

Historical Perspective

The Civil Rights Movement's Early Embrace of Human Rights

by Raymond M. Brown

Most Americans accept that their freedoms are protected by the Constitution and the Bill of Rights. To many, the human rights concept applies in foreign lands like Bangladesh, North Korea, the Congo, Nigeria or Kazakhstan. However, after World War II, a broad segment of the leadership of the civil rights movement embraced the human rights idea¹ and its evolving international law and United Nations (UN) framework. This article focuses on this embrace. The article suggests the idea that this embrace can provide inspiration for Americans in the 21st century to utilize the human rights concept more fully in domestic contexts.

Appealing to the United Nations

In 1946, legendary civil rights attorney Charles Hamilton Houston publicly supported the National Negro Congress (NNC) in filing a petition with the United Nations Economic and Social Council (ECOSOC).² The NNC sought to have a United Nations Human Rights Commission subcommittee assist in the elimination of race-based discrimination in the United States. The NNC document was called a *Petition to the United Nations on Behalf of Thirteen Million Oppressed Negro Citizens of the United States of America*.³ Responding to NNC critics, who claimed that discrimination was a purely internal U.S. question, Houston offered a defense of the NNC petition in his column called *The Highway* in the African-American newspapers. In that column, entitled an *Appeal to UN by Minorities in Order*,⁴ Houston took the position that:

...It may be true that the UN does not have jurisdiction to investigate every lynching ...or denial of the ballot.... But where the discrimination and denial of human and civil rights reach a national level, or where the national government either can-

not or will not afford protection and redress for local aggressions for colored people, the national policy of the United States... becomes involved, and at the national policy level the UN can take jurisdiction and receive the complaints presented by national organizations. A national policy of the United States which permits disenfranchisement in the South is just as much an international issue as elections in Poland or the denial of democratic rights in Franco Spain.⁵

Houston and other elements of the civil rights leadership looked to human rights for relief in the post-war era, in part because they had not been able to rely on the U.S. civil rights regime for relief. Houston, perhaps more than any other pre-war leader, had the credentials to make such a judgment. Houston has been aptly called “the chief engineer and the first major architect on the twentieth-century civil rights legal scene” by A. Leon Higgenbotham Jr., former chief judge of the United States Court of Appeals for the Third Circuit.⁶ Houston “spawned”⁷ Thurgood Marshall as a civil rights lawyer and Houston initiated the legal assault on the “separate but equal” rationale of *Plessy v. Ferguson*,⁸ with his stewardship of the plaintiff’s case in *Missouri ex rel Gaines v. Canada*.^{9,10} In *Gaines*, Houston persuaded the Supreme Court of the unconstitutionality of Missouri’s practice of paying tuition for blacks who were otherwise qualified to attend the state university’s law school to attend out-of-state law schools rather than the state school.

Judge Higgenbotham has observed that “the decision in *Gaines* paved the way for the ultimate victory in *Brown v. Board of Education*.”¹¹ Although Houston was lead counsel in many seminal civil rights cases before the Supreme Court, he died in 1950, prior to the decision in *Brown*.¹² However, as a lawyer who spent a lifetime seeking constitutional relief, his response to the new human rights regime is conceptually and

symbolically important.

Houston's spirited defense of the human rights idea is important not just because it reflects a larger tendency among civil rights leaders but because it emphasizes a combination of desperation and vision at a time when the idea of human rights was still in its embryonic stage. The desperation was rooted in the reality that lynching remained the paramount post-war issue for blacks. The vision involved the need to challenge a Jim Crow regime that affected blacks in every aspect of political and economic life. The human rights idea, originally conceived as an antidote for war not as a platform for blacks in America, had a great appeal as a possible strategic tool.

A "High Concept" as "War Aim"

Rhetorical and political discussion of the human rights concept was intense during World War II. H. G. Wells' letter to *The New York Times* shortly after the German invasion of Poland in 1939 had a catalytic effect on the discourse.¹³ Wells called for a broad public "war aims" discussion, including updating principles found in the "Magna Carta and going through various Bills of Rights, Declarations of the Rights of Man and so forth."

It is unclear whether President Franklin Roosevelt was influenced by Wells' challenge. Nonetheless, Roosevelt's "Four Freedoms Speech," delivered in Jan. 1941 as his State of the Union Address, ends with an unmistakable linkage of future war aims and human rights. (Recall that the U.S. would not enter the war for 11 months after the speech.)

