rights terms. For example, female genital mutilation justified by cultural tradition is not justified by either religion or by the science of human sexuality.⁴⁴ Human rights thus provide a process by which these boundaries may be appropriately protected and appropriately expanded according to the normative challenges of human dignity. The current discourse often suggests that universality trumps cultural relativity or vice versa.⁴⁵ This is not necessarily helpful unless one sees these ideas as only the starting point for value clarification and application from a human rights' perspective.

11. The status and value of the eco-system. Today, we recognize a complex right to a viable eco-system on what theorists have seen as Spaceship Earth.⁴⁶ The values embedded in the protection and promotion of a healthy eco-system, are, like many other values, issues of complex inter-dependence and inter-determination. However, implicit at least, in the concern for the integrity of the eco-system is clearly the notion that there are no human rights if there is no environment in which human beings can survive and possibly even improve the human prospect.⁴⁷ But this insight suggests an even higher level of moral consciousness in the sense that the eco-system (with its plant life and animals, wild and domesticated) are all part of a complex cycle, in which human beings are both custodians and also utterly dependent as individuals and as society. This means that we now see in nature not something irresponsibly exploited and destroyed but central to our identity as a sentient species. To take a simple example, for all the vaunted technology of human progress and human egotism, no one has seen a dog or a cat or a rat or indeed the most elemental of recognizable life forms outside of this lonely and unremarkable planet called Earth. Thus, as humanity, we now look at life even in its most humble forms as not only indispensable to the interconnected chain of life on this planet but we see in it something new and utterly connected to the very consciousness of being human and being alive. In short, we know that our dogs identify with us. We may now know those ordinary pets in terms of how they and all other living forms have shaped our identity both psychologically and physiologically.

The values outlined above essentially are abstracted from the UDHR and, more generally, from the International Bill of Rights. To give it an activist emphasis, the values are identified as having great meaning from the point of view of the struggle to enhance, to define, and clarify them and to recognize the currency of these values is not something apart from human responsibility. Obviously, the precise content of these generalized values are challenged and indeed are part of the prospect of social and political activism.⁴⁸ On the other hand, these

⁴⁴ Lewis, Hope, *Between Irna and Female Genital Mutilation: Feminist Human Rights Discourse and the Cultural Divide*, 8 Harv. Hum. Rts. J. 1 (1995)

⁴⁵ Donnelly, Jack, *Cultural Relativism and Universal Human Rights*, 6 Hum. Rts. Q. 400 (1984)

⁴⁶ Jim Igoe, *Global indigenism and spaceship earth: Convergence, space, and re-entry friction*, Globalizations, Vol. 2, Iss. 3 (2005); See also Popovic, Neil A.F., *In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment*, 27 Colum. Hum. Rts. L. Rev. 487 (1995-1996); See also Shelton, Dinah, *Human Rights, Environmental Rights, and the Right to Environment*, 28 Stan. J. Int'l L. 103 (1991-1992)

⁴⁷ *Id.*

⁴⁸ Steve C. Ropp, Kathryn Sikkink, *The power of human rights: international norms and domestic change*, Cambridge University Press (1999); See also Margaret E. Keck and Kathryn Sikkink Ithaca, *Activists beyond Borders: Advocacy Networks in International Politics*, Canadian Journal

tentative clarifications of the nature of the human rights values also have areas of broad agreement among ‘we the people’ of the global community. It is a tribute to the creation of the UN system that human rights are a central concern and problem for humanity. The UN Charter makes numerous references to human rights as statements of aspiration, of pre-existing achievement as well as juridical and political development for the future. There is little controversy about the further level of conceptualization that collectively, the International Bill of Rights and the values that sustain it mean the commitment to universal human dignity.

B. CLARIFYING THE CORE VALUES OF HUMANISTIC HUMAN RIGHTS

Many important questions still vex the international system. What is the precise content of the rights in the UDHR? What intellectual procedures are to be used to clarify the specific content of each goal value or generalized right contained in the UDHR? How are international human rights to be implemented? What intellectually sanctioned principles of procedure are important to set out the procedural aspect of human rights realization? What are the explicit principles of content and procedure that permit us to clarify the value judgments in the human rights precept and to implement rationally these values in instances of particular application? In other words, how do we ground, that is, how does we specifically *prescribe* and *apply*, the value judgments contained in the human dignity precept?

