

REIMAGINING RIGHTS IN THE AMERICAS

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In March 2023, the Promise Institute for Human Rights (Promise Institute), together with the Bringing Human Rights Home Network and the *UCLA Journal of International Law and Foreign Affairs*, convened its Annual Symposium on “Bringing Human Rights Home: Bridging the gap between the international and domestic frames for human rights in the United States.”¹ The Symposium was one part of the Promise Institute’s week-long “Reimagining Rights in the Americas Conference”, which was held in conjunction with the 186th period of sessions of the Inter-American Commission on Human Rights (IACHR or the Commission) at UCLA from March 1 to 11, 2023.² This introductory article has two objectives: first, to report on the activities of and outline the key themes arising from the Conference; and second, to outline how our work at the Promise Institute engages critically with the human rights frame and explores how it could be reimagined towards transformative ends, particularly in the Americas. This article is intended to supplement the rich engagement with the human rights frame and IACHR included in the other articles in this Symposium Issue.³

The Promise Institute is the center of human rights education, research, and advocacy at UCLA. Its strategic focus areas are race and indigeneity, migration, the environment and human rights, technology and human rights, and accountability. These focus areas intersect with other human rights issues, such as gender, sexual orientation and gender identification, and economic, social and cultural rights. Any choice between different areas of struggle must necessarily confront the way they intersect dynamically, and the indivisibility of the rights implicated. For instance, Indigenous land and environmental defenders

1. The Symposium was organized and co-sponsored by the Promise Institute, the Journal for International Law and Foreign Affairs (JILFA), and the Bringing Human Rights Home Network. The Bringing Human Rights Home Network is a network of lawyers, scholars, and advocates seeking to bring a human rights frame to domestic issues in the political and legal context of the United States: <https://law.northeastern.edu/academics/centers/phrge/initiatives/bringing-human-rights-home/>. Please see a complete list of additional co-sponsors here: <https://promiseinstitute.law.ucla.edu/project/inter-american-commission-on-human-rights-visit-to-ucla/>.

2. The Reimagining Rights in the Americas Conference was made possible in part by a grant from the National Science Foundation (NSF) Law and Society Program. The opinions, findings, and conclusions or recommendations expressed here and in the Conference products are those of the authors and do not necessarily reflect the views of the NSF.

3. The analysis in this article of the Conference represents the views of the authors and not necessarily those of the Promise Institute. Most of the events summarized here by the authors can be viewed through their live-stream recordings at: <https://promiseinstitute.law.ucla.edu/project/inter-american-commission-on-human-rights-visit-to-ucla/>.

may also be most likely to suffer other human rights violations, such as deprivation of liberty, threats to life and personal integrity, or freedom of expression.⁴ Although the Conference and IACHR visit engaged the Promise Institute's focus areas in disparate ways, both events explicitly centered race, indigeneity, migrant status, and vulnerability to environmental harm as cross-cutting sites of marginalization that must be placed at the center of the discourse and advocacy of human rights.

On the one hand, as human rights scholars and activists engaging with the human rights frame, we recognize and privilege the role of social movements and the struggles of impacted communities in the processes of human rights norm creation. Social movements and impacted communities around the world have increasingly appropriated and deployed the discourse of human rights in their struggles. Through their agency, these collectives have occupied spaces within the international human rights system and are shaping and impacting its discourse, norms, and standards.

On the other hand, we recognize that the results of human rights processes often unevenly align with the goals and horizons of the struggles themselves. Social movement actors must engage with contradictory elements of the international human rights system, such as the foundation of the human rights doctrine in Western Enlightenment philosophy to the exclusion of other epistemologies, the preeminent space given to Western liberal democracies and states within the international legal order, and the ongoing distortions resulting from political and economic hegemonies of the Global North.⁵ Liberatory struggles using the human rights frame run the risk of having their struggles reinscribed into structural hierarchies of power and inequality. These structures are rooted in the legacies of colonialism, settler colonialism, slavery and the slave trade, and empire.⁶ Because formal adoption of and compliance

4. See, for example, the thematic hearing on The Human Rights Situation of the Garífuna People in Honduras, held during the 186th period of sessions on Friday, March 10, 2023. *186th Period of Sessions*, IACHR, <https://www.oas.org/en/IACHR/Sessions/Default.asp?S=186>.

5. Anthony J. Langlois, *Normative and Theoretical Foundations of Human Rights*, in *HUMAN RIGHTS: POLITICS AND PRACTICE* 25.4 990–1019 (Michael Goodhart ed., 2d ed. 2009); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 *HARV. INT'L L.J.* 201 (2001); Shannon Speed and Xochitl Leyva Solano, *Global Discourses on the Local Terrain: Human Rights in Chiapas*, in *HUMAN RIGHTS IN THE MAYA REGION* (Pedro Pitarch, Shannon Speed, and Xochitl Leyva Solano eds., 2008).