This nation has placed its destiny in the hands and heads and hearts of its millions of free men and women: and its faith in freedom under the guidance of God. Freedom means *the supremacy of human rights everywhere*. Our support goes to those who struggle to

gain those rights and keep them. To that *high concept* there can be no end save victory. (Emphasis added)

The Atlantic Charter, executed by Winston Churchill and Roosevelt in Aug. 1941, set forth certain "common principles," including the right of "all peoples" to choose their own forms of government and general rejection of the use of force in international relations. Roosevelt's Atlantic Charter anniversary message, in 1942, noted the allies had embraced a program reflecting:

[F]aith in life, liberty, independence, and religious freedom, and in the *preservation of human rights* and justice in their own as well as in other lands, [it] has been given form and substance as the United Nations." (Emphasis added)

Although Roosevelt characterized human rights as a "high concept," his emphasis on its linkage to war reveals his practical reason for advancing the idea. He and Churchill shared a belief that second only to winning the war was a need to ensure the West would not face future "world wars" like the two they believed had been initiated by German aggression in the first half of the 20th century.

Western leaders identified political disenfranchisement and economic inequality as the dry tinder that fed military aggression. (This explains why the four freedoms included "freedom from want," an economic idea not fully encompassed by the U.S. constitutional or civil rights framework.) Roosevelt and Churchill also accepted the legal notion that, in some cases, international law supersedes domestic law.¹⁴

In advocating human rights, Roosevelt and Churchill were immersing themselves in conflicting crosscurrents. Churchill presided over the largest imperial project on Earth. Roosevelt governed a rising world power, which

was home to "thirteen million oppressed negro citizens." Roosevelt's death on April 15, 1945, deprived him of the opportunity to address these contradictory forces at the founding United Nations' Conference on International Organization beginning on April 25, in San Francisco.

"Fireworks Erupt" in San Francisco

Shortly after April 25, 1945, and prior to the drafting of the UN charter, a now infamous meeting¹⁵ was held at San Francisco's Fairmount Hotel on Nob Hill. The meeting was attended by representatives of 42 non-governmental organizations (NGOs)¹⁶ who had been asked by the State Department to serve as "consultants" to the official U.S. delegation. One of the consultants was Walter White, executive secretary of the National Association for the Advancement of Colored People (NAACP). His inclusion resulted in part from a letter written by former executive secretary and then staff member W.E.B. Du Bois to Secretary of State Edward Stettinius, asking if:

any provision will be made for the representation of American Negroes at the San Francisco meeting in order that they may advocate and advise measures for their own social progress and also be given opportunity to speak for other peoples of African descent whom they in a very real sense represent.¹⁷

White reported he received an unpleasant surprise at the Fairmount Hotel gathering:

Fireworks erupted at the first meeting of delegations and consultants when Mr. Stettinius, apparently nervous and embarrassed at being required to make such a report, announced that the American delegation had decided neither to introduce nor support a

human rights declaration as an integral part of the charter which the nations had gathered to draft. All of us sat in stunned silence.¹⁸

The other consulting NGOs included the American Bar Association, the American Jewish Committee, the U.S. Chamber of Commerce, the Congress of International Organizations (CIO),¹ and the American Association for the United Nations, Inc. White reported that Stettinius' positions on human rights, colonialism and education were so weak they obliterated the normal "ideological" differences among those groups and led to a concerted and increasingly public criticism of the U.S. stance. He also noted that on his return to Washington, he met with President Harry Truman who seemed "unhappy" at White's "pessimistic report."²⁰

As a result of domestic pressure generated by the NGOs, as well as intense lobbying by Latin American countries, several of which advocated including a Bill of Rights provision in the charter, the U.S. changed its position in early May 1945. As a result, the charter contains seven references to human rights.²¹ However, this was not a sufficiently robust commitment to satisfy Du Bois. Du Bois, who had accompanied White to San Francisco along with civil rights leader and educator Mary McLeod Bethune, reported to NAACP President Arthur B. Spingarn in late May that:

As consultants we could do little although we exercised some little influence. They would not take a stand for any race equality or for colonies, but did back a contradictory statement on human rights.²²

In fact, the charter's preamble asserts a commitment to human rights as an organizational *raison d'être* in its initial clause:

We the Peoples of the United Nations
Determined to save succeeding gener-

ations from the *scourge of war*, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental *human rights*, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom....(Emphasis added)

Article 1 of the charter proclaims that among the four purposes of the UN is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction for all as to race, sex, language or religion..."

There are two relevant observations to be made about the preamble and Article 1. The first is that they reflect a continued linkage between war and human rights. The preamble's reference to the "scourge of war...twice in our lifetime" is obvious. Slightly more subtle is Article 1's reference to "race, sex, language or religion." The nexus with war is that each of these categories was the avowed basis for discrimination, oppression, brutality or murder at the hands of the Axis powers.

