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## Have Human Rights Failed?

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*Evidence for Hope: Making Human Rights Work in the 21st Century*

by Kathryn Sikkink

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Getty Images

Refugees from Gambia, Mali, Senegal, Ivory Coast, Guinea, and Nigeria rescued by the Italian navy from a rubber boat in the sea between Italy and Libya, October 2014; photograph by Lynsey Addario from her book *Of Love & War*, published by Penguin  
It's been more than seventy years since, following the atrocities of World War II, the nations of the world adopted the Universal Declaration of Human Rights in 1948. Since then, multiple human rights treaties and conventions have been drafted, and most countries have ratified one or more of them—including the International Covenant on Civil and Political Rights and treaties focused on torture, race- and sex-based discrimination, and the rights of children. Human rights organizations have proliferated at the domestic and global levels, and international institutions dedicated to the monitoring and enforcement of human rights, including commissions, special rapporteurs, and courts, are well established.

But are we better off as a result? Is this project worth our continuing collective investment? With Donald Trump in the White House and populist authoritarianism on the rise more generally, human rights advocacy, which is predicated at least in part on “naming and shaming” malefactors, seems almost quaint. Trump himself seems utterly incapable of being shamed. And he shows little or no interest in criticizing the human rights practices of others—especially Russia.

Even before Trump took office, an increasing number of scholars had begun to question the efficacy of advocating for human rights. Eric Posner, a law professor at the University of Chicago, has argued that the ratification of human rights treaties has done little to reduce human rights violations worldwide.<sup>1</sup> Samuel Moyn, a law professor at Yale, has argued that human rights are largely irrelevant because, he asserts, they do not address the expanding gap between the rich and the poor.<sup>2</sup> Stephen Hopgood, a professor at the London-based School of Oriental and African Studies, has argued that we are facing the “endtimes of human rights,” in part because of the erosion of US and European influence and the rise of China and Russia.<sup>3</sup> And Moyn and other critics have also questioned the legitimacy of human rights advocacy, portraying it as a handmaiden to neoliberal policies imposed by the West on the Global South.

In *Evidence for Hope*, Kathryn Sikkink, a professor at the Kennedy School of Government at Harvard, offers a spirited response. On the question of the provenance, and therefore the legitimacy, of human rights, she fills in the partial history that Moyn and other critics have emphasized. While critics often depict human rights as beginning in the 1970s with the Helsinki Accords' recognition of "freedom of thought, conscience, religion or belief" and "equal rights and self-determination," Sikkink demonstrates that the call for human rights protections in fact began far earlier, in the 1940s, and with significant support from the Global South. The Universal Declaration of Human Rights, for example, was preceded and deeply influenced by the American Declaration of the Rights and Duties of Man, which all twenty Latin American nations and the United States adopted eight months earlier in April 1948. It was Latin American nations, over the resistance of the US and the UK, that insisted on including human rights language in the United Nations Charter. The enumeration of women's rights in the Universal Declaration of Human Rights was largely attributable to two Latin American women, Bertha Lutz, the Brazilian delegate, and Minerva Bernardino, from the Dominican Republic. This is hardly the work of neoliberal imperialists.

It should not be surprising that the call for human rights was supported by the less powerful nations of the Global South. It is generally in the interest of the weak to support international standards, as they provide a basis for criticizing and holding accountable the strong. Sikkink writes, "The less powerful embraced the idea of the international protection of human rights in attempts to restrain the more powerful, not vice versa." Early voices for human rights included the anti-apartheid movement in South Africa and the many campaigns for decolonization. In short, charges that international standards for human rights were imposed by the powerful nations of the West on the rest of the world are based on an incomplete account of history.

The more difficult issue, however, concerns the efficacy of human rights advocacy. Sikkink approaches it as an empirical question but acknowledges the many challenges to doing so. First, measuring the frequency of human rights violations is no simple matter, because the more one looks for violations, the more one is likely to find them. Governments typically conceal abuses, and human rights advocates seek to reveal them. Thus the rise of a human rights movement, by bringing more abuses to light, may appear to increase the number of human rights violations even if their actual incidence is falling.

