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PRESENTATION



The ninth issue of the *Sur Journal* is dedicated to the commemoration of the sixty years of the Universal Declaration of Human Rights. The articles on this subject were chosen in collaboration with the International Service for Human Rights (ISHR). Two main issues were addressed in the selected articles: the indivisibility and the universality of human rights. These two issues were initially raised sixty years ago by the Universal Declaration of Human Rights as the pillars of international human rights law. In this ninth issue of the *Journal*, they are revisited under an especially critical light.

The issue of indivisibility is analyzed by both Eitan Felner and Fernanda Doz Costa. Felner adopts a pragmatic perspective: how can economic and social rights not only be recognized as human rights, but also be effectively implemented? The author proposes a methodological framework to assess whether or not a State has violated human rights obligations related to this set of rights. He also reveals some of the challenges in identifying violations of economic and social rights. Doz Costa approaches the issue from a conceptual perspective, discussing the possible connections between human rights and poverty.

Anthony Romero, Executive Director of the American Civil Liberties Union (ACLU), in an interview with Conectas Human Rights, sheds light on how important the human rights movement is for the protection of individuals in the currently most powerful country in the world, a country that has “seen a remarkable loss of human rights” in the last eight years. In Romero’s words: “[t]he existence of a global human rights movement is actually, for this very reason, vitally important. Even if one government of one country sets back human rights, there is a movement of leaders and human rights NGOs that can keep the pressure on and keep pushing for advances in human rights.”

Katherine Short’s paper analyzes to which extent the Human Rights Council has been successful in overcoming the over-politicized approach adopted by the former UN Commission on Human Rights. Short highlights, however, that the Council’s effectiveness has been partially “undermined by both its failure to implement mechanisms to prevent its own membership to include acknowledged human rights violators and its continuing inability to harness US support.”

This issue of the *Sur Journal* also includes an analysis of the UN human rights system from an internal perspective: the perspective of Paulo Sergio Pinheiro, former UN Special Rapporteur on the Situation of Human Rights in Myanmar (2001-2008), former UN Independent Expert for the Study on Violence against Children (2003-2006), and former UN Special

Rapporteur on the Situation of Human Rights in Burundi (1995-1999). Pinheiro is currently member of the Inter-American Commission on Human Rights.

This issue of the *Sur Journal* also includes three thought provoking articles by Barbora Bukovská, Jeremy Sarkin and Rebecca Saunders. Bukovská defends an idealistic view of human rights organizations, a view that is not content with mere normative achievements in the field. According to the author, as human rights should always result in concrete protection for victims of violations, Bukovská highlights the need to bridge the gap that frequently exists between international human rights organizations and the actual victims of violations.

Sarkin examines the historical development of African prisons from colonial to modern times, raising two issues: first, he understands that African prisons current conditions are in great part a legacy of colonialism; second, he argues that overcrowding and violence are a widespread problem in prisons all over the world.

Finally, Saunders criticizes the system of transitional justice established in South Africa after Apartheid. In her own words, her article addresses "what is gained and lost when expressions of human suffering are translated into a standardized language of human rights." The author also questions the priority given to national over individual forms of healing.

These three articles invite discussion. We therefore invite readers to respond either with another article or with a three-to-five-page essay. Articles and essays will be subjected to the *Journal's* selection process, and hopefully will encourage further discussion on these key issues.

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Andre Degenszajn, Andrea Pochak, Fabián Sanchez, Flavia Piovesan, Habib Nassar, Inês Lafer, Juan Amaya Castro, Kwame Karikari, Lucia Nader, Magdalena Sepúlveda, Mustapha Al-Sayyed, Olga Espinosa, and Richard Pierre Claude. We would also like to inform that Profesor Upendra Baxi (Warwick University) has accepted our invitation to join the *Sur Journal* Editorial Board.

Finally, we would like to announce that the next edition of the *Sur Journal* will be a special issue on "People on the Move: Migrants and Refugees", to be published in collaboration with the Office of the UN High Commissioner for Refugees (**UNHCR**). The journal will also carry articles on other human rights topics.

The editors.



ANTHONY ROMERO

Anthony Romero has been the Executive Director of the American Civil Liberties Union since 2001, and he “has presided over the most successful membership growth in the ACLU’s history and more than doubled national staff and tripled the budget of the organization since he began his tenure.”* Founded in 1920, the ACLU has focused on the

protection of freedom of speech, association and assembly, freedom of the press, freedom of religion, equality before the law, right to due process and right to privacy. It has today more than five hundred thousand members and litigates six thousand judicial cases a year.* In this interview, Romero discusses the relationship between the ACLU and the human rights movement.