The second observation is that despite multiple references to human rights in the charter, which is a legally binding treaty, the term "human rights" remained undefined. The charter's solution to this lacuna was Article 68, which authorizes ECOSOC to establish *inter alia* "Commissions" for "the promotion of Human Rights."

Imagine the frustration of the NGOs when they arrived in San Francisco in April 1945 to oversee the drafting of the charter, only to find the U.S. uncommitted to wrestling with a commitment to human rights, the development of an accepted definition of the idea, or the

installation of a mechanism to protect them. For White and Du Bois, there was the additional challenge of wanting to bring these developments to bear on the conditions of African Americans.

The adoption of the charter in June 1945 was followed by the appointment in Feb. 1946 of a Commission on Human Rights, chaired by Eleanor Roosevelt, to draft an "international bill of rights." When Houston wrote his *Highway* article in early 1947, the commission was midway through the deliberations that would ultimately lead to the Universal Declaration of Human Rights. Houston's article, therefore, relied on the promise in the charter's Article 1 to "promote human rights." He specifically supported the NNC's practical effort to influence the development of a human rights regime by persuading a sub-commission of the Human Rights Commission charged with prevention of discrimination and protection of minorities to investigate U.S. conditions.

Challenging a "Vast Hypocrisy"

While the NNC awaited a decision on its petition in Oct. 1947, the NAACP created an "international sensation"²³ by filing with the Human Rights Commission's staff an "Appeal to the World: A Statement of Denial of Human Rights to Minorities..."²⁴ Du Bois, who organized the appeal, regarded the NNC's petition as "well done but...too short and not sufficiently documented."²⁵

The appeal's, introduction, which Du Bois drafted, proclaimed:

[T]herefore, Peoples of the World, we American Negroes *appeal* to you; our treatment in America is *not merely an internal question* of the United States. It is a basic problem of humanity; of democracy; of discrimination because of race and color; and as such it demands your attention and action. *No nation is so great that the world can afford to let it continue to be deliber-*

ately unjust, cruel and unfair toward its own citizens. This is our plea to the world; and to show its validity; we are presenting you with the proof....

The bulk of the appeal consisted of sections drafted by four scholars, outlining the oppressive conditions under which African Americans lived. However, Du Bois' introduction offered a rationale for the appeal that specifically addressed the intellectual shift from civil to human rights. After a brief demographic and sociological description of "American Negroes," the appeal noted that their treatment had:

[L]ed the greatest modern attempt at democratic government to deny its political ideals, to falsify its philanthropic assertions and to make its religion a *vast hypocrisy.* (Emphasis added)

The appeal proceeded to identify both the U.S. founding language ("All men are equal") and a list of race-sensitive constitutional provisions before and after the Civil War Amendments as evidence of an inconsistent American attitude "far more dangerous to mankind than the atom bomb." This analysis was followed by the final "appeal" to the "Peoples of the World," which included an effort to:

detail the status of American Negroes in the past and today, in law, administration and social condition; and the relation of this situation to the *Charter of the United Nations....* (Emphasis added)

The attempts by civil rights organizations and leaders to utilize the UN structure and effectively harness the human rights regime in service to their cause met with considerable opposition. Unsurprisingly, some opposition came from Southern Democrats, some from

conservative Republicans. More difficult to circumvent were the efforts of the erstwhile civil rights supporters President Harry S. Truman and Eleanor Roosevelt. In response to efforts like the appeal and the NNC petition, they, along with increasing segments of the American political leadership, took the position that international criticism of the U.S. on civil rights and race were unpatriotic and served the interests of international communism.²⁶

Initially, the U.S. persuaded the ECOSOC not to facilitate debate on the NNC effort. It subsequently persuaded the Human Rights Commission to vote not to deliberate on the appeal during its meeting in Geneva in Nov. 1947. Prior to the Paris meeting of the General Assembly in 1948, Du Bois met with Eleanor Roosevelt in a final effort to encourage UN debate on the appeal. In a memorandum to White, Du Bois reported her response:

[Mrs. Roosevelt said] The Department of State was of the opinion that it would be unwise to put our Petition on the agenda of the next Assembly for discussion....I replied that I realized that no international action was probable or indeed expected; but that I thought that the world ought to know just exactly what the situation was in the United States, so that they would have factual statements before them so that they would not be depending upon vague references....Mrs. Roosevelt thought that this would be embarrassing; that it would be seized upon by the Soviet Government as an excuse for attacking the United States. Mrs. Roosevelt said that already, several times, she had been compelled to answer attacks upon the United States for its race problem by pointing out the fact that other countries had made similar mistakes....The situation might be so unpleasant that she would feel it necessary to resign from the United

States Delegation to the United Nations.²⁷

Ultimately, the United States used diplomatic pressure to ensure there was no discussion of the appeal at the Paris General Assembly meeting in the fall of 1948. This marked the end of efforts to seek recognition for the appeal.²⁸ Despite these U.S. efforts, the principle Soviet delegate, Alexei Pavlov (nephew of the scientist whose work with dogs and conditioned reflexes is famous), frequently raised the issue of lynching of American blacks and other aspects of the Jim Crow regime.²⁹ Similarly, the USSR was faced with criticisms of its gulags and the British with challenges to its rule in India.