Second, human rights standards are not static. Advocates generally seek to expand the scope of human rights, so as the movement develops, more conduct will be found to violate human rights, again making it appear that the number of abuses is growing when it may simply be the scope of what counts as a human rights violation that is expanding. The rights of women and of gay and lesbian individuals, for example, have expanded dramatically in the last fifty years, and therefore mistreatment of these groups that once might not have been seen as a human rights violation would count as one today. Third, bad news generally gets more attention than good news, so accounts of abuse are more

likely to be covered by the press and remembered than accounts of improving human rights records.

That said, Sikkink cites evidence that at least some types of human rights abuses are declining worldwide. Local conditions vary greatly, of course; war and conflict zones feature many more violations than anywhere else. Still, war-related deaths have fallen dramatically, as have genocide and what Sikkink calls “politicide,” or politically motivated killings by governments or hit squads. The number of nations that have abolished the death penalty has grown from sixteen in 1977 to 140 today. The percentage of girls in school has increased dramatically since the adoption of the Convention on Eliminating Discrimination Against Women (CEDAW) in 1979, as countries have equalized schooling requirements for boys and girls.<sup>4</sup>

Sikkink’s evidence, however, at most identifies correlation, not causation. Some developments, such as the growing number of nations that have abolished the death penalty and increased educational access for women in countries that have adopted CEDAW, seem plausibly related to human rights movements and treaties. But others are less obviously connected. Wars have diminished worldwide, and that may explain a reduction in wartime deaths regardless of the effect of human rights norms. Genocide and politicide are, not surprisingly, highly correlated with war, so here, too, the causal link to human rights seems less than clear.

Sikkink notes that human rights practices generally improve when nations become more democratic, and they deteriorate in wartime. As war has diminished and democracy has expanded since World War II (notwithstanding recent backsliding), attributing causal significance to human rights advocacy seems virtually impossible. Still other evidence of improvement in human rights that Sikkink offers, such as global reductions in infant mortality, famine, and undernourishment, seems even further afield from human rights advocacy. These developments are far more likely to be the result of advances in public health and nutrition.

But skeptics do not offer convincing empirical evidence either. As Sikkink argues, they too often base their critiques not on an objective assessment of how practices have or have not changed with the spread of human rights advocacy but on the simple fact that injustices persist. Posner, for example, sees ongoing human rights abuses as evidence that the human rights project has failed. It is of course true that torture, race and sex discrimination, interference with the right to vote, and denials of fair trials continue in many parts of the world, the United States included. But the fact that we have not wholly eradicated such practices is hardly reason to abandon the effort, or even to conclude that it is failing. The US Constitution includes its own human rights mandate in the Bill of Rights, but the fact that unfair trials, coerced confessions, and police brutality still exist hardly means that constitutional law is a failure. The real question is whether we would be better off without the right to challenge these practices as unlawful. The Constitution

and human rights law provide valuable tools for calling government officials to account when they fall short.

Given the many inescapable challenges involved in factual assessments of the efficacy of human rights (or constitutional law, for that matter), we might look to anecdotal evidence. There are, of course, many nations that have adopted human rights treaties only to ignore them. Russia, for example, is a signatory to, and chronic violator of, the European Convention of Human Rights. But there are also powerful stories of successful human rights advocacy.

In the United States, efforts to abolish the death penalty have undoubtedly been abetted by the international trend toward abolition, itself reflecting a growing consensus that capital punishment is cruel and inhuman and violates the right to life. The Supreme Court in *Roper v. Simmons* (2005) cited such developments in declaring the death penalty unconstitutional for juvenile offenders. So, too, did California governor Gavin Newsom, when he imposed a moratorium on executions in that state, which houses the largest death row in the Western Hemisphere. Governor Newsom stated, “Three out of four nations in the world know better and are doing better. They’ve abolished the death penalty. It’s time California join those ranks.” It seems almost certain that the United States will eventually do away with executions entirely. As it is, they have slowed dramatically, with only twenty-five last year, down from ninety-eight in 1999.