6. SHANNON SPEED, *INCARCERATED STORIES: INDIGENOUS WOMEN MIGRANTS AND VIOLENCE IN THE SETTLER-CAPITALIST STATE* (2019); Tendayi E. Achiume and Asli Bâli, *Race and Empire: Legal Theory Within, Through, and Across National Borders*, 67 *UCLA L. REV.* 1386 (2021).

with human rights norms, standards and instruments continue to remain with states, social movements deploying the discourse of human rights and using the system in their struggles must continually contend with the interpellation and dilemma famously voiced by Audre Lorde, that “the master’s tools will never dismantle the master’s house.”⁷ While not resolving this dilemma, we are committed to a critical perspective of the human rights frame as a site of struggle, and to its ongoing transformation and potential to support liberatory movements.

Engaging with the human rights frame from within a U.S. academic institution, we also must grapple with the ways in which the United States fails to engage or often obstructs human rights discourse and advocacy domestically and in other countries. Given its hegemonic position, the United States plays an outsized and often problematic role in the discourse and development of the human rights frame, and its application in the Americas. For example, as noted in the Symposium’s first panel and outlined further below, the United States actively worked to keep Black racial justice movement actors from advocating for racial justice as a human rights issue and worked to shield the United States from accountability under human rights instruments. The United States has not signed or ratified many of the international human rights instruments,⁸ and where it has, it has done so with reservations which assert its own constitutional and legal framework.⁹ For example, the United States has resisted a full embrace of the emerging international framework on the rights of Indigenous peoples, registering reservations with the framework and limiting it to its own tortured framework of recognition and interpretation of the sovereignty and sovereign rights of tribal nations.¹⁰ At the same

7. Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 110–114 (2007).

8. S. Priya Morley et. al., *Critical Perspectives on Race and Human Rights Primer*, PROMISE INSTITUTE 1, 7–8 (2023), <https://promiseinstitute.law.ucla.edu/wp-content/uploads/2023/08/Primer-Critical-Perspectives-on-Race-Human-Rights.pdf>; *Basic Documents in the Inter-American System*, IACHR, https://www.oas.org/en/IACHR/jsForm/?File=en/iachr/mandate/basic_documents.asp (lists declarations, conventions, and protocols that the United States has not ratified any of the Inter-American Human Rights Convention); see HUM. RTS. WATCH, *United States Ratification of Human Rights Treaties* (July 24, 2009), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

9. *Basic Documents in the Inter-American System*, *supra* note 8 (the United States has not ratified any of the Inter-American Human Rights Conventions); see also, HUM. RTS. WATCH, *supra* note 8.

10. See *Announcement of U.S. Support for the U.N. Declaration on the Rights of Indigenous Peoples*, U.S. DEP'T OF STATE, Jan 12, 2011, <https://2009-2017.state.gov/sr/srgia/154553.htm>; O.A.S.T.S., *American Declaration on the Rights of Indigenous People*, AG/RES.2800(XLVI-O/16, 1, 2 n.1 (2016), <https://www.oas.org/en/sare/documents/DecAmIND.pdf>.

time, the United States projects itself as a leader and defender of human rights across the globe and uses its hegemony to direct the application and discourse on human rights towards its geopolitical interests, focusing on condemnation of its rivals and accommodation of its allies, on individual rights and freedoms rather than collective economic, social and cultural rights, and on external rather than internal accountability.¹¹

Our effort to critically reimagine rights in the Americas emerges out of the aforementioned dilemmas and conundrums encountered in human rights advocacy and practice, at the cutting edges of social justice movements and at the intersections of the Promise Institute's focus areas. In the Conference and IACHR visit, we asked questions, including: Is it possible to reimagine the human rights framework in a way that better addresses historical and contemporary harms that are structural in nature? What contours do human rights have in the demands made by social movements, and what does the human rights horizon or future look like? How are these struggles being played out in the Americas, in the context of U.S. geopolitical hegemony, and within the Inter-American System for Human Rights?

The Conference sought to stimulate dialog and discussion along two crucial axes: human rights struggles and norm creation at the intersection of our focus areas, on the one hand, and the engagement and applicability of the human rights frame to the United States on the other. The activities planned were designed to take the Conference and the visit in these directions. While the Symposium specifically addressed the latter axis, those questions were still approached through the lens of the former. What follows in this article is a brief report on these activities, how they addressed and moved forward the major themes of the Conference, and future pathways towards reimagining rights in the Americas.

I. PRELUDE: SITE VISIT OF THE IACHR SPECIAL RAPPORTEUR ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (REDESCA) ON THE RIGHTS OF THE UNHOUSED, RACIALIZATION AND CRIMINALIZATION OF POVERTY IN LOS ANGELES

In a historic first, then-Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), Soledad García Muñoz, conducted a site visit to the City of Los Angeles on the rights of the unhoused in the city and the United States. Organized by the

11. See below, *Panel 1 of the Symposium Bringing Human Rights Home: The United States and the Human Rights Project Writ Large*, PROMISE INSTITUTE, <https://promiseinstitute.law.ucla.edu/symposium/bringing-human-rights-home-2023>.