Although there are important areas of concern about the theory and justification of human rights values, there are areas of broad agreement at a more general level about the fundamental values that should condition the social, political, and legal processes of the larger international community.⁴⁹ These may be summarized as follows:

1. Broad agreement exists about production and distribution of the core values in the UDHR and that these values implicate both individuals and aggregates.
2. The values in the human rights framework cover both the so-called “negative” rights that purport to limit the abuse of power and the “affirmative” rights that implicate more directly the guidelines of responsible social change. Expectations in this latter category are styled “aspirational” rights.
3. While the word “universal” in the UDHR cannot be taken too literally, the nature of the rights in the Declaration have a much generalized character, a kind of “practical” universality.
4. The operative sphere of human rights is the socio-political conditions of interdependence and inter-determination. This means that rights are frequently “absolute,” when they are

of Political Science/Revue canadienne de science politique, Vol. 32 No.3, Cornell University Press, pp. xii, 228 (1998); See also Jackie Smith, Charles Chatfield, Ron Pagnucco, *Transnational social movements and global politics: solidarity beyond the state*, Syracuse University Press (1997); See also Carole Nagengast and Michael Kearney, *Mixtec Ethnicity: Social Identity, Political Consciousness, and Political Activism*, Latin American Research Review, Vol. 25, No. 2, pp. 61-91 (1990)

⁴⁹ *Id.*; See also *Supra* note 9, 12, 19, 21, 25, 26 and 32-44; See also Otto, Dianne, *Rethinking the Universality of Human Rights Law*, 29 Colum. Hum. Rts. L. Rev. 1 (1997-1998)

contextually prescribed and applied. A cruder version of this point is the simple dictum that A's right or entitlement ends where B's like right or entitlement begins.

5. Human rights frequently give empirical specification to basic or fundamental interests.⁵⁰

The approach to value clarification that we have outlined above may be usefully compared to the UDHR. The UDHR has been said to encapsulate three distinct generations of human rights: "first generation" civil and political rights; "second generation" economic, cultural, and social rights; and "third generation" solidarity rights.⁵¹ This common approach is stated in general terms. Since the rights are interdependent, this is not an approach of which we value; nevertheless, the approach is conventional wisdom. First generation rights are represented in Articles 2-21; second generation rights are represented in Articles 22-27; and the third generation of solidarity rights are said to be represented in Article 28.

The second generation rights are the ones most controversial to constitution-makers, and the solidarity rights, with their transnational internationalist implications, may also be seen as far afield from conventional frames of constitutional law discourse.⁵² The rights expressed in Article 28, *viz* that "everyone is entitled to a social and international order in which the rights set forth in this Declaration can be fully realized"⁵³ has been developed in various international law influencing fora to refer to a more equitable distribution of global resources, the right of all nations to political, economic, social, and cultural self-determination, and "the right to economic and social development."⁵⁴ Additionally, the right to a viable eco-system, the right to peace, and the right to humanitarian aid during emergencies also are reflected in Article 28's mandate.

This bare outline of the fundamental values attending the contemporary conception of human rights obscures a great deal of complexity, historical understanding, the pervasive and critical importance of normative insight in human experience, as well as the impact of science and change upon the human prospect. In short, human rights may have been influenced by trans-empirical or spiritual values, but its modern genesis is rooted in human experience. The human rights codes are actually given life and dynamism by the human element. We may describe this element as the element of dynamic humanism. The human element in dynamic humanism is the element of individual and associational choice. In short, human rights, as an aspect of dynamic humanism, are given momentum and relevance by the processes of human decision making. To illustrate this point with a specific example we may refer to the Polish Lawyer, Rafael Lemkin. Lemkin had an intelligence predicate for the scope of the Nazi atrocities and proceeded to dedicate himself to the creation of a universal crime of genocide. The term genocide is a neologism which he coined. However, the process of getting an international agreement on the

⁵⁰ *Id.*

⁵¹ *Supra* note 31.

⁵² *Id.*

⁵³ *Id.*; See also *Supra* note 46; See also Woods, Jeanne M., *Emerging Paradigms of Protection for Second-Generation Human Rights*, 6 Loy. J. Pub. Int. L. 103 (2004-2005); See also Burgdorf, Robert L. Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 Harv. C.R.-C.L. L. Rev. 413 (1991); See also Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, Human Rights Quarterly, Vol. 12, No. 4, pp. 486-498 (November, 1990)

⁵⁴ *Supra* note 31 and 35.

idea of a universal crime for a major human rights violation encountered considerable resistance. It is possible that the leaders of sovereign states understood that the defendants in such a situation would be the state decision makers themselves. In any event, Lemkin's tenacity in pursuing the creation of the international crime of genocide is an inspiring example of the success of individual activism in the success generated by the adoption of the Convention that outlaws genocide.⁵⁵ Indeed, I do not believe that we would have had the universal, international crime of genocide without the humanistic advocacy of Lemkin. Additionally, the seeds that would ultimately emerge from this initiative may well be the inspiration for the creation of the International Criminal Court.

