

**Law, Education, and Social Change**  
Keynote Address to  
Lawyers' Rights Watch Committee Dinner

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Thank you. I feel honoured to have been invited to speak to you this evening. The work of Lawyers' Rights Watch is necessary and inspiring. Please accept my congratulations.

My topic is the relationship between law and social change, and I want to begin by making a claim that no-one in this room, I believe, would dispute: that social change is meaningless unless it is underpinned by the law. That seems self-evident: for without a system of laws, no society can govern itself, no individual or group can be assured of security, no foundation can be laid for individual, corporate, or national prosperity. And when a society looks to make changes in its governance, no matter how those changes are conceived or promulgated, they must be sustained by legislation that creates a firm and lasting framework—that enshrines change within a shared system of norms and aspirations.

By “social change” I want to convey the notion of *progressive* change—positive changes that are proposed or introduced because they are intended to *improve* something. Domestically we might be speaking about changes in health care practices, for instance, designed to protect patients; or new approaches to the treatment of homelessness in society. On the international scene we might be addressing such issues as a citizen’s right to freedom from state repression, or regulations affecting personal mobility within national borders. “Social change” is a catch-all phrase that has negative as well as positive connotations, but here I want to use it as short-hand for the kinds of transformations that are intended to benefit us, to protect human rights and improve the conditions of life for all. It’s in that sense that we speak of change in our mission statement at UBC, in which we state: “As responsible members of society, the graduates of UBC will value diversity, work with and for their communities, and be agents for *positive change*.”

For many of us, that aspiration is what drew us into law in the first place: the idea that, through our judicious study and application of the law, or through our influence on the creation of progressive legislation, we might actually make the world a better place—more moral, more compassionate, more *just*. Such a possibility is reinforced by some of the great legal thinkers. Major legal theorists have argued for a view of law that is almost heroic; think of Ronald Dworkin whose book *Law's Empire* espouses a hegemonic view of law's role in Western societies. Within international law, one of the most interesting, if eccentric, thinkers is Cambridge's Philip Allott who has written:

The extraordinary progress of the human species would not have been possible without law. We have created a vast world-law in which collective human effort is organized through law, a world of unlimited possibilities of complexity and sophistication.

Professor Allott's view is rooted in the Hegelian view that all of humanity is shaped by a universal, transcendent spirit. For Allott, law is the modern expression of that spirit; it is only through law that we can attack what he creatively calls the current "interstatal unsociety" and build a global society.

At the same time, we need to remind ourselves that the law cannot achieve such noble ends by itself: that it is in practice but one of the elements that, collectively, may bring about social change and realize the potential that lies in the universal human spirit. I trace my own reluctance to place exclusive faith in the power of law to my first encounters with a wonderful Harvard philosopher, Judith Shklar. In her important book, *Legalism*, Shklar identifies a western culture (especially an American culture) in the thrall of "legalistic" thinking, which she describes as follows:

[Legalism is]... the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules. Like all moral attitudes that are both strongly felt and widely shared it expresses itself not only in personal behavior but also in philosophical thought, in political ideologies, and in social institutions.

Shklar argues for a more complex view of human motivation and of human interaction, where what she calls “moral relationships” are not always bounded by fixed “rules”. Those relationships may not always be amenable to rule-bound approaches to legality.

It needs to be understood that, if it is to work, law must be more than simply the coercive application of societal rules.

This is nowhere more evident than in the attempts of law, especially international law, to deal with the problems involved in safeguarding human rights. The very term “human rights” is in

itself difficult to define, given its many applications. Indeed, it is often invoked as a means of justifying all sorts of activities that have very little to do with what we understand by the phrase: the language of human rights has been used to describe everything from supplying computer systems to courts, to the construction of irrigation systems; from local government reform to the creation of land registries. Human rights becomes everything—and thereby risks becoming nothing.

Setting this kind of distortion aside, I want to maintain that Canadians care about human rights, that human rights are an integral part of our value system, because we collectively believe that human beings matter for themselves. We believe that humans are endowed with a dignity – whatever its origin, secular or divine – that must be upheld by any society that wants to see itself as civilised. This is a moral concept upon which we construct our policy regarding foreign aid, and to some extent our economic and social interaction with other nations. Such an approach allies us

with the Declaration of Human Rights proclaimed 60 years ago by the United Nations (and first drafted, I'd like to remind you, by John Peters Humphrey, a Canadian legal scholar and jurist). Our own society is protected by a Charter of Rights and Freedoms that protects individual freedom and equality under the law: no surprise, then, that we should seek to advance those ideals for the benefit of citizens in other nations, and help them achieve those rights that we too often take for granted.

The difficulty that we face is that we cannot hope to effect positive social change in less fortunate countries simply by invoking law or moral conscience. Those of us who work in the area of international law have learned the hard way that, even where legal and social norms can be agreed upon, their application is an entirely different matter. Yes, we have built up an enormous edifice of human rights law; but it is often more honoured in the breach than in performance.



In my view, it is misconceived to focus our limited resources on the creation of more and more structures that are intended to enforce human rights norms that are not inclusively supported by people around the world. This is because, as Jurgen Habermas so powerfully argues, rights are relationships, not things. For rights to have meaning, people must be engaged in building up that meaning through their interactions in support of human rights.

In recent times, we have heard understandable cries for an end to “impunity” for violators of human rights. An International Criminal Court has begun investigating perpetrators of crimes against humanity and lodging prosecutions. Regional tribunals already are trying to address similar crimes committed in Rwanda and the former Yugoslavia. Truth Commissions have been established in states as diverse as Peru and Sierra Leone to identify those who should be subject to punishment. These are, in and of themselves, positive symbolic initiatives. But let us not fool ourselves into thinking that they are key instruments in promoting

significant social change in favour of human rights for the inhabitants of our planet. These initiatives are likely to remain relatively marginal. Let me suggest why.