So, too, international human rights advocacy helps explain why President George W. Bush had suspended his controversial post-September 11 practices of torture, disappearances into CIA “black sites,” and extraordinary rendition by the time he left office in 2008. As I detail in *Engines of Liberty*,<sup>5</sup> advocates invoked human rights and employed naming and shaming tactics to bring international pressure to bear on Bush. Because the victims were generally foreign nationals, the American public was often difficult to mobilize in opposition to these abuses. But for the same reason, foreign populations were quick to condemn them. Even though no US court declared these practices illegal, pressure from the United Kingdom, Europe, and other allies ultimately strengthened those within the administration who urged compliance with human rights standards. And formulating criticism in the terms of human rights helped garner that international support.

Neither Sikkink’s book nor these accounts are going to settle the matter. The search for evidence on the effectiveness of human rights advocacy should and will continue. In the meantime, however, we must, as always, act on less-than-perfect information. Critics like Posner and Moyn choose to emphasize the ways in which human rights promises fall short and proclaim their futility. Sikkink rightly observes that this attitude is likely to be rewarded in the academy. Just as negative events get more attention than positive ones, we “tend to see people who say negative things as smarter than those who present positive views.” It is certainly easier to be an armchair critic than to propose a solution or

take action. But if one criticizes the human rights project, shouldn't one be prepared to point to an alternative that is more promising?

Some academics object to the notion that they should offer an affirmative program. Bernard Harcourt, a professor of law and political science at Columbia, has said, "I have always strenuously resisted the idea that we critical thinkers should be compelled to offer solutions after exercising critique, that we should have to propose a way forward." Others are less explicit but are simply mum on alternatives. Thus Moyn, who has dismissed human rights as "powerless against inequality"—a charge that is both an overstatement and a little like objecting to calculus because it cannot plumb the depths of James Joyce's *Ulysses*—offers little in their stead. As an academic and a human rights advocate, I am sympathetic to the challenge articulated by Navi Pillay, a former South African judge and UN high commissioner for refugees: "I welcome criticism, but I would also welcome academics telling us then what to do, what is missing, rather than taking up the view that everything is useless, everything falls into a black hole, don't even try to change the world."

No one should underestimate the challenges that human rights activists face. Some of the most powerful nations in the world, such as China and Russia, seem immune to naming and shaming. But if Russia and China really didn't care about human rights, why would they target those who do for harassment and suppression? And as Trump's retreat on the cruel and inhuman policy of family separation illustrated, even he can be compelled to reform his conduct by a widely adopted appeal to fundamental human rights. Meanwhile, in much of Europe, nations routinely abide by decisions of the European Court of Human Rights declaring their sovereign actions in violation of human rights. The language of fundamental rights, whether at the international or domestic level, has become nearly universal. Whether in particular countries such norms are honored in fact or in the breach, they provide a valuable basis for criticism, activism, and resistance.

As the civil rights lawyer Bryan Stevenson often says, "The enemy of justice is not injustice; it is hopelessness." Cornel West and Roberto Unger have written that "hope is more the consequence of action than its cause. As the experience of the spectator favors fatalism, so the experience of the agent produces hope."<sup>6</sup> Human rights reflect a leap of faith in the direction of hope. By identifying core rights that everyone deserves, enlisting the world's agreement in principle to these values, establishing them as law, and building institutions and organizations to press for their realization, we have built a better world. If there are more effective ways to achieve basic respect for human beings, the critics have not identified them. And doing nothing is not an option. In the absence of a better alternative, acting for hope beats skeptical spectatorship every time.

1. Eric Posner, *The Twilight of Human Rights Law* (Oxford University Press, 2014). [↵](#)

2. Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Belknap Press/Harvard University Press, 2018). In fact, the Universal Declaration of Human Rights promotes economic justice in numerous ways, including by protecting the right to equal pay for equal work and prohibiting race- and sex-based discrimination, both of which play a part in economic inequality. ↵
3. Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press, 2014). ↵
4. See Sikkink's Figure 5.2: "Trends in genocide and politicide, 1955–2015"; Figure 5.4: "Number of abolitionist countries"; and Figure 5.8: "Change in global gender inequality: five education indicators." ↵
5. *Engines of Liberty: How Citizen Movements Succeed* (Basic Books, second edition, 2017). ↵
6. Cornel West and Roberto Mangabeira Unger, *The Future of American Progressivism: An Initiative for Political and Economic Reform* (Beacon, 1999), p. 11. ↵