Perhaps because issues related to African Americans were being discussed at times in the UN, Du Bois was unwilling to concede defeat, and drafted a new petition in 1949, inspired by miscarriages of justice including lynching of black women in Georgia. This time, however, the document assumed a more hectoring tone. After detailing the failure of state authorities and the refusal of the U.S. attorney general to investigate the allegations, Du Bois:

[c]harge[d] that the Human Rights Commission under Eleanor Roosevelt.... Instead of receiving complaints and giving them careful investigation....have buried the complaints and drowned themselves in a flood of generalities by seeking to rewrite in verbal platitudes of tens of thousands of words, those statements on Human Rights which the Declaration of Independence and the French Declaration of the Rights of Man set down a century and a half ago in imperishable phrase which no man can better today.³⁰

No action was taken on the petition, and there is no evidence Du Bois sought to utilize the UN human rights frame-

work again. The bitter tone of Du Bois' final effort can be attributed to two factors. The first is the cumulative effect of U.S. diplomatic efforts to utilize Cold War diplomacy to suppress attempts by civil rights activists to bring issues before the UN. The second is that the declaration itself was not a document that provided enforceable remedies. In fact, as a strategic means of attracting the support of states, the declaration was drafted as a normative rather than a legal document. Eleanor Roosevelt took pains to make this point in her presentation of the declaration to the General Assembly:

In giving our approval to the Declaration today it is of primary importance that we keep clearly in mind the basic character of the document. *It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a Declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.* (Emphasis added)³¹

After 1949, Du Bois was deterred from expending more effort in this direction. Other leaders who focused on civil rights issues were not. However, there was a shift toward a rhetorical and political embrace of human rights, international law, and the UN structure. In 1951, William Patterson and the Civil Rights Congress approached the UN with a petition entitled "We Charge Genocide," which sought to have the UN initiate an investigation into whether U.S. policies created genocidal conditions for American blacks.³² That petition addressed within its framework "the right to petition:"

If those whose human rights are violated can speak only through those gov-

ernments that violate them, or through some other formal entity, the right of the General Assembly to make recommendations for the protection of human rights is considerably vitiating. It is obviously necessary to hear the complaints of minority peoples if studies or recommendations protecting their rights are to have any meaning.³³

Even as the hope of filing successful petitions fell into disfavor, the idea that human rights was conceptually important survived. In 1957, Paul Robeson, while commenting on events in Little Rock, Arkansas, argued that:

The status of the Negro in the USA violates the Charter of the UN and its Declaration of Human Rights. It is my opinion that the leaders of the fight against racism should carry this struggle again to the UN.³⁴

In a seminal speech at the Second African Summit in Cairo in 1964, Malcolm X addressed what he regarded as the strategic *cul de sac* provided by the civil rights idea and spoke about the motives of the U.S. for keeping some African American spokesmen from addressing the UN. He accused a "racist element in the State Department" of using:

[W]hite "liberals" to gain our friendship and confidence in order to "advise" and maneuver us into a twelve-year fight for our civil rights, knowing that as long as our freedom struggle was labeled "civil rights" it would be considered by the African nations as American "domestic" affairs and our plight would remain within the sole jurisdiction of the American Federal Government for a "solution."

Malcolm also charged that:

This racist element within the State

Department realizes that if any intelligent, truly militant Afro-American is ever permitted to come before the United Nations to testify on behalf of the 22 million mistreated Afro-Americans, our dark-skinned brothers and sisters in Africa, Asia, and Latin America would then see America as a "brute beast," even more cruel and vulturous than the colonial powers of Europe and South Africa combined.³⁵

One of the most interesting uses of 'human rights' language occurs in Martin Luther King's last speech. This sermon is best known for King's premonition of death. In fact, the rhetorical structure of the speech is a response to critics who demanded justification for King's use of his civil rights credentials in support of striking Memphis sanitation workers. His entire discussion (including whether he would get to the "Promised Land") is a response to this question of why he was in Memphis:

