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Human Rights: The Key to Progressive Cross-Movement Building in the United States

by R.J. Thompson, Esq.*



Courtesy of Corey Scherrer

Civil rights march, Seattle, Washington State.

INTRODUCTION

RECENTLY, A GROWING NUMBER OF U.S.-BASED SOCIAL JUSTICE ACTIVISTS AND ORGANIZATIONS HAVE EMBRACED THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK to pursue progressive social change domestically. The emergence of the U.S. Human Rights Network (USHRN) provided U.S. activists with a coordinating body for organizing, training, human rights education and grassroots activist engagement in processes such as shadow reporting and visits of special rapporteurs that have been inaccessible to grassroots activists in this country for far too long.

The Bringing Human Rights Home Lawyers Network at Columbia University Law School has coordinated and educated domestic civil and criminal lawyers seeking to employ human rights strategies in their ongoing litigation, legislative and policy work. Moreover, the network brings U.S. lawyers to the Inter-American Commission on Human Rights (IACHR) to discuss U.S. cases pending before the IACHR and to strategize around issue-based thematic hearings and other ways to utilize the regional human rights system of which the United States is a part.

Some progressive social justice movements in the United States embrace human rights frameworks and strategies more quickly or easily than others. The social justice movement that I have called my political home for the past thirteen years — the lesbian, gay, bisexual and transgender (LGBT) liberation movement — has not been represented in large numbers within the growing domestic human rights movement. I believe there are several reasons for this, including assimilationist and isolationist movement trends, anxiety around new strategies when faced with seemingly urgent attacks, short term wins versus long term movement building goals, and a lack of meaningful relationships across movements.

This article will look at some recent developments in the domestic human rights movement, some recent developments in terms of human rights vis-à-vis sexuality and gender regionally and globally, and an example of a domestic cross-movement initiative using human rights tools — *Causes in Common: Reproductive Justice & LGBT Liberation*. Additionally, this article will call for the LGBT liberation movement in the United States to fully realize the revolutionary potential of human rights for the individual and collective liberation of our communities.

BACKGROUND

Progressive activists — lawyers, organizers, educators, journalists, fundraisers, scholars, social workers and cultural workers — in the United States, have operated for the most part over

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the last sixty years within a framework of civil rights, identity-based politics, issue-based politics, and/or social justice. The human rights framework, so often used by grassroots activists in the Global South and Europe, was largely de-popularized soon after the development of the modern human rights regime in the late 1940s because of McCarthyism, U.S. exceptionalism, and isolationism. In the 1950s, the recognition and application of the full spectrum of human rights (economic, social, cultural, civil, and political rights) to those within U.S. borders posed a threat to the legally sanctioned racial apartheid of the day, as well as to the U.S. capitalist system that views economic and social human rights such as education, housing and health as privileges, charity or benefits rather than inherent, interdependent and inalienable rights possessed by all simply by virtue of one's birth as a human being.

While mainstream wings of the Black liberation movement moved forward using a civil rights framework that focused on important gains in civil and political rights, many Black leaders, including Malcolm X, embraced and spoke about the importance of viewing the struggle as a human rights struggle. This was partially due to those leaders' Pan-Africanist perspective and global consciousness, but also because they understood the limitations of the narrower civil rights framework, especially with regard to addressing economic injustice in the United States.

In an interview with the *Egyptian Gazette* on August 25, 1964, Malcolm X explained that "our common goal is to obtain the human rights that America has been denying us. We can never get civil rights in America until our human rights are first restored. We will never be recognized as citizens there until we are first recognized as humans." In a April 3, 1964 speech, Malcolm X said that "civil rights means you're asking Uncle Sam to treat you right. Human rights are something you were born with. Human rights are your God given rights. Human rights are the rights that are recognized by all nations of this earth."

As the gay liberation movement (later to become the lesbian, gay, bisexual and transgender liberation movement) gained visibility during New York City's Stonewall Rebellion in 1969, civil rights frameworks were firmly entrenched in the mindset, messaging and strategies of social movements in this country. The gay liberation movement modeled itself after the African-American civil rights movement and the emerging second wave feminist movement.