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INTERVIEW WITH ANTHONY ROMERO, EXECUTIVE DIRECTOR OF THE AMERICAN CIVIL LIBERTIES UNION (ACLU)

By Conectas Human Rights

Conectas: *How do you see the international human rights movement today?*

Anthony Romero: The international human rights movement has made enormous progress in the last forty years. The modern international human rights movement really came out of the atrocities of the Second World War, and when you look worldwide and you see the growth of human rights NGOs, as well as the effect we've made in having international law that's binding on countries; when you see that we've had governments and government leaders held accountable, you might agree that this is one of the great success stories of the twentieth century: human rights NGOs have really made a difference in peoples' lives.

However, over the last several years, especially in the United States, we've seen a remarkable loss of human rights. The eight years of President Bush will go down in history as one of the darkest moments in America's commitment to human rights. It was almost inconceivable to anyone here in the United States that the highest levels of our government would sanction torture; that our government would arrest American citizens and hold them without access to lawyers and without charging them with a crime; that our leaders would sanction policies that abrogate every commitment this country has ever stood for, every commitment this country has ever made on human rights issues. Unfortunately, while the

*ACLU. ROMERO, A. D. Available at: <<http://www.aclu.org/about/staff/13279res20030205.html>>. Last access on: 24 Oct. 2008.

*ACLU. About us. Available at: <<http://www.aclu.org/about/index.html>>. Last access on: 24 Oct. 2008.

human rights movement has had enormous success in its history, the United States has lost enormous ground over the last eight years.

The existence of a global human rights movement is actually, for this very reason, vitally important. Even if one government of one country sets back human rights, there is a movement of leaders and human rights NGOs that can keep the pressure on and keep pushing for advances in human rights.

Conectas: *Does the ACLU have any connections to human rights NGOs outside the US?*

Anthony Romero: Sure. The ACLU is a human rights organization. We're often described as a civil liberties organization, but we defend the rights of all people in America, whether you're a woman or a man, whether you're a citizen or an immigrant, whether you're black or white, or Hispanic, whether you're gay or straight, whether you're a member of the Nazi party, or a member of the African-American civil rights movement. I've always viewed our mission as being a human rights NGO that fights for the human rights of all people in America. That being said, our mandate is to hold the US government accountable for the human rights abuses in the US. And we do that by suing the government; we do that by lobbying Congress; we do that by educating the public. We also do it by using international mechanisms. We've increasingly looked to both the United Nations and the Inter-American Commission on Human Rights to hold the US government accountable for human rights abuses, when we're not able to do so in domestic fora. We've recently brought cases to the Inter-American Commission. We've prepared shadow reports for the UN Committee on the Elimination of All Forms of Racial Discrimination. We've sent delegations of domestic advocates to Geneva and to some of the UN Meetings to talk about the human rights abuses at home.

There is a lot that we share in common with other human rights NGOs who work in their own home countries. We have an emerging network of human rights or domestic human rights organizations that, like us, hold their governments accountable. We had a meeting about three months ago, for instance, with 15 domestic human rights groups, including "Liberty" in the UK, "The Legal Resources Center" in South Africa, the "Irish Civil Liberties Union", the "Hungarian Civil Liberties Union", the "Association for Civil Rights" in Argentina, and the "Association for Civil Rights" in Israel. We all got together earlier this year with the sole purpose of sharing perspectives and strategies. It was a remarkable meeting because we realized, as domestic human rights NGOs, that our job is to protect the rights of all people, without respect of countries, and there was a lot that we could learn and share with each other.

At the same time, some of the human rights challenges that we now confront are global challenges; they are no longer domestic problems. The question of xenophobia and *islamophobia* are problems that we all confront in our different societies. It is as much about how South Africans have been scapegoating individuals from Zimbabwe as it is about Americans scapegoating Muslims, Arabs and Mexican immigrants. We understand that the so called “war on terror” has had global implications for human rights. When you think about issues like rendition; when the American government renders an individual to another country with the purpose of having him tortured, that is no longer a domestic issue. And it requires us to understand and work with our sister organizations, in other countries, to have a global approach on what are global problems.