The masses of people are rising up. And wherever they are assembled today, whether they are in *Johannesburg, South Africa*; *Nairobi, Kenya*; *Accra, Ghana*; *New York City*; *Atlanta, Georgia*; *Jackson, Mississippi*; or *Memphis, Tennessee*—the cry is always the same—"We want to be free."....That is where we are today. And also in the *human rights revolution*, if something isn't done, and in a hurry, to bring the colored peoples of the world out of their long years of poverty, their long years of hurt and neglect, the whole world is doomed. Now, I'm just happy that God has allowed me to live in this period, to see what is unfolding. And I'm happy that he's allowed me to be in *Memphis*. (Emphasis added).³⁶

Economic and Social Rights

The controversy surrounding King's last efforts (Memphis, the "Poor Peoples

Campaign”) revolved around the complaint that he had strayed from the path of civil rights. In a technical sense this was an accurate criticism. In a broader sense the critique failed to take into account the fact that the struggle for African American freedom had consistently focused on economic and social rights in conjunction with traditional civil rights. The human rights idea had comfortably encompassed this breadth, explaining its popularity among post-war leaders and spokesmen. The human rights concept had been broader than traditional civil rights ideas from its inception.

Roosevelt’s 1941 articulation of “freedom from want” accompanies references to the Axis powers’ “barbarous acts” in the declaration’s preamble. The declaration embraces “political and civil rights,” but also addresses “social” and “economic rights.” The common element in all of the petitions and appeals by the American civil rights leadership was their emphasis (after lynching) on economic factors corresponding to the declaration’s provisions guaranteeing an “adequate standard of living” (Article 25) and “equal pay for equal work” (Article 23) and a right to an education (Article 26 of the declaration).

This focus on education brings us back to where we began. In the face of the multifaceted oppression faced by blacks, Charles Hamilton Houston centered his strategic assault on segregation in education for a specific reason:

Discrimination in education is symbolic of all the more drastic discriminations which Negroes suffer in American life. And these apparent senseless discriminations in education against Negroes have a very definite objective on the part of the ruling whites to curb the young [blacks] and prepare them to accept an inferior position in American life without protest or struggle. In the United States the Negro is economically

exploited, politically ignored and socially ostracized. His education reflects his condition; the discriminations practiced against him are no accident.³⁷

Mandela and the Future

This breadth of vision that marries civil rights to economic rights is the hallmark of visionary leadership. This was reemphasized as the news of Nelson Mandela’s death³⁸ overtook the final edits of this article. Mandela was a leader in that rarest of contexts—an armed struggle that remained³⁹ true to principles of human rights. In 1955, just eight years after the declaration was adopted by the UN General Assembly, the African National Congress promulgated its Freedom Charter, a critical human rights manifesto that survived the overthrow of the Apartheid regime and served as a template for the South African Constitution.

Interestingly, when Mandela addressed the General Assembly in 1998, on the 50th anniversary of the declaration, he emphasized the very economic rights that had helped make human rights appealing to a generation of American civil rights leader:

The very right to be human is denied every day to hundreds of millions of people as a result of poverty, the unavailability of basic necessities such as food, jobs, water and shelter, education, health care and a healthy environment. The failure to achieve this vision contained in the Universal Declaration of Human Rights finds dramatic expression in the contrast between wealth and poverty which characterizes the divide between the countries of the North and the countries of the South and within individual countries in all hemispheres.

Although Mandela was talking to nation states in the General Assembly,

he was helping to focus the international community’s attention on the need to address the relationship of human rights to the interest of entities, which are in many ways more powerful than some states—private corporations. As he was speaking, an unsuccessful effort was underway at the Human Rights Commission⁴⁰ to develop a law-based regime governing the human rights obligations of corporations. That effort, however, was followed by a more impactful project resulting in a document called *Guiding Principles on Business and Human Rights: The Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework*.⁴¹ The principles are an important step in a process by which the corporate responsibility “to respect human rights” is developed and implemented in the future.

The World We Live In

The *Guiding Principles on Business and Human Rights* and the broader subject of business and human rights returns us to the suggestion at the outset of this article that we might learn from the frustrated but ingenious efforts of post-civil rights leaders to utilize the burgeoning human rights regime to the advantage of an oppressed people (as well as to anticipate opposition). That kind of effort is taking place regularly around the world.

On April 24, 2013, Rana Plaza in Dhaka Bangladesh, a garment manufacturing facility in the South Asian city, collapsed, leading to the deaths of more than 1,100 workers and injuries to another 2,500. In the United States, many compared the tragedy to 1911’s Triangle Shirtwaist Fire in New York. The Rana collapse has had a significant impact on American corporations and their supply chains. In fact, two competing multi-stakeholder schemes have evolved reflecting, in part, domestic American consumer concern with the human rights interest of workers in

Asia.