Mainstream gay organizations have consistently used a civil rights framework and/or an identity-based framework. Some progressive LGBT organizations, such as the National Gay and Lesbian Task Force, have always possessed some level of intersectional analysis and/or used a social justice framework, in addition to an identity-based politic. These domestic-focused organizations, however, rarely engaged in human rights messaging or strategies, until very recently. One exception is international solidarity work with sexual and gender diverse people abroad, especially in the Global South. Instead, the LGBT movement has viewed human rights as the exclusive territory of international organizations like the International Gay and Lesbian Human Rights Commission (IGLHRC), Amnesty International, Human Rights Watch and the International Lesbian and Gay Association (ILGA). This notion has reinforced the false schism of human rights as applicable abroad and civil rights applicable at home. Moreover, a social justice framework is not in any way mutually exclusive from a human rights framework. The con-

cept of social justice depends on the realization of the full spectrum of human rights. Social justice exists when all individuals and communities have their civil, political, economic, social, cultural, sexual, developmental and environmental human rights respected, protected and promoted by state and non-state actors alike.

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POLITICAL AND LEGAL ANALYSIS

The LGBT movement in the United States has been an increasingly assimilationist, and in some ways, isolationist, social movement for the past twenty years. The deeply entrenched identity-based framework of many LGBT organizations has reinforced silos and created a "bubble" around a movement that is part of a broader social justice movement, feminist movement, and human rights movement. The identity politics of many LGBT organizations has served less to liberate "queer" and "trans" people than it has reinforced silos. Rather than working towards the full promotion and protection of sexual rights and freedoms and gender liberation for all people, we have focused only on those who claim this culturally constructed identity. This is not to say that it has not been critically important to create and claim a space for those of us who identify as queers — sexually, politically, culturally and/or gendered, but it is to highlight that a unified, strategic movement for human rights, that fully includes and takes leadership from those most marginalized by systemic oppression, would create fundamental social change inclusive of sexual human rights for all people, as well as broader human rights such as bodily autonomy and integrity, family creation, nondiscrimination, freedom of association and self-determination.



Courtesy of Corey Scherrer

Protest march in reaction to California's Proposition 8, Seattle, Washington State.

Implementing human rights strategies in the United States often falls in line with longer-term movement building goals, but may not always be easily understood by organizations operating from a reactionary or defensive posture utilizing only short term strategies. Because of the lack of familiarity with human rights in the United States among government officials, advocates and the general public, any integration of human rights framework and tools requires a commitment to long term, ongoing human rights education. This education needs to happen simultaneously internally and externally since most organizations' boards, staff and/or volunteers are just learning about human rights themselves as they are employing human rights strategies.

A commitment to movement building means looking beyond the current challenges or attacks a community faces and thinking strategically about possible long-term consequences that may result from strategies focused on achieving short-term gains. A community or movement can be left to struggle through unintended consequences of short-term compromises and political maneuvering for years or even decades to come. In the case of domestic human rights, advocates are now struggling to bring to light the power of this framework and the progressive proactive standards it embodies, because of short-term strategies and compromises made sixty years ago.

The good news for advocates who see the value of human rights but have legitimate concerns around lack of resources and the current fights is that human rights can and should be complementary to whatever other progressive strategies or frames in which activists currently operate. For example, shifting organizational language and messaging to human rights terms sends a powerful, albeit sometimes subtle, message. Language catches on the more it is used. Not separating out "civil rights" from "human rights," for example, will eventually lead to an under-

standing that civil rights are not separate from human rights, one having a domestic connotation, and the other an international one. Rather it reinforces the notion that civil rights are one subset of human rights, no more or less important than economic rights, cultural rights or sexual rights.

These institutional changes within progressive organizational messaging will shift the culture in this country over time to a culture of human rights, which in turn will result in a much more deeply empowered citizenry — where the government has a healthy fear of the masses, rather than the current status of a populous in fear of its government.

Another reason why I believe the LGBT movement has been slow to come to the table in terms of domestic human rights is the siloed nature of the nonprofit industrial complex that has resulted, among other things, in a lack of relationships across movements. Cross-movement initiatives such as *Causes in Common: Reproductive Justice & LGBT Liberation*, the *US Human Rights Network*, *Right to the City Campaign* and *Desiring Change* have begun to break down the NGO silos most of us work in to build meaningful working relationships between and among individuals and organizations working in allied social justice movements. Using a human rights framework immediately breaks down issue- and identity-based silos and reinforces the core nature and goals of all social justice work — for individuals and communities to become fully liberated and to have the conditions necessary to actualize the fullness of our humanity, our relationships, our environment and our lives.