Today we have countless illustrations of organizations which mobilized ordinary citizens concern, activism and the corresponding influences on decision making with regard to human rights issues in all parts of the planet. For example, recent studies have shown that the global anti-apartheid movement was largely inspired by ordinary people activism which in turn forced their governments to take stronger action against the apartheid state and which was a significant factor in the transformation of that country into a new political order.⁵⁶ Similarly, tremendous indecision in the international community regarding the scale of atrocities of the conflict in South East Europe also generated citizen advocacy to reshape the dynamics of international intervention in that region.⁵⁷ More than that, it was again citizen advocacy that led to the creation of the ad hoc tribunals for the former Yugoslavia and Rwanda.⁵⁸ Today, civil society, human rights organizations operate with global reach and are one of the most important sources of human rights intelligence. These organizations, directly or indirectly, train citizen investigators, citizen reporters, citizen advocates and citizens as human rights transformational agents. Moreover, such organizations have been skilled in utilizing modern technologies to strengthen global human rights mobilization. For example, Amnesty International has a sophisticated urgent action network, which permits it to have instant communication with thousands of members who focus on urgent human rights actions. This can be expeditiously done because of the speed with which a crisis can be communicated worldwide and generate an equally expeditious response.

III. HUMAN RIGHTS: A FUNCTIONAL HUMANISTIC APPROACH TO ACTIVISM AND DECISION

One of the great contributions to social and political theory made by a former President of the World Academy, Harold D. Lasswell, and his long-time associate and fellow of the

⁵⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948; See also Schabas, W.A. *Convention on the Prevention and Punishment of the Crime of Genocide; Paris 9 December, 1948*, Codification Division, Office of Legal Affairs United Nations (2008); See also Dan Stone, *Raphael Lemkin on the Holocaust*, *Journal of Genocide Research*, 7(4), 539-550 (December 2005); George A. Finch, *The Genocide Convention*, *The American Journal of International Law*, Vol. 43, No. 4, pp. 732-738 (October, 1949)

⁵⁶ Edwards, Richard W. Jr., *Contributions of the Genocide Convention to the Development of International Law*, 8 Ohio N.U. L. Rev. 300 (1981)

⁵⁷ Reimann, K. D., *A View from the Top: International Politics, Norms and the Worldwide Growth of NGOs*, *International Studies Quarterly*, 50: 45-68 (2006)

⁵⁸ Payam Akhavan and René Provost, *Moving From Repression to Prevention of Genocide*, *Ius Gentium: Comparative Perspectives on Law and Justice*, Volume 7, 1-10 (2011); See also Lauren, Peritz, *The International Criminal Court, Sovereignty, and the United States: global power and the case for non-participation* (2006)

Academy, Myres S. McDougal, was to provide and insight into the architecture and related functions of the concept of decision making itself.⁵⁹ They contended that any decision would implicate an aspect of private or public policy.⁶⁰ Therefore, a generic sense of what decision making means must be rooted in the individual social participant, who frequently functions as both a claimant to shape decision making, as well as a decision maker per se. The functions of decision include the functions of (1) intelligence; (2) promotion; (3) prescription; (4) invocation; (5) application; (6) termination; (7) appraisal.⁶¹ Any decision would implicate all of these functions, although these functions may be poorly appreciated by the decision maker. Nevertheless, we should keep in mind that the creation of a legal and political culture of human rights, as a global mandate, requires a deeper appreciation of the human responsibility for choice and decision in which human rights perspectives are grounded in the global social reality. We should also keep in mind the influences that may be brought to the focus of human rights choice and decision. Among those influences is the activism of the ordinary social participant human rights stakeholder. The stakeholder is essentially an advocate and an articulator of human rights interests and values. However, it would be important that advocacy target and hopefully influence the specific, identifiable functions of decision making in the human rights global context.

