
FIFTEENTH ANNUAL GROTIUS LECTURE RESPONSE

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I thank Emilio Alvarez Icaza for his lecture and the Washington College of Law for hosting this important series and inviting me to serve as discussant. As Dean Grossman said in his generous introduction, I was a member of the Inter- American Human Rights Commission in an earlier era and reading the lecture this afternoon afforded me the opportunity to recall and reflect on some very happy—and, to be candid—some very unhappy memories. I see that the Commission continues to be buffeted by political attacks. I know how wearing they can be on those who work within it and how dispiriting they are for those who turn to the Commission for protection. Yet, in a way, such attacks are also a positive indicator, because they mean that the Commission is doing its job. I would shudder for the future of the Commission if authoritarian leaders of the continent were loudly singing its praises!

The great human rights documents proclaim standards against which the exercises of powers by governments are to be tested and they, then, establish institutions and procedures by which those standards are to be applied to particular cases. For the Commission, the instruments are the American Declaration and the Inter-American Convention. The procedures, as Don Emilio explained, include a range of activities, from individual petitions, country reports, thematic reports, on- site visits, workshops, and so on. Some of these activities are promotional and some are judgmental. When the standards in the documents are applied through the Commission's procedures to particular cases, the result may be criticism of government practices and even condemnation. No government—no person—enjoys being criticized; some, who take umbrage at what they deem a *lèse majesté*, defend themselves by indicting the Commission and its methods.

If I may cite one recent example, Ecuador's President, Señor

Rafael Correa Delgado, in a blistering critique of the Commission in a speech delivered in Guayaquil on March 11, 2013, called on the Commission, among other things, to be “redirect[ed] to be more . . . respectful . . . of the constitutional sovereignty of States.” In reading President Correa’s speech, I was reminded of Thomas Wälde’s response to the criticism that international investment treaties “interfere in domestic regulatory and administrative sovereignty.” Wälde, who had that wonderful gift of putting things concisely, responded: “That is their very purpose.” And, of course, that is the very purpose of the treaties and institutions that comprise the international protection of human rights: to interfere in domestic regulatory and administrative sovereignty when it is being exercised in violation of human rights as prescribed by international law.

As I said, no state likes to be criticized for a lapse in fulfilling its human rights obligations. The United States did not, when the Commission condemned it for violation of the Declaration, as it did in the Gonzales case. But the appropriate response, whether in Washington or in Quito, is not to attack the Commission; it is to repair the lapse and to ensure that it does not recur.

Most of the 2012 procedural revisions which Don Emilio has reviewed seem more refinements of current practice than innovations. The commitment to supply reasons is certainly a hallmark of Rule of Law but my recollection is that the Commission had long practiced it. The promise of more detailed reasons will enrich the Commission’s jurisprudence and should provide guidance to States parties as to their obligations under the Declaration and the Convention. The change in cautionary measure practice, the *medidas cautelares*, seems to make sense. If the Commission has issued a *medida* and then presses for its confirmation as binding in the Inter-American Court where it is rejected, I think it quite right that the Commission should accept the Court’s judgment as final and not proceed to reinstate the measure.

Where I might gently differ with Don Emilio is in the notion that more procedural rights should be afforded the petitioner, as putative victim, than the respondent state. To be sure, there is no power parity between the state and the individual, which is one of the reasons why enlightened criminal law tilts markedly in favor of the defendant. But in international human rights processes, the State is, as it were, the

defendant and the consequences of a possible condemnation by the Commission or the Court are not negligible reputational costs. Wholly apart from that, the legitimacy of the Commission's processes will stand or fall on the scrupulous adherence to a procedure that is manifestly even-handed. That is not to say that certain presumptions may not operate, in circumstances in which the respondent state withholds evidence or does not participate. But such presumptions should be consistent with international conceptions of due process.

The Universal Declaration of Human Rights, the Covenants, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the European Convention on Human Rights together provide a focus and pathway for the human rights movement at all levels. Without these architectonic instruments, efforts at all levels of the world community to promote and protect human rights would be diffused, with less legitimacy for local NGOs struggling to protect human rights and making protection of individuals at the national and sub-national level far more difficult of achievement.

