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Makau Mutua

University at Buffalo School of Law

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Change in the Human Rights Universe

Makau Mutua*

I was a student at Harvard Law School when the *Harvard Human Rights Journal* was founded, and when the Harvard Human Rights Program (“HRP”) was in its infancy. One memory that poignantly stands out in my mind from those early days is the marginal nature and smallness of the human rights community at the law school. Even though some of the greatest human rights struggles of the twentieth century—the anti-apartheid movement, the Cold War, and a number of genocides—were still burning, the language of human rights was a scarce idiom at Harvard Law School. Little did I know that two decades later human rights would be all the rage. Here I reflect on two important themes that have come about in the field of human rights. The first is that human rights now occupy a central place in legal education. The second is that the human rights corpus is slowly evolving from its paradigmatic Western orientation.

In 1985, I took one of the first human rights courses ever offered at Harvard Law School. Professor Henry Steiner, who constructed the internationally celebrated Human Rights Program from scratch, taught the course. Both he and us—law students interested in challenging the conditions that create powerlessness—spent a semester exploring the contradictory dynamics of this new offering. There could not have been more than fifteen of us in that class, a testament to the course’s novelty and marginalization. I think we were all intrigued to discover how the course would be taught as a real “law school” subject. We were pleasantly surprised when Professor Steiner combined the Socratic method with a jurisprudential analysis of text, treaties, case law, and critiques of norms to bring the topics to life.

When I survey the human rights landscape now, I marvel at how commonplace and pervasive human rights courses have become. Whereas twenty years ago, there were only a few law schools that taught human rights, today human rights is a subject of choice, and virtually every law school in the United States teaches a human rights course. The same is true in most countries around the world. Law school human rights programs likewise are no longer a rarity. These changes have had a profound effect on legal education and on the practice of law. It is now impossible to imagine Harvard Law School—and many others, such as SUNY Buffalo Law School, where I teach—without a human rights program. Human rights have become an integral part of the consciousness of legal education.

* Makau Mutua is SUNY Distinguished Professor and Professor of Law at the SUNY Buffalo Law School where he is also the Director of the Human Rights Center and the Floyd H. & Hilda L. Hurst Faculty Scholar. He is the author of numerous works in human rights, including *MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE* (2002). He serves as the Chair of the Kenya Human Rights Commission.

In theoretical terms, human rights courses have revolutionized the way legal scholars and law students perceive the purpose of a legal education. Whereas legal education was once defined narrowly as an industry for feeding traditional law pursuits—corporate, commercial, institutional, and small town practice—today law students see themselves as having a more interesting choice of career paths. For instance, a good number of graduates now pursue careers in non-governmental and international settings where the calling card is human rights. Many more do so in private practice, academia, and within government agencies. The long and impressive list of HRP alumni who work as human rights lawyers, advocates, executives, professors, international civil servants, and policy-makers is proof of the success of the human rights project.

The most important transformation in human rights, however, is taking place in the normative character of the human rights corpus, the movement, and its discourse. Some twenty years ago, human rights were primarily seen as a gift of the West to the “rest” of the world. The “international” in human rights was often thought of as about “them” and not “us.” There was a sense—which still exists—that human rights were about the redemption of backward cultures, states, and peoples. In this sense, many earlier human rights advocates were steeped in a tradition of Eurocentric Western racism. In the last decade and a half, however, critiques of the human rights corpus itself, as well as of its practices and practitioners, have yielded some introspection within the human rights movement. In turn, there has been a slow, if irreversible, reconstruction of the human rights corpus and its discourse. This multi-culturalization and universalization of human rights is an inevitable process that is bound to continue. The idea is to construct a truly universal project.

This cross-fertilization of cultures is essential if the human rights movement is to claim real grassroots legitimacy across the globe. Ideologically the human rights movement is becoming more subtle and sophisticated. Initially, there was great emphasis on civil and political rights. Many human rights scholars and activists, in a reflection of the West’s bias during the Cold War, deliberately downgraded economic and social rights. Since the mid-1990s, however, more attention has been paid to economic powerlessness and the effect of globalization on people. For example, human rights groups in the global South increasingly focus on economic problems. Even Amnesty International and Human Rights Watch, the two dominant Western human rights groups, have tentatively started to address economic deprivation. Still, the jurisprudence in this area is very underdeveloped because many of the leading human rights NGOs still only pay lip service to these problems. But the cat is out of the bag. The legitimacy of the human rights project depends on its willingness to tackle head on the ills associated with free market capitalism. This is an issue in which third world thinkers and advocates are becoming the leading force.

Finally, the human rights movement, which is still too closely associated with forms of political democracy, must become more attentive to the challenges of powerlessness if it is to attain an unassailable global prominence. Thus far, the movement has been too soft on imperial Western political democracies even as they seek to redefine human rights to suit their own foreign policy objectives. These biases expose the limitations of the human rights movement and call for a rethinking of its conceptual bases, analytic assumptions, and strategic alliances. A truly legitimate human rights movement cannot be cabined by powerful states and elites. It must be material for battle in the hands of the powerless. This, however, will not be possible unless the movement is purged of its Eurocentric, racist, free-market biases.