The analytical markers identified as functions of decision-making are kept discrete for analytical and descriptive purposes. They are, however, inherent in the processes of decision-making and in practice, and influence one another in complex ways. The result of which is a decision or choice. For our purposes, the emphasis will be on the decision function of promotion or advocacy. This emphasis is meant to clarify the role of advocacy, or interest articulation, within the structure of decision in order to maximize and influence beneficial outcomes in choice and decision that sustain human rights expectations. Moreover, this emphasis gives us a clearer sense of the actual workings, prospects, and efficacy in the actual human rights decision process.

Advocacy depends on knowing the facts, identifying the players, and understanding the problems that require interest articulation. The relationship of advocacy or interest articulation to decision making is often under-appreciated in the sense that the focus of inquiry tends to be on the decision outcome, and not the forces that drove interest articulation in the first place. However, without interest articulation, without the express demand for the basic values that human beings feel that they have a right, decision-making would be a pale shadow of its appropriate social and political importance. This phenomenon is partly observed in societies involved in transition to democracy. When those freedoms are initially established, the culture of interest articulation and advocacy remains weak as a function of the pre-existing political order.

⁵⁹ *Supra* note 32; Lasswell, Harold D.; McDougal, Myres S., *Criteria for a Theory about Law*, 44 S. Cal. L. Rev. 362 (1970-71); See also McDougal, Myres S.; Lasswell, Harold D.; Reisman, W. Michael, *The World Constitutive Process of Authoritative Decision*, 19 J. Legal Educ. 253 (1966-1967); See also Myres S. McDougal and Harold D. Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, *The American Journal of International Law*, Vol. 53, No. 1, pp. 1-29 (January, 1959)

⁶⁰ *Id.*

⁶¹ *Id.*

Thus, there is often the outcome of democracy denuded of effective interest articulation and effective advocacy.

In our time, we have witnessed the growth and strengthening of civil society on a global basis.⁶² This development is not simply random and inexplicable. Civil society is the outcome of the demand and the need for advocacy in the demand for good governance, the rule of law, and universal human rights.⁶³ Civil society, by definition, is not the state; it is part of the community comprising the state. That community insists that its voice be heard and that its advocates promote and defend the interests of ordinary people. Further, the growth of civil society is not confined to states. It is a global phenomenon.⁶⁴ Thus, the term *global community* refers to global civil society and even more to the processes that generate focused interest articulation and effective advocacy. One of the most important global outcomes inherent in the civil society process has been the development of civil society interest groups specialized on a global basis to the promotion and advocacy of human rights.⁶⁵

A central problem that effective human rights advocacy encounters is the problem of obtaining the facts about human rights deprivations, and also predicting the prospect of human rights violations in the future.⁶⁶ Thus, the human rights problem for which advocacy and promotion are demanded will need an intelligence predicate to determine whether to proceed, and, if so, how to tactically and strategically present and prosecute such a claim or demand in a forum most effectively calculated to respond meaningfully to the problem.⁶⁷ Without reliable facts or intelligence, advocacy and promotion are weak; and intervention is correspondingly undermined. A weak intelligence predicate weakens the strategic and tactical options of the advocate as well as the ultimate decision-making forum.⁶⁸

The approach to human rights that stresses problems and interventions, such as advocacy and decision making, must examine carefully what is implicit in such ideas as advocacy, representation, and decision making (such as adjudication). Functional theory has distilled seven decision functions that are expressed or implied in human rights inquiry.⁶⁹ These decision

⁶² Srilatha Batliwala, *Grassroots Movements as Transnational Actors: Implications for Global Civil Society*, *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, Volume 13, Number 4 (2002); See also Helmut Anheier, Marlies Glasius, and Mary Kaldor (Editors), *Global Society 2001*, Oxford University Press (2001); See also Thompson, D. F., *Democratic Theory and Global Society*, *Journal of Political Philosophy*, 7: 111–125 (1999); Lester M. Salamon, et al., *Global Civil Society: Dimensions of the Nonprofit Sector*, The Johns Hopkins Comparative Nonprofit Sector Project (1999); See also Goran Hyden, *Civil society, social capital, and development: Dissection of a complex discourse*, *Studies in Comparative International Development (SCID)*, Volume 32, Number 1, 3-30 (1997); See also Jean L. Cohen, Andrew Arato, *Civil society and political theory*, MIT Press (March 29, 1994)

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Yonatan Lupu, *Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements*, University of California, San Diego (UCSD) - Department of Political Science (August 26, 2011); See also McHarg, A., *Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights*, *The Modern Law Review*, 62: 671–696 (1999); See also Kurt Jonassohn, *Prevention without Prediction Holocaust Genocide Studies*, 7(1): 1-13 (1993)