Another example of a global challenge is the advancement and protection of rights for lesbian, gay, bisexual and transgender people. The question of same-sex marriage is playing out very significantly on a global scale. Spain, for instance, has granted gay and lesbian couples the right to marry. The gay/lesbian rights movement, which has always been seen as a domestic issue in different countries, is increasingly becoming a global human rights movement for equality and dignity. The ACLU’s job is to play a part in that, and to share expertise and strategies, to learn from other countries in context, to draw upon international law that we can use in our domestic advocacy.

To be clear, the ACLU will always be focused on holding the US government accountable. Our job is not to criticize China, or Cuba, or Venezuela for their human rights violations. That is the work of other human rights NGOs, and luckily we’ve had very strong NGOs working at the global level and in those countries, which can do that work. However, as one of the largest human rights NGOs in the country, if not the world, we could still play a leadership role in the global movement for human rights.

Conectas: *And what is the role that it has been playing so far?*

Anthony Romero: About four years ago, we created a Human Rights Program at the ACLU. The idea was to hire individuals within the organization with expertise in international mechanisms and international human rights law. These individuals serve as a nucleus of expertise; they work with all the different litigation projects and offices of the ACLU to incorporate a global human rights approach into our domestic advocacy. They radiate out the expertise in other projects.

For instance, the Women’s Rights Project filed a lawsuit on behalf of Jessica Gonzales – a woman who had an abusive husband. She was able to get a court order requiring the husband to stay away from her and her children. However, one day, her husband showed up and took the

kids. She kept calling the police to enforce that protective order, but the police refused to enforce it. At the end of that same day, the husband killed himself and both of her two kids. We brought that case all the way up to the Supreme Court to say that the police failed on its permanent responsibility to protect Gonzales' and her children's human rights. The US Supreme Court did not agree with us. So we filed a case within the Inter-American Commission. We brought charges against the American government and the local police authorities for not enforcing the protection of Gonzales' human rights.

That is just one example of our using international mechanisms or international fora on issues that we are not able to make progress on domestically. There are other examples. Take racial discrimination. We have consistently worked to hold our government accountable for the persistence of racial discrimination in America, but we have never tried to put that within a larger context or framework of the United States' international obligations.

You will find, however, a remarkable number of decisions, even in local jurisdictions, that begin to apply international human rights law to local ordinances. For instance, the city of San Francisco has adopted CEDAW as a legal framework; it applies in the city of San Francisco just like a local city law would apply. One of the things that makes me very hopeful, even though the last eight years have been very dark times for human rights in America, has been the fact that this is a movement of enormous vigor and vitality. It is not good anymore to just turn a blind-eye and say "what happens in that country is that country's problem". The emergence of institutions like the International Criminal Court, the emergence of the cross-country campaigning that has come out on issues like Guantanamo and torture, that gives me hope that in fact the global human rights movement will continue to progress, notwithstanding whatever challenges we confront in our respective countries.

Conectas: *Do you think that after Abu Ghraib, Bagram Air Base and Guantanamo, there has been a shift in the way Americans perceive human rights or do Americans continue to regard human rights as something restricted to the developing world?*

Anthony Romero: No, there has been a change in America on this issue. In fact that is not just my opinion or my impression. We have conducted surveys, where we have asked people how they view these issues and, increasingly, what we thought would be a question that the domestic American constituency or the membership of the ACLU would see as a foreign issue, they see as the most *bread and butter* human rights issue. They understand that the abuses that happened in Abu Ghraib have as

much to do with what happened in Iraq as it does with what is happening in Washington. There is a greater recognition that the one thing that binds all these issues together, so that they are not constituency-specific, is a broader human rights framework; and I think that framework has taken root in a very significant and deep way.