The Tribunals empowered to hear cases involving war crimes and crimes against humanity in the former Yugoslavia and Rwanda have been hamstrung by an inability to pursue accused perpetrators and by a lack of commitment on the part of the very states which trumpeted their creation. The various committees which sit under a diverse group of international treaties, such as the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic Social and Cultural Rights*, and the *Convention on the Elimination of All Forms of Discrimination Against Women*, are limited in power and in their permitted scope of inquiry.

With the exception of the Human Rights Committee, when sitting under the terms of the Optional Protocol to the *International Covenant on Civil and Political Rights*, all of the committees are

restricted to receiving and commenting upon state reports relating to the national implementation of the relevant convention. The reports of some states are cursory at best, willfully misleading at worst. Even the Human Rights Committee, which has jurisdiction under the Optional Protocol to hear individual complaints, can only "forward its views" at the end of any particular case to the state involved. There is no mechanism for implementation of a committee decision, aside from the court of public opinion.

All of this is no accident. States are willing to create human rights institutions, but they typically do not want them to be effective. Even new institutions like the International Criminal Court, which potentially has real clout but whose authority has not yet been fully tested, or the office of the UN High Commissioner for Human Rights, may not be able to function effectively in the face of resource limitations and lack of governmental cooperation.

In 2002 I was honoured to be appointed to chair the Working Group on Enforced and Involuntary Disappearances of the United Nations. This five-member panel of experts was set up in the 1980s, primarily to deal with the phenomenon of the disappeared in South America. Since then, the geographic scope of its work has expanded to include cases from around the globe, and currently roughly 55,000 cases of disappearance remain under active consideration. Through the processes of the Working Group, which are entirely non-adjudicatory, human rights values are fostered and implemented. In recent years the Working Group has conducted successful missions to Colombia and Nepal, where I personally participated in finding six disappeared persons in local jails outside Katmandu. We cleared up a backlog of some 12,000 cases from Sri Lanka.

This is all to the good; but like other international human rights institutions, the Working Group is being strangled by a lack of resources. In 2002, to cope with its backlog of what was then

70,000 cases, it had one and a half full-time professional staff members, and a constantly changing cohort of assistants on temporary assignment. The situation has improved since then, but not dramatically. This utterly inadequate complement of staff reveals that international society is not serious about the promotion and protection of human rights, even when mechanisms have already demonstrated their effectiveness. It is easier, and less challenging of governmental power, to create largely symbolic legal structures that cannot easily be used.

Therefore, implementation of human rights norms at the international level is still largely dependent upon bilateral diplomacy, upon political action in multilateral fora such as the Human Rights Commission of the United Nations, or upon the work of committed actors in civil society - - people like you who volunteer for Lawyers' Rights Watch. The alternative to such action is the imposition of human rights rules through coercion; but history has shown that imposed laws that are not founded on a shared sense

of obligation don't work; strategies that focus upon human rights education, community development and institutional strengthening will have more impact than support for formal legal institutions that are charged with enforcing laws that may not be seen as legitimate (or even relevant) by the populace. An exclusive focus upon formal legal, and especially adjudicatory, structures will have limited value. Law has authoritative power, but only when it is mutually constructed, when it arises out of the interaction of a variety of actors and agencies. Law is not a product that is manufactured and distributed for consumption. Citizens in domestic systems and states and other actors at the international level are not consumers; they are active participants in the continuing enterprise of lawmaking.

Rather than looking only at courts to promote human rights then, what is needed is the creation and sustaining of human rights norms through processes of mutual construction engaging people and institutions; and this process must occur alongside the creation

of an internationally-accepted understanding of legal legitimacy. As the noted American legal philosopher Lon Fuller has shown, this may only be achieved if states and other international actors can build up shared understandings of right conduct and the appropriate role of law in society; after which, they must work together to ensure that the criteria of legality are met. That is the work of groups like Lawyers' Rights Watch. Only with this type of work can the force of international law be brought to bear on regimes that might otherwise abuse citizens' rights; only then can the law be used as an effective instrument for social change.

If the application of law is ever to have any lasting impact upon the protection of human rights around the world, future generations must find a way to overcome the barriers in the way of social change. As citizens of Canada, we take for granted a freedom of thought and action that is guaranteed by both law and custom, but this is denied to many others around the world. At UBC, we are trying to build an awareness among our students that, along with the rights and protections that they enjoy, comes an

obligation to ensure that others may enjoy those same rights and protections, an obligation to take social and community action on behalf of others less fortunate than oneself. We have adopted the term “global citizenship” as a way of describing the kind of person we hope UBC graduates will become: people who are motivated by the desire to help others, who are driven by a strong moral awareness to use their hard-won skills and knowledge for the benefit of others. Our graduates, we believe, should be people who *care* deeply enough to *learn* and then to *act*—to volunteer, whether at home or abroad, in support of global initiatives for change.

In this regard the universities play a crucial role, by providing our society with citizens who not only have the learning and the skills to succeed as professionals in their chosen careers, but also possess the moral conviction and the vision to see the importance of using their knowledge in the interests of creating a better world. They are the future social leaders who will, I trust, succeed where we are stumbling; they will, I believe, break through the legalistic barriers that separate nations to create laws that are based on



inclusively created norms and values. Through the concept of “global citizenship” we can hope for a future in which human rights law is created through the interaction of states, international jurists, legal commissions, NGO’s, community groups and individuals, all acting together to transcend borders in the name of our common humanity.

Thank you.