⁶⁷ *Id.*; See also Philip Plowden, Kevin Kerrigan, *Advocacy and human rights: using the Convention in courts and tribunals*, Psychology Press(2002)

⁶⁸ *Id.*

⁶⁹ *Supra* note 59.

functions are triggered by the processes of interest articulation and advocacy.⁷⁰ To be effective as an advocate and to effectively influence decision making, advocacy must target its expression of interest articulation with a view to providing a credible foundation upon which the normal functions of decision making made be deployed, and hopefully in the service of enlightened and altruistic interest articulation.⁷¹ It is therefore obvious that the functions of decision-making are matters that fall within the strategic and tactical vantage point of human rights advocacy. What follows is a summary of the central functions of decision-making but essayed through the lens of effective advocacy as a strategy of interest or value articulation.

A. THE ADVOCACY FUNCTIONS OF INTELLIGENCE

Human rights advocacy whose facts or intelligence predicate are flawed may have disastrous consequences for the credibility of human rights advocacy as a whole. In cases of grave human rights deprivations, it is usually the state that is the responsible actor. However, the management of information concerning these deprivations is a matter of the state's claimed monopoly over classified information generated by its intelligence services. Thus, a significant element of human rights work pits the intelligence claims of the state against the intelligence claims of human rights advocates. This is a very sensitive matter, and is often at the heart of whether human rights work succeeds.

Human rights organizations claim access to information using their own methods and research.⁷² Thus, they generate databases, case specific material, and a great deal more. Their work is sensitive and often cannot compete with the state's claim to secrecy over intelligence that may implicate the state in wrongdoing. It is through the intelligence network, especially of NGOs, that we understand the scope, relevance, and capacity for intervention and its limitations.⁷³ Facts are a critical basis for decision-making responses or interventions because it is from facts that we garner the scope of human rights deprivations.⁷⁴ Human rights groups, therefore, claim the right to gather, process, and distribute human rights intelligence.

It is also a critical intelligence demand, inherent in human rights advocacy, that advocacy be based on intelligence that meets the criteria of dependability, comprehensiveness (within which we include systematic contextuality), selectivity (relevance), creativity, openness, availability, and economy.⁷⁵ Without an effective process of intelligence development the deployment of critical human rights advocacy functions are weakened. To appreciate the centrality of human rights intelligence to human rights advocacy and decision making, it is important to appreciate how intelligence influences all the other functions of advocacy and decision making.

⁷⁰ *Id.*

⁷¹ *Id.*; See also Winston P. Nagan & C. Hammer, *Communications Theory and World Public Order: The Anthropomorphic, Jurisprudential Foundations of International Human Rights*, 47 VA. J. INT'L L. 725 (2007)

⁷² *Supra* note 7 and 57.

⁷³ *Id.*

⁷⁴ *Supra* note 66.

⁷⁵ Myers S. McDougal et al., *The Intelligence Function and World Public Order*, 46 Temple L.Q. 365-448 (1973); See also Harold D. Lasswell, *Communications Research and Public Policy*, The Public Opinion Quarterly, Vol. 36, No. 3, pp. 301-310 (Autumn, 1972)

B. THE ADVOCACY FUNCTIONS OF PROMOTION

To understand the human rights issue or problem is to begin the process of promoting a solution.⁷⁶ The problem of mass murder based on race in World War II generated the promotion/advocacy functions of seeking an international prescription criminalizing certain forms of mass murder or group extinction which ultimately produced the adoption of a general policy outlawing genocide, a convention proscribing and punishing the crime of genocide.⁷⁷ Advocacy may also take the form of involvement in specific cases or issues such as those associated with survival rights. Often particular cases lead to an awareness of a practice and to levels of advocacy that have enhanced the scope and specificity of the International Bill of Rights.⁷⁸ It is hard to imagine the extent to which a Bill of Rights for mankind could have developed as it has during the past fifty years without the elements of advocacy, promotion, and attendant activism. One of the great functions of promotion is that it accesses the modern means of communication as a mechanism for influencing world public opinion.⁷⁹