The damage has been done by President Bush and Mr. Rumsfeld, Mr. Cheney and Mr. Ashcroft, Mr. Gonzales and Mr. Addington. But the fact is that the global human rights movement is strong enough to withstand and survive, and hold them accountable. One of the things we're looking at right now is that we have hopefully a change in administration in Washington in the next 30 days. And, whether it is Senator McCain or Senator Obama who gets elected,* we will do our best to hold accountable, in American courts, those leaders who were responsible for human rights abuses over the last 8 years. We already sued Secretary of Defense Rumsfeld on behalf of individuals who were tortured in Abu Ghraib. We have a lawsuit against Mr. Tennant, who was the head of the CIA. We have lawsuits against Jeppesen Dataplan, which is a subsidiary of the Boeing Corporation, for running the rendition flights that rendered people to countries where they would be tortured. Those are very hard cases to win. We're giving it our best shot, but the odds are probably not with us. Now if we begin to think of strategies of holding them accountable, not just in America, but globally, then we will have many more opportunities. While American judges and American law enforcement officials may be unwilling to hold Mr. Rumsfeld accountable, we should make Mr. Rumsfeld quake in his boots whenever he travels to another country. What if Mr. Garzón were to indict Rumsfeld in the way he did Pinochet? What if we were able to make sure that, if Mr. Addington travels to London to address some group of jurists, the British authorities would exert power or pressure over him? We want to make sure that we can put the fear of God into them, so that when they travel anywhere overseas, they worry about the human rights movement holding them accountable. Human rights are universal values, and if the American government doesn't have the political will or the ability, or the willingness to hold American officials accountable for human rights violations, then we'll look to the global community to help us do that.

Conectas: *Changing subjects. Is there an agenda of social rights in the ACLU?*

Anthony Romero: The distinction between social rights and civil and political rights is a bit of an artificial debate within the ACLU, and

*Senator Obama was elected president in November 2008.

within American human rights circles. When you go back and you look at the beginnings of the human rights movement, these rights were one and the same. The Universal Declaration of Human Rights talks about all of them. Unfortunately, the civil and political rights agenda was the one that was taken and promoted by the Western Bloc countries, and the economic and social rights were taken up by the Eastern Bloc countries. That unified vision of human rights unfortunately fell victim to the Cold War politics of the twentieth century. I think some of that has changed. While we have certain limitations in American courts regarding economic and social rights (under our Constitution, we don't have the right to housing; we don't have the right to health; we don't have the right to food), there are other ways of addressing those issues, through established rights which are recognized by the federal government.

When we focus, for instance, on women's rights, on gender discrimination, we apply an economic and social rights frame to figure out what clients we represent and what cases we'll bring. The ACLU Women's Rights Project focuses very much on the rights of low-income, minority women. As to the types of cases we bring, there is, for instance, a case of two domestic workers who were shipped to America to work for the ambassador of Kuwait to the United Nations. They were essentially slaves. They were not allowed out of the house; they were paid poor wages; they were physically abused, and sometimes sexually abused by their employers. We applied an economic and social rights frame to figure out what cases we pushed and how we pushed them. Now, the arguments we might use are not economic and social rights arguments *per se*, because economic and social rights are not justiciable in American courts.

I'd say the same rationale applies to our work after Hurricane Katrina, where a lot of our focus has been on the poor African-American community that has not been helped by the US government programs to rebuilt New Orleans. We have specifically targeted individuals that are the most disenfranchised and often the poorest of the poor. Once again, we applied an economic and social rights frame to select clients and cases. More specifically, one of the cases we brought after Katrina was on behalf of prisoners who were at the Orleans Parish Prison in New Orleans. The sheriff made a decision to not evacuate them, even when he knew that Katrina was on its way to wreak havoc in New Orleans. Many Americans might say: "well, why would these prisoners be entitled to rights? Katrina was a tragedy for everyone involved". But we were able to show that it was not just a mistake. It was a conscious decision to put prisoners at risk of enormous physical harms. Some of our clients were locked in that prison for three days, and they had no food; they couldn't get in or out, because the guards quit in the middle

of the storm. Prisoners were submitted to terrible conditions. When they were finally evacuated from the prison, they were put into other overcrowded prisons without sufficient food or access to healthcare, which just led to further violence.

Conectas: *As you mention ACLU's work on behalf of prisoners, we would like to address an issue that has been of concern in a number of countries in the Global South. The US is one of the countries with the largest percentage of the population in prison. Has ACLU taken a position regarding over-incarceration?*

Anthony Romero: Very much. First, we have a national prison project, which litigates the conditions of confinement in prisons. We deal with all sorts of issues, such as the lack of access to healthcare, overcrowding, violence and rape in prisons, the lack of access to good counsel, the lack of access to information, the lack of access to being able to practice your religious beliefs, the treatment of mentally ill prisoners. So, one way that we deal with the over-incarceration issue is by trying to improve conditions in prisons.