Causes in Common: Reproductive Justice & LGBT Liberation is a five-year-old national movement-building program of the Lesbian, Gay, Bisexual & Transgender Community Center in New York City. The program exists to connect the reproductive health, rights and justice movements with the LGBT liberation

movement around common history, common challenges, common opponents, common vision, and common goals. We have begun to introduce human rights education among the 148 partner organizations that make up *Causes in Common*. Integrating a human rights framework with reproductive justice and queer liberation frameworks has resulted in a deepened analysis of what our common issues are and how to be allies to one another. Importantly, I am currently organizing the first full-day Pre-Conference Human Rights Institute at *Creating Change*, the LGBT movement's annual conference, along with a cross-movement group of human rights advocates. This is a remarkable paradigm shift within LGBT movement discourse and strategizing.

Seeing this cutting edge cross-movement work as human rights work in a U.S. context means that we are articulating a vision of human rights in general, and LGBT human rights in particular, that is inherently inclusive of reproductive and sexual rights. Sexual rights are emerging globally as a subset of human rights, but are still very much marginalized within official human rights mechanisms, structures and instruments. Through *Causes in Common*, we are starting from a place of claiming human rights as ours, rather than waiting for official human rights bodies to proclaim that we have legitimate human rights claims around our sexuality and gender.

The proactive claiming of sexual rights as human rights has resulted in important global developments. Perhaps the most critical of these developments is the publication of the first set of guiding principles on international human rights law in relation to sexual orientation and gender identity — the *Yogyakarta Principles*.

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the *Yogyakarta Principles*, a universal guide to human rights which affirm binding international legal standards with which all states must comply. They promise a different future where all people born free and equal in dignity and rights can fulfill that precious birthright.¹

Within the Inter-American Human Rights system, we have recently seen the first Organization of American States (OAS) resolution on human rights, sexual orientation and gender identity. Advocates in the Western Hemisphere hope to use this resolution, along with the *Yogyakarta Principles* and relevant legal standards in aspirational and binding regional and universal declarations and treaties, to lay a firm foundation for domestic and international litigation in the areas of sex, sexuality and gender.

There have also been several noteworthy jurisprudential developments with regard to international and comparative human rights law in federal and state court cases in recent years. In *Lawrence v. Texas*,² the U.S. Supreme Court looked, in part, at international recognition of gay rights when holding that its precedent in *Bowers v. Hardwick*³ should be overruled. In their analysis of comparative human rights law, the Court cites a case from the European Court of Human Rights that held that a Northern Ireland anti-sodomy law violated the European Convention on Human Rights.⁴ The Court also noted that the “reasoning and holding in *Bowers* have been rejected elsewhere” and concluded that the particular right to privacy regarding consensual sexual relations between same-sex couples

is an “integral part of human freedom” in many other countries in Western civilization.⁵

In *In re Marriage Cases*, a consolidated claim of six same-sex couples challenged the validity of California statutory provisions that limited marriage to heterosexual couples.⁶ In its analysis, the California Supreme Court considered primarily domestic conceptions of the right to marry as “a fundamental right of free men [and women].”⁷ The court goes on to note, however, a number of sources of international law to reaffirm this right to marry.⁸ Indeed, the court specifically cites language in the Universal Declaration of Human Rights regarding “the right to marry and to found a family,” and references the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights in its efforts to

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show that “many nations throughout the world explicitly link marriage and family and provide special protections to these institutions.”⁹

In addition to case law developments in local, state and federal courts, social justice lawyers in the U.S. have increased their use of human rights strategies, arguments and venues, including shadow reporting for the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Convention on Civil and Political Rights (ICCPR), petitioning the Inter-American Commission on Human Rights, integrating human rights law as persuasive authority in amicus briefs and oral arguments, and writing legislation that integrates international human rights principles into local law as part of local implementation campaigns in places such as San Francisco and New York.