There is a decade-long history of violence in the Congo in which millions have died. A UN expert's report alleges "Companies trading minerals, [as]... 'the engine of the conflict in the Democratic Republic of the Congo.'" In part, at the behest of civil society groups, Congress passed, in 2010, significant (and controversial) legislation designed to expose business enterprises that ignore the duty to respect human rights. Perhaps more importantly, multi-stakeholder entities like the EITI,⁴² which involve NGOs, governments, and corporations, are continually working to evolve standards to address ways in which extractive and mining activities do not undermine democratic government and development.

In April 2013, the Supreme Court issued its long-awaited decision in *Kio-bel v. Royal Dutch Petroleum*.⁴³ Nigerian plaintiffs had alleged the company had violated the Alien Tort Claims Act (ATS) by aiding and abetting mass violations of human rights committed by the Nigerian government. The ATS had been widely interpreted by U.S. courts as providing a forum for violations of humanitarian law by individual and corporate defendants.

Although the Supreme Court affirmed the dismissal, it did not embrace the circuit opinion that the law of nations did not support corporate liability for human rights violations. (The case saw 100 *amicus* briefs filed.) Ultimately, the plurality opinion focused on a relatively obscure canon of interpretation, "the presumption against extraterritoriality," to hold that U.S. courts do not have jurisdiction to adjudicate ATS claims arising from acts committed overseas by foreign corporations against foreign plaintiffs. One of the consequences of this opinion may be an increase in state court human rights litigation.

Just over the horizon, New Jersey

civil society groups seek to 'mobilize' the New Jersey travel and hospitality industries around awareness of their responsibilities with respect to an anticipated human trafficking upsurge surrounding Superbowl XLVIII in the Meadowlands.

Even popular culture figures with reputational concerns are focusing on the impact of their actions respecting human rights. For example, Beyoncé, Nellie Furtado, and Mariah Carey divested themselves of millions of dollars earned performing for Muammar Gaddafi's sons. Nonetheless, some, like Kanye West, who performed for the brutal regime in Kazakhstan, and Dennis Rodman, who maintains a public liaison with North Korea's Kim Jong Un, combine elements of farce with tragedy.

Finally, there has been significant response to an online article suggesting that whatever the formal legal framework, BP's spill in the Gulf of Mexico is most effectively viewed through the framework of corporate violation of American human rights. Of course, as an observer noted in a manner eerily appropriate to the BP context:

A fisher[man] who can no longer eat the fish he catches because the water has been polluted might immediately understand the environmental impact but may not know that access to safe and nutritious food is actually a human right to which he is entitled.⁴⁴

The fisherman will benefit greatly if he is exposed to the strategic thought of men like Houston, Du Bois and King, who saw the possibility of carrying the fight for freedom beyond narrow intellectual and geographical boundaries into the world of human rights.

As attractive as the human rights concept is, making it a valuable tool for ordinary people involves struggle and the overcoming of legal, economic and diplomatic obstacles. ⚔

Endnotes

1. For purposes of this article, the term "civil rights" refers to those rights guaranteed by a nation state's constitutional regime. "Human rights" refers to those fundamental rights outlined in the Declaration of Human Rights and guaranteed to all as a matter of international law. The "civil rights movement" here refers to the post-civil war movement to protect the rights of the descendants of former chattel slaves.
2. Chapter X, Article 68 of the UN Charter charged the ECOSOC with establishing another charter-based entity, the Human Rights Commission, which was accomplished Feb. 16, 1946. Its chair was Eleanor Roosevelt, and it drafted the Universal Declaration of Human Rights. The commission was replaced in 2006 by the Human Rights Council. The UN Charter, adopted 26 June 1945, entered into force Oct. 24, 1945, found at un.org/en/documents/charter. Universal Declaration of Human Rights. Dec. 10, 1948 G.A. Res. 217A (III) 3 UN GAOR, UN Doc. kA/810 at 78 (1948) available at [unorg./aboutun/documents/ga/rews/3/ares3.htm](http://un.org/aboutun/documents/ga/rews/3/ares3.htm).
3. See Editor's Note p 163 fn 1 *Correspondence of W.E.B. Du Bois, Volume III*, Ed. Herbert Aptheker, 1978.
4. The article was published Feb. 1, 1947, cited in Genna Rae McNeil, *Charles Hamilton Houston and the Struggle for Human Rights*, 1983, Chapter XIII "In Any Fight Some Fall," fn 15, Kindle Loc 7188.
5. *Groundwork*, Kindle location 4577-8 and Langston Hughes, *Fight for Freedom, the Story of the NAACP*, 107, 1962.
6. *Groundwork*, Forward by A. Leon Higgenbotham Jr., Kindle Loc 202.
7. *Id.* at Kindle Loc 270.
8. 163 US 537 (1896).
9. 305 US 337 (1937).