Second, we look at the root causes, because we don't want to treat only the symptoms without treating the disease. One of the root causes of over-incarceration in America - in a country that has a larger percentage of it is population in prisons than any other country in the world, including Russia and China, has been the drug war. You find that almost two thirds of all the prisoners who serve in US prisons right now are there for non-violent drug offenses. My organization takes the point of view that the use of drugs by individuals ought not to be criminalized. We take the point of view that all drugs should be legal: every drug, from marijuana to heroin. Drugs can be regulated by the government, just like it regulates alcohol or tobacco, but we should not criminalize what is a public health problem. The best way to deal with drug abuse and drug addiction is not to put people behind bars, but to help them treat it, as the public health issue that it is. We have a big litigation project that deals with the drug war and challenges the government's very vigorous campaign against the use of drugs, because we understand that crimes that often lead people to prison are often non-violent drug offenses; and we hope to lower the incarceration of individuals, by ultimately making this country deal with the drug issue from a public health perspective rather than a criminal justice perspective.

Third, we also focus on the selective enforcement of the nation's laws, because, let's face it, many of the people in prison represent the poor minorities; and that's not by chance, and that's not by coincidence, that's because the police specifically targets racial and ethnic minorities and poor people. In some of our local offices, we specifically work at

selective enforcement. We look at police practices that target minorities and poor people. One of our great campaigns has been to force police departments in America to document the individuals that they stop on the streets and on the highways. There is a phenomenon that we call in America: “driving while black or brown”. If you are a white person driving down the street, you are less likely be pulled over by police officers than if you are a black person or a Latino. We force the police departments to collect data; we sue the police departments to begin to collect data on the racial breakdown of the individuals they stop. We show that there is an over-concentration on stopping minority drivers, and then we force the police department to train their officers and to ensure that they are not just stopping people on the streets or on the highways because of their race or because they are poor. Combating selective enforcement of the law is also a way for us to make sure that we are not just dealing with the symptoms, but with the mechanism that creates the over-incarceration in the countries.

Finally, the one last way that we focus on the over-incarceration has been to connect it back to what is happening in many urban and minority schools. We talk about the school-to-prison pipeline. In recent years, there has been an effort to bring the police departments in to deal with discipline and violence issues in schools. That has become a revolving door. For when you have broken schools where kids are not getting good education with teachers who are not well prepared, you wind up with a revolving door from the broken school house to the jail house. By making that link very explicit, both through research and through litigation, we hope to deal with the over-incarceration issue as well.

Conectas: *A last question. Do you think it is important that a Supreme Court be open to the participation of civil society organizations through, let's say, amicus curiae? Why?*

Anthony Romero: The Supreme Court in our country and in almost all the countries that I know is one of the most significant branches of government. We elect the President; we elect the Congress. The Supreme Court Justices in America and in many countries are appointed by the heads of government. One of the ways that you can make sure that the Supreme Court remains accessible to the public is by ensuring that civil society organizations are able to bring cases before the Court, able to file *amicus* pleas. The Court should be a more visible institution; it shouldn't just be a marble box that is sealed from public review and public scrutiny.

The ACLU participates in more than twenty cases a year that come before the Supreme Court. We are either direct Counsel on those cases or we write *amicus* pleas. It is essential that they hear our perspectives,

even though it may not be our case, and even though we might lose in the Supreme Court. The Supreme Court should not be isolated from general society. Much of the work that we do in educating the public and in lobbying Congress helps change the points of view and the conditions, and the ultimate outcomes of Supreme Court decisions. The one example I would use would be *Bowers v. Hardwick*, a 1986 case where the Supreme Court said that two consensual adults did not have the right to have sex in the privacy of their home if they were gay. That was a case we brought to view of the Supreme Court in 1986, and it was a case that we lost. Now, in 2004, the Court reversed itself. In the *Lawrence v. Texas* case, they held that two consenting men or two consenting women had the right to privacy in their bedroom. That flip-flop, if you will, from 1986 to 2004, said less to me about what happened in the Court and more about what had happened in American public opinion. It was no longer tenable for the Court to uphold discrimination in that way. The jurisprudence didn't evolve very much from 1986 to 2004; what evolved was public opinion, and the court had to catch up with what public opinion had become, rather than helping set the public opinion. The more that we can make the Supreme Court, and the Supreme Courts of all countries, more accessible, more responsive, having to explain their positions, the more we will find those Courts willing to make the hard decisions and to defend human rights.

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