C. THE ADVOCACY FUNCTIONS OF PRESCRIPTION

Prescription is largely a legislative undertaking.⁸⁰ Legislatures and sometimes executives “make” law or other effective prescriptions. What is noteworthy in the human rights context is that there is no super-legislature or super-executive. Human rights activism often has been merged into human rights lawmaking involving state, non-state, as well as international or regional institutional action.⁸¹ Human rights NGOs often have been the triggering mechanism through research, advocacy, and activism to create the momentum that states and institutional actors need to create international or regional human rights regimens.⁸² The focus on courts, legislatures, and executives as lawmaking agents is important; but this focus may obscure the broader array of participants, who facilitate, or even make, human rights law.⁸³ The central truth about official lawmaking—be it legislative, executive, administrative, or juridical—is that, without some demand, without some counter-demand that generates a problem in which modern communication systems facilitate the processes of advocacy and claiming, the official prescriptive outcome of a state would indeed be very modest.⁸⁴

⁷⁶ *Supra* note 48; See also Nicolas Guilhot, *The democracy makers: human rights and international order*, Columbia University Press (2005); See also Michael McFaul, *Democracy promotion as a world value*, *The Washington Quarterly*, Vol. 28, Iss. 1 (2004)

⁷⁷ *The Convention Proscribing and Punishing the Crime of Genocide*, 78 U.N.T.S. 277 (December 9, 1948)

⁷⁸ Colleen Lundy, *Social Work, Social Justice, and Human Rights: A Structural Approach to Practice*, University of Toronto Press (November 1, 2011); See also Lesley Chenoweth, Donna McAuliffe, *The road to social work & human service practice: an introductory text*, Cengage Learning Australia (September 1, 2005); See also Kitzinger, C. and Wilkinson, S., *Social Advocacy for Equal Marriage: The Politics of “Rights” and the Psychology of “Mental Health”*, *Analyses of Social Issues and Public Policy*, 4: 173–194 (2004); See also Brennan, William J. Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. Rev. 535 (1986)

⁷⁹ *Id.*; See also *Supra* note 76.

⁸⁰ *Id.*; See also *Supra* note 71.

⁸¹ Jochen von Bernstorff, *The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law*, *Eur. J. Int. Law* 19(5) (2008); See also Francis Kofi Abiew, *The evolution of the doctrine and practice of humanitarian intervention*, Martinus Nijhoff Publishers (1999)

⁸² *Id.*; See also *Supra* note 7 and 57.

⁸³ *Id.*

⁸⁴ *Id.*; See also *Supra* note 71.

The focus upon the role of lawyers must not, of course, blind us to other decision-making participants and institutions that have responsibility for participating in the prescription, application, and enforcement of human rights.⁸⁵ For example, a joint resolution of the US Congress requests the executive branch to be more active in action against torture.⁸⁶ The resolution requests that the chief of mission, usually the ambassador, actively investigate allegations of torture and make representations on behalf of the victim.⁸⁷ This would require the ambassador to use his diplomatic position to facilitate compliance with basic human rights. The US Foreign Assistance Act makes foreign aid contingent upon some measure of human rights performance.⁸⁸ This makes both the Congress and the executive branch of the US Government responsible for the employment of economic assistance as a vehicle to advance human rights and trends toward democratization.

At another level, there are many UN agencies whose work directly or indirectly impacts upon the delivery or non-delivery of human rights. The Committee Against Torture does not require that its “experts” be lawyers; The Committee on Civil and Political Rights similarly does not mandate a legal training for its members; The special rapporteur on torture may be a lawyer, but there is no explicit rule requiring this; The UN Human Rights High Commissioner in this situation was a distinguished politician.⁸⁹ This all suggests that the culture of human rights in global context includes advocates, decision specialists, as well as scholars and scientists from very diverse backgrounds, cultures, and professions. What ties them to the culture of human rights is that they are directly or indirectly involved in aspects of decision making that have human rights consequences and impacts.

D. THE ADVOCACY FUNCTIONS OF INVOCATION

Lawyers in both advocacy and adjudicatory roles are familiar with the processes of fact-problem-prescriptive characterization of issues for the purpose of the specific application of human rights norms. The case of *Filartiga v. Pena Irala* is a good illustration of the invoking function.⁹⁰ However, invoking is not confined to courts, be they national or international; any human rights institution of intervention can and often does perform this function.⁹¹ Thus, when Amnesty International focuses on an urgent action death penalty, torture, or disappearance case, it is in fact performing this kind of provisional function often in contexts of extreme crisis.