A groundbreaking development in using the Inter-American Human Rights system to address gender issues in the United States is *Gonzales v. U.S.*¹⁰ Jessica Gonzales's three daughters were abducted and killed by her husband in violation of a restraining order. The U.S. Supreme Court held that there was

no constitutional right to forcing the state to protect one individual from another.¹¹ Having exhausted domestic remedies, Gonzales went before the IACHR. When her case was filed in 2005, many assumed that it would have little credibility. The Court did not base its decision on the United States Constitution, as the Supreme Court did. Instead it turned to the American Declaration on the Rights and Duties of Man, signed by the United States in 1951.¹² The IACHR did not turn to the U.S. justice system to discern what civil rights she possessed, but asked whether her fundamental human rights, including her right to be safe, had been violated. In September 2008 the IACHR approved a request for a merits hearing, argued on October 22, 2008.

Gonzales breaks ground for several reasons. First, it implied that the United States must respect and promote certain inalienable human rights. It was not enough for the state to refrain from taking rights away from its citizens. When the United States declared that the government had no obligation to protect an individual from harm at the hands of others, the Commission found that it violated its duty to its citizens under the American Declaration on the Rights and Duties of Man.

This case has important implications for human rights cases in the United States. Gonzales exhausted efforts to seek justice within the United States, with the Supreme Court itself ignoring her plight. Yet once she took her case before an international commission, she found a groundswell of support. Congress held hearings on domestic violence, while other advocates are debating taking domestic violence cases before the IACHR. Even the State Department, recognizing the international embarrassment this case causes, weighed in on the issue. Gonzales was the first survivor of domestic violence to bring a human rights complaint against the United States, and she will not be the last.

Moreover, *Gonzales* has prompted other women's rights, reproductive rights and LGBT rights advocates to consider legal, organizing and media strategies involving the IACHR. To date, the IACHR has overwhelmingly heard cases against the United States involving death penalty and other criminal punishment issues; hearing the Gonzales case on the merits marks a new chapter of international accountability for the United States' violations of human rights within its borders — including human rights violations based on gender and sexuality.

CONCLUSION — RECOMMENDATIONS AND PREDICTIONS

The time is now for the lesbian, gay, bisexual & transgender liberation movement, along with all other social justice movements in the United States, to understand our struggles as human rights struggles, our organizations as human rights organizations and envision a world where all human rights of all peoples are respected, protected and promoted. A progressive, people-centered human rights movement has true revolutionary potential in the context of the United States. Popular education around human rights has the potential to transform the mainstream culture of the United States. Human rights frameworks, language, messaging and strategies are needed for the individual and collective liberation of our communities.

Activists in the United States can no longer afford the luxury of geographic, issue-based or identity-based isolationism and must no longer unwittingly mirror the exceptionalism of our own government. Human rights are universal, interdependent, indivisible, inalienable and intersectional. The human rights framework demands that rights be protected, promoted and respected, and that violations of rights be addressed proactively, not just retroactively. The human rights framework understands that for any scheme of rights protection and promotion, those most directly impacted must have a place at the table at all levels of policy creation, implementation and enforcement. Finally, a people-centered human rights framework teaches that both the state and non-state actors have affirmative obligations to respect, protect and promote civil, political, economic, social, cultural, sexual, environmental and developmental rights.

U.S.-based activists are understanding and implementing human rights domestically more and more with each passing day. Our challenge is to continue to educate ourselves and our colleagues about the revolutionary potential of a human rights vision and agenda; and to simultaneously craft our public messaging, media campaigns, and legal arguments in the language and principles of human rights as part of a long-term movement building and culture shifting effort, so that one day the masses in this country demand government accountability for human rights obligations and expect that the full spectrum of their human rights be respected, protected, and promoted by all segments of society.

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ENDNOTES: Human Rights

¹ See The Yogyakarta Principles: the Application of Human Rights Law in relation to Sexual Orientation and Gender Identity, March 2007, <http://www.yogyakartaprinciples.org>.

² 539 U.S. 558, 573 (2003).

³ 478 U.S. 186 (1986) (upholding a Georgia anti-sodomy law).

⁴ *Lawrence*, 539 U.S. at 573.

⁵ *Id.*

⁶ 43 Cal. 4th 757, 778 (2008).

⁷ *Id.* at 818 (citing *Perez v. Sharp*, 32 Cal.2d 711, 714 (1948)).

⁸ *Id.* at 818 n. 41.

⁹ *Id.*

¹⁰ (Admissibility), 2007 Annual Report of the IACHR.

¹¹ *Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

¹² *Id.*