None of these extraordinary instruments could have come into being without international organizations but law-making is only the beginning. Without robust ways of invoking, implementing, sanctioning, and remedying violations of those instruments, legal promises in treaties remain a beautiful dream or a semantic exercise or, to put it in coarser terms that amount to the same thing, a dead letter. The Inter-American Human Rights Commission's primary function is as an international institution for invocation and application—the provisional characterization of violations, the confirmation of such violations, the determination of remedies and judicial initiatives.

But that is only one part of the human rights process. Tip O'Neill famously said that "all politics is local." He oversimplified, of course, but it's useful to keep in mind that whether in national or international politics, the local is as important as the global, regional and national. In the final analysis, human rights protections are local. Until human rights processes are effective at the local level, we will not have much meaningful human rights.

Some international law scholars conceive, study, and write about the international protection of human rights as if it were the province of a number of international and regional organizations and courts with explicit human rights mandates. But the international and regional protection of human rights is a complex process, encompassing a wide range of international and national organizations, some governmental, many non-governmental, and many individuals, inside and outside these governments and organizations. All of these participants are vitally important,

The resources of every international human rights organization and every criminal court are limited as is their ability to compel. And the resources of local NGOs are limited, as many in this audience well know. What is required in every country is an ongoing and self-sustaining culture of human rights in which broad strata of the population insist, not only on their own protection, but the protection, in line with international human rights standards, of everyone in their country; not only the freedom of religion for their own faith or sect, but the freedom of religion for every faith and credo in their country; the freedom to marry and have families not only for themselves and those of whom they approve but for all people; the right to self-determination not only for their own ethnic or language group, but the self-determination of the entire community.

The absence of that culture is usually blamed on the lack of effective domestic institutions. In my view, that is a secondary phenomenon. The primary cause can be attributed, I believe, to a failure of vision, commitment and leadership at the elite level. One of my doctoral students reported that in an interview he conducted with a former head of state, the former head remarked that when he speaks to business leaders in the continent about economics, he commands the full attention of his audience. When he moves on to the coordinate indispensable Rule of Law and all that it entails for an effective economy, eye contact is lost as his audience begins to shift restlessly in their chairs.

A fundamental goal of international human rights organizations must be the inculcation of this culture of Rule of Law and human rights, the development, in each country, of a public order that ultimately renders superfluous international organizations, like the

Inter-American Commission, dedicated to human rights.

We are not there and those organizations, far from being superfluous, are still desperately needed.

As we celebrate the accomplishments of the Inter-American Human Rights Commission, it is important to keep in mind the front line protectors of human rights, the individuals in each country who courageously expose violations, protest them, agitate at the local level for their remedy, accept the danger of their often unpopular activity and, more often than you may care to know, are murdered for their effort.

The foundational case of Velasquez Rodriguez was processed in the Inter-American Commission and thereafter decided by the Inter-American Court of Human Rights. A critical witness in the case was a school teacher. Dean Claudio Grossman, later a member and president of the Commission, was of counsel in Velasquez. Claudio explained to the teacher the danger he was exposing himself to and candidly warned him that the Commission had no witness protection program. The teacher, fully and fairly apprised of the personal danger he faced, proceeded because he believed that the human rights issues at stake in the case were important for his country. The case succeeded. The school teacher was murdered. In Ayacucho, on my first on-site visit, a brave woman, the leader of the Mothers of Disappeared in that province, movingly testified before me late in the afternoon and then returned to her home in the adjoining shanty town. She was murdered that night. Many other men and women in our hemisphere and worldwide have died for doing no more than pressing for the Rule of Law and the internationally guaranteed human rights of their fellows.

I was and continue to be inspired by such brave human rights workers. In the towns and villages in their own countries, they elect daily to expose themselves to danger for the cause we celebrate, they suffer arrest, imprisonment or lengthy unlawful detention, they are tortured, “reeducated” in camps, they are murdered.

When I was a member of the Commission, I was haunted—and I still am—by those who died for trying to defend basic rights that are promised in the Universal Declaration of Human Rights and the American Convention. As I think of their sacrifice, I am shamed by

the shallowness of my own. Even as a member of the Commission, I was never in danger but many of the people who sought me out knew they were precisely because of it. I am still awed by their courage and their real sacrifice. So as we mark an important institutional evolution in the Inter-American Human Rights Commission that Don Emilio has presented, let us also wish Godspeed to those human rights workers at the local level, without whom the international protection of human rights would be little more than brave words on F Street in Washington, in Turtle Bay and in the Palais des Nations in Geneva.