⁸⁵ *Id.*

⁸⁶ Richard B. Bilder and Detlev F. Vagts, *Speaking Law to Power: Lawyers and Torture*, *The American Journal of International Law*, Vol. 98, No. 4, pp. 689-695 (October, 2004); See also Nagan, Winston P., *The Politics of Ratification: The Potential for United States Adoption and Enforcement of the Convention against Torture, the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights*, 20 *Ga. J. Int'l & Comp. L.* 311 (1990)

⁸⁷ *Id.*

⁸⁸ *Id.*; See also *Foreign Assistance Act* (Pub. L. 87-195, 75 Stat. 424, enacted September 4, 1961, 22 U.S.C. section 2151 et seq.).

⁸⁹ *Id.*; See also B. Gorlick, *The convention and the committee against torture: a complementary protection regime for refugees*, *Int. J. Refugee Law* 11(3) (1999)

⁹⁰ 630 F.2d 876 (2d Cir. 1980)

⁹¹ Dahbour, O., *Advocating Sovereignty in an Age of Globalization*, *Journal of Social Philosophy*, 37: 108–126 (2006); See also Simon Dalby, *Geopolitical Change and Contemporary Security Studies: Contextualizing the Human Security Agenda*, Institute of International Relations, The University of British Columbia Working Paper No.30 (April 2000); See also Theodor Meron, *The Martens Clause, Principles of Humanity, and Dictates of Public Conscience*, *The American Journal of International Law*, Vol. 94, No. 1, pp. 78-89 (January 2000)

E. THE ADVOCACY FUNCTIONS OF APPLICATION

In an application situation, the advocate has a crucial role in specifying the nature and practical efficacy of the remedy. A central challenge for human rights is invariably the scope of the remedy. It is the advocate's job to define that scope for the authoritative decision-maker. Where the institutionalization of the decision-maker is at a higher level, such as at the European Court of Human Rights or at the US Supreme Court, the greater the ability of the advocate to predict an actual, effective, and final application and enforcement of human rights prescriptions in concrete situations is.⁹²

Application is a significant problem for human rights in an era of globalization, during which there is still great dependence upon the decentralized application of human rights policies and prescriptions.⁹³ The international community has in fact created a significant consensus as to what human rights are and what general prescriptive force they must have.⁹⁴ On the one hand, the application of human rights norms through the United Nations represents institutional weaknesses as well as financial and logistical limitations, and on the other hand, provisions in key human rights covenants prescribe state obligations to prosecute or extradite offenders. These treaty-required obligations impose on states obligations that many tacitly believe to be their reserved domain of sovereignty and domestic jurisdiction.⁹⁵ Decentralization comports with political and legal reality, but also generates an inconsistent, untidy political mosaic of practice and precedent. The growth of human rights institutions, such as regional commissions and courts, has added coherence to the application of human rights standards.⁹⁶ Moreover, constitution making in the post-cold war world has generated institutions of basic law in some states that are extraordinarily human rights sensitive. The application of human rights norms also requires skills in grounding human rights values in specific cases. These cases represent important political challenges for theory and practice; but central to the success of advocacy is the ability to craft a framework that persuades the authorized decision-makers that application is necessary and effective.

F. THE ADVOCACY FUNCTIONS OF TERMINATION

The termination of advocacy may mean that a favorable result has been achieved.⁹⁷ It also could mean the abandonment of advocacy that has the effect of terminating the possibility of

⁹² John H. Farrington, *The new narrative of accessibility: its potential contribution to discourses in (transport) geography*, *Journal of Transport Geography*, Volume 15, Issue 5, Pages 319–330 (September 2007); See also Polly Vizard, *Specifying and Justifying a Basic Capability Set: Should the International Human Rights Framework be given a more Direct Role?*, *Oxford Development Studies*, Vol. 35, Iss. 3 (2007); See also Mark V. Tushnet, *Following the Rules Laid down: A Critique of Interpretivism and Neutral Principles*, *Harvard Law Review*, Vol. 96, No. 4, pp. 781-827 (February 1983)

⁹³ *Id.*

⁹⁴ *Supra* note 49.

⁹⁵ Mills, Kurt, *Human rights in the emerging global order: A new sovereignty?*, St. Martin's Press (1998); See also W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, *The American Journal of International Law*, Vol. 84, No. 4, pp. 866-876 (October, 1990); See also Richard Falk, *Human rights and state sovereignty*, Holmes & Meier Publishers (1981)

⁹⁶ *Id.*

⁹⁷ *Supra* note 76-82.

decision-making responses.⁹⁸ All decision-making affirms and disaffirms certain preferences. The central challenge of the terminating function in human rights law is impressive. For example, human rights law in comprehensive perspective seeks to terminate all law and practice which is incompatible with the dignity of man. Termination thus is more than simply prescribing, promoting, and applying human rights law; it is terminating reactionary, retrogressive law of the old system.⁹⁹ The importance of termination is vividly illustrated in US death penalty litigation; the US Supreme Court cannot quite develop a consensus to outlaw capital punishment.¹⁰⁰ However, it has not terminate the practice, but instead, using loopholes and strained constructions, it has in fact validated the execution of the mentally retarded, children, and upheld convictions where race is a factor. An important objective for the human rights advocate is to ensure that argument persuades the decision-maker that the decision will terminate the problem.