LA Community Action Network (LACAN), an advocacy organization of the unhoused, with the support of UCLA School of Law's Veterans Legal Clinic and Human Rights Litigation Clinic, the visit centered the voices and lived experience of the local unhoused community. The Special Rapporteur also engaged with city, county, state and federal authorities charged with addressing the situation.¹² The organizers emphasized how racialization and criminalization of poverty intersect with the rights of the unhoused.

In her "Conclusions and Observations" following the visit, the Special Rapporteur called for derogation of LA Municipal Code section 41.18, which targets the unhoused and authorizes sweeps by the Los Angeles Police Department of encampments to clear public spaces of the unhoused population by criminalizing their use of designated public spaces to sit, rest, stand or simply be.¹³ The Special Rapporteur noted how the web of vulnerability of economic, social, cultural and environmental rights violations connects to the situation of the unhoused, and specifically how they experience discrimination on the basis of their race, gender and disability status. Finally, the Special Rapporteur called into question the lack of regulation of the housing market in Los Angeles and the structural failure of the neoliberal economic model to address what she called a human rights crisis.

II. THE BRINGING HUMAN RIGHTS HOME SYMPOSIUM: BRIDGING THE GAP BETWEEN INTERNATIONAL AND DOMESTIC FRAMES FOR HUMAN RIGHTS IN THE UNITED STATES¹⁴

The Symposium approached the "Bringing Human Rights Home" theme from three perspectives which formed the basis of three curated panels: the United States and the human rights project writ large; the struggle for human rights in the United States; and the United States and human rights accountability. It also featured three keynotes from Commissioners of the IACHR, addressing in particular the role and relevance of the Inter-American System, the case of racialized police

12. *REDESCA's Visit to Los Angeles, USA: It is Urgent to Address the Human Rights Situation of Unhoused People*, IACHR, July 12, 2023, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/153.asp.

13. Press Release, REDESCA and IACHR, Concluding Observations and Recommendations from REDESCA After its Visit to Los Angeles on the Human Rights Situation of Unhoused People (July 2023), https://www.oas.org/en/iachr/media_center/releases/2023/cp_153_eng.pdf.

14. *2023 Symposium, Bringing Human Rights Home: Bridging the Gap Between the International and Domestic Frames for Human Rights in the U.S.*, PROMISE INSTITUTE (Mar. 2023), <https://promiseinstitute.law.ucla.edu/symposium/bringing-human-rights-home-2023> (Full live-stream recording of the keynotes and panels of the Symposium).

violence in the United States, and how to leverage U.S. civil society and academia to promote human rights in the Americas. Moreover, the Special Rapporteur on REDESCA, following her ground-breaking site visit to the United States and Los Angeles on the rights of the unhoused, participated in the panel on the struggle for human rights in the United States.

A. The Symposium Keynotes

The Commissioners brought an institutional perspective to the Symposium, yet one that was open to the varied forms that social movements take across the hemisphere. As they described, their own institutional agenda at the Commission is set by the impacted communities engaged in these human rights struggles.

Then-President and Commissioner of the IACHR, Julissa Mantilla, opened the Symposium with an inaugural keynote on “The Inter-American System and the Obligations of States.” She spoke of the real impact the Commission has had on the protection of human rights through its institutional advocacy, noting that “people come and go, but the Commission stays.” Using the example of Nicaragua following the protests of 2018, Mantilla noted that the persistent work of the Commission to protect the rights of victims and families led to some meaningful improvement in their situation. Even though Nicaragua refused to engage the Commission directly, after measures were taken by the IACHR, the rights of victims and families were at least minimally respected. Mantilla’s first conclusion was: “We must have hope. Because you don’t know what impact your work can have on other people.”

Mantilla then focused on the obligations of the United States within the Inter-American System. The United States is a member of the Organization of American States (OAS) and is responsible for human rights obligations under both the Charter of the OAS and the American Declaration on Human Rights, even though it has not ratified the American Convention on Human Rights.¹⁵ Moreover, the United States is subject to the Commission, whose mandate derives from both the Charter and the American Declaration. The IACHR, through its various instruments and mechanisms, has done important work in protecting and guaranteeing human rights in the United States on issues such as migration, the death penalty, police violence against

15. American Convention on Human Rights “Pact of San José Costa Rica” (B-32), ORGANIZATION OF AMERICAN STATES, https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

Afro-descendants, and the rights of Guantanamo detainees. Mantilla emphasized the idea that international human rights law has different tools that work interdependently but are ultimately like a puzzle. For example, if a state has not ratified a human rights treaty, it still has obligations under *jus cogens*, which are non-derogable norms of international law accepted by the community of nations, such as the principle of non-discrimination and equality as well as the right to life and freedom from torture and cruel, inhuman or degrading treatment or punishment. She concluded by stating, “even if the state has not ratified any treaty, it cannot go against your heart,” an apparent appeal to universally recognized principles and fundamental human dignity as key drivers of