10. Donald Gaines Murray was an Amherst College graduate and grandson of a well-known AME Zion Bishop. Houston and the NAACP viewed the effort to force the University of Missouri Law School to evaluate his credentials in lieu of paying his tuition to an out-of-state school as an early test of their equal protection strategy.
11. A. Leon Higgenbotham, *Shades of Freedom*, 166, 1996. The reference here is of course to *Brown v. Board of Education*, 347 US 483 (1954), which held segregation in education unconstitutional and effectively eviscerated white supremacy as acceptable government doctrine.
12. For those unfamiliar with Houston and his work, a quick primer, including a list of cases argued and publications, can be found in Charles L. Conyers' introduction, "Charles Hamilton Houston: An Efficacious Reflexive Analysis," to *Charles H. Houston: An Interdisciplinary Study of Civil Rights Leadership*, Ed. James L. Conyers Jr., 2012.
13. "At various crises in the history of our communities, beginning with Magna Carta and going through various Bills of Rights, Declarations of the Rights of Man and so forth, it has been our custom to produce a specific declaration of the broad principles on which our public and social life is based....The present time seems peculiarly suitable for such a restatement of the spirit in which we face life in general and present combat in particular....In conjunction with a few friends I have drafted a trial statement of the rights of man brought up to date. I think that this statement may serve to put the War Aims discussion upon a new and more hopeful footing." *New York Times*, Oct. 23, 1939.
14. "Professor Richard Falk has described a post-war 'normative architecture' which embraces international laws primacy as it rejects 'genocide, crimes against humanity' and other violations of human rights and humanitarian law. The foundation for this architecture can be found in a trilogy of documents, *the London Charter, the Universal Declaration of Human Rights, and the UN Charter*. This trilogy and the resulting normative architecture has provided a quantum leap in the protections afforded to two vulnerable groups: (1) non-combatants during armed conflict and (2) all human beings subject to persecution by government authorities. Those protections include establishing and confirming norms, criminalizing violations of many of those norms and, where necessary, conferring jurisdiction on international courts and tribunals to adjudicate major norm violations." (Emphasis added). Raymond Brown, *Cascading Ironies: The American Perspective on Nuremberg*, *The Nuremberg Trials International Criminal Law Since 1945*, Die Nürnberger Prozesse Völlerstrafrecht seit 1945, Edited by Herbert R. Reginbogin and Christoph J. M. Safferling, 2006 K. G. Saur Verlag GmbH, Munchen festshrift contribution to by the author based on a presentation at a 50th Anniversary Speech in the Courtroom 600, Palace of Justice, Nuremberg Germany at brownakin.com/docs/RMB_Festschrift.pdf or on file with the author.
15. *Eleanor Roosevelt and the Universal Declaration of Human Rights*, John F. Sears, 2008 fdrlibrary.marist.edu/library/pdfs/sears.pdf.
16. Non-governmental Organizations.
17. Letter W.E.B. Du Bois to Secretary of State Stettinius, March 10, 1945, *Correspondence of W.E.B. Du Bois*, 6.
18. *A Man Called White, The Autobiography of Walter White*, 1948, p295.
19. The AFL-CIO resulted in 1955 from the merger of the old American Federal of Labor and the Congress of Industrial Organizations.
20. *A Man Called White*, at 299.
21. The UN Charter contains numerous references to "human rights," including its preamble and Articles 1 and 68. Although The Universal Declaration of Human Rights served to clarify the meaning of human rights, it was offered as a normative rather than a legally binding document.
22. Letter to Arthur Spingarn, May 30, 1945, *Correspondence of W.E.B. Du Bois*, p14
23. *A Man Called White*, at 358. In fact, White says the UN Secretary General Trygve Lie insisted that the appeal be mailed, a suggestion rejected by the NAACP. The petition presented to the staff apparently consisted of 155 mimeographed pages. The challenge of having the appeal printed was beset by problems involving the cold war, the U.S. administration's reluctance to be embarrassed by the appeal, and the increasing tensions between Du Bois and White.
24. Its formal title was *An Appeal to the World: A Statement of Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress*.
25. Memorandum to Walter White explaining the necessity for the Appeal, Aug. 1, 1946, *Correspondence of W.E.B. Du Bois* p163.
26. For an interesting account of the opposition based on the cold war 'critique' see David Levering Lewis, *W.E.B. Du Bois 1919-1963: The Fight for Equality and the American Century*, 2000, Chapter 14: Against the Grain: From the NAACP to the Far Left, and notes accompanying. See also generally Mary L. Dudziak, *Cold War, Civil Rights: Race and the Image of American Democracy*, 2000, 2011.
27. Memorandum to Walter White from Du Bois July 1, 1948, *Correspondence of W.E.B. Du Bois* p188-9.