G. THE ADVOCACY FUNCTIONS OF APPRAISAL

Human rights law, like natural law, provides a standard against which positive law can be rationally evaluated. It provides thus a critical component in addition to reason and rationality in the appraisal of the state of both domestic and international public order.

IV. HUMAN RIGHTS AS A DYNAMIC HUMANISTIC STRUGGLE FOR DIGNITY

In setting out the issues and problems that limit the scope of contributions that academics can make to the human rights agenda, the core ingredients of a solution to the dilemma can be identified. The solution requires a theory for inquiry about human rights.¹⁰¹ The theory must have a decision-making focus to have practical relevance, since only effective decision making—formal or informal—will apply human rights perspectives and operations to particular situations and contribute to a human rights-conditioned future.

A theory about human rights, that is policy decision-focused, must self-consciously concern itself with the policy process itself by integrating actual human rights problems that require policy responses; both the problems and the decisional responses to them must occur in a disciplined contextual setting and the decisional responses must employ processes that meaningfully clarify the policy basis of human rights prescriptions.¹⁰² Theoretical inquiry about this kind of emphasis must embrace cross-disciplinary tools of inquiry, or multiple methods, to give scientific credibility to the enterprise. This requires fidelity to at least four essential features of a theory about human rights inquiry from a humanistic policy perspective;¹⁰³

1. **Comprehensive mapping.** Fundamental to an inquiry is the expression of a comprehensive map of human rights problems specified in terms of functional value categories and which permit continuing refinement and elaboration. A systematic expression of these problems

⁹⁸ *Id.*

⁹⁹ *Supra* note 59 and 75.

¹⁰⁰ *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909 (1976)

¹⁰¹ *Supra* note 59 and 75.

¹⁰² *Id.*

¹⁰³ *Id.*

will underline the difference between human rights deprivation and human rights realization. The lexical formulation of human rights as rights is frequently the tail end of a process that needs illumination;

2. **Relevance of context.** Factual, theoretical, historical, and political contextual relevance must drive the theory. All human rights, in the sense of process, must be seen in relation to every relevant community context, from local to global;
3. **Relevance of advocacy, policy and decision.** The focus on policy and decision requires the identification of past, present, and future decisional mechanisms at every level of community that may be relevant in clarifying, specifying, protecting, and enhancing human rights. We should of course keep in mind that policy and decision do not function in a vacuum. Frequently what triggers a policy response is a problem that emerges from the social process context. That problem will emerge in the form of a dynamic humanistic claim for a human rights value and an aspect of social process that will respond by resisting that claim. Therefore, the quality and sustainability of interest articulation and advocacy will be an important foundation for a response that is authoritative and controlling to the problem that is eventually presented for decision;
4. **Relevance of key intellectual tasks for inquiry.** The relevance of the identification and use of appropriate intellectual tools is necessary to clarify the rational, theoretical and factual basis of the context of human rights, as well as the procedures for their realization in fact. The key discrete intellectual tasks are; goal and value clarification; the historic study of relevant trends; the scientific study of causes and consequences of human rights failures or successes; the concern for predicting possible future scenarios in terms of approximation to desired human rights goals; and the creation of alternatives to better approximate the desired human rights goals.¹⁰⁴

V. CONCLUSION

The broad outlines of an approach to human rights that stresses the dynamic humanism of the individual in the global environment and the importance of creative advocacy in search of solutions that from a policy point of view enhance and strengthen human rights globally remains a vital challenge. In particular the emphasis on humanism is also a focus on the recognition of an enhanced responsibility in individuals and human institutions, in particular, institutions of science and enlightenment. These challenges are both theoretical and practical and require an enhanced sense of responsibility and an enlarged sense of empathetic identity with all of human kind. Obviously this challenge is one that requires us to struggle with a much broadened sense of who we are, and in particular, responsibility requires that the breath of our identity be global and universal.

¹⁰⁴ *Id.*