28. It should be noted that lynching and other aspects of race in America were discussed during deliberations over the declaration despite U.S. reticence to discuss race in America and an unwritten rule among commission members not to discuss 'violations' in each other's countries to avoid *ad hominem* attacks. *The Universal Declaration of Human Rights: Origins, Drafting & Intent*, Johannes Morsink (1999) at 32. Professor Morsink's work is still regarded as a leading scholarly treatment of the deliberations surrounding the declaration. A readable account of Eleanor Roosevelt's role in the drafting and deliberations is Mary Ann Glendon, *A World Made New*, (2001). Interestingly, Glendon devotes very little attention to the apparent conflict Mrs. Roosevelt experienced over the domestic race question at the UN, particularly with respect to the NAACP, on whose board she served.
29. Morsink at 32, 94, 96.
30. A petition to the Human Rights Commission of the Social and Economic Council of the United Nations; and to the several delegations of the member states of the United Nations. *Against Racism: Unpublished Essays, Paper, Addresses 1887-1961 W.E.B. Du Bois*, Ed. Herbert Aptheker, 1985, p261-265.
31. Statement by Mrs. Franklin D. Roosevelt, Department of State Bulletin, Dec. 19, 1948, 751.
32. *We Charge Genocide: The Crime of the Government Against the Negro People*, Ed. William L. Patterson (1951, 1970).
33. *We Charge Genocide* at 37. Notwithstanding this view of the suppressed right to petition, the petition was revived in 1970 in a printed version and with a preface by Ossie Davis.
34. Robeson Urges Government Defend Constitution Against Racists, Daily Worker, Sept. 23, 1957, *Paul Robeson Speaks, Writings, Speeches, Interviews, 1918-1974*, Ed. Philip S. Foner, 1978, p449. Foner's annotation for this article notes promised by Jesse Gray, leader of 1964 Harlem Rent Strike to seek UN intervention as well as the involvement of Congresswoman Shirley Chisom and Dr. Nathan Wright and Black Panther Huey P. Newton with the 1970 revival of the we charge genocide petition at fn 2 p 581.
35. malcolmxfiles.blogspot.com/2013/07/speech-to-second-african-summit.html.
36. Martin Luther King Jr., I See the Promised Land, in *A Testament of Hope: The Essential Writings of Martin Luther King Jr.*, 279, 284 (Ed. James M. Washington, 1986). For the author's analysis of how this speech fits into the framework of American attitudes toward narratives of international law violations, see I Into Thou: American Resistance to Narratives of International Humanitarian Law Violations, Raymond M. Brown, *Thomas Jefferson L. Rev* 28:1 (2005).
37. *Groundwork*, Kindle Loc 3136, quoting from "Proposed Legal Attacks on Educational Discrimination," address to National Bar Association, Aug. 1935.
38. Dec. 5, 2013.
39. The author means the establishment of a constitutional regime consonant with human rights and an initial fair election. The author does not comment here on the ANC's criticized response as in the "Marikana Massacre" involving striking miners. dailymail.co.uk/news/article-2513189/Marikana-miners-strike-South-African-police-ordered-vans-carry-32-bodies-shooting-34.html, Nov. 25, 2013.
40. One early United Nations-based initiative was called the Norms on Transnational Corporations and Other Business Enterprises. It was drafted by an expert subsidiary body of what was then the Commission on Human Rights. Essentially, this sought to impose on companies, directly under international law, the same range of human rights duties that states have accepted for themselves under treaties they have ratified: "to promote, secure the fulfillment of, respect, ensure respect of and protect human rights." UN Guiding Principles, introduction, para 2 (see note 41 below). This proposal triggered a deeply divisive debate between the business community and human rights advocacy groups while evoking little support from governments. The [Human Rights] Commission declined to act on the proposal.
41. A/HRC/17/31 presented to the UN Human Rights Council, June 2011, found at business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf.
42. Extractive Industries Transparency Initiative.
43. 133 S. Ct. 1659 (2013).
44. Human Rights Impact Assessments for Foreign Investment Projects, International Centre for Human Rights and Democratic Development, 2007, p. 17. Cited in BP Executives' Human-Rights Miscalculation: Have They Bet the Company?, diversityinc.com/diversity-management/bp-executives-human-rights-miscalculation-have-they-bet-the-company/.

Raymond M. Brown is a partner at Greenbaum Rowe Smith & Davis, where he chairs the white-collar crime and international business and human rights compliance sections. He has practiced international law and lectured on human rights and related issues frequently in the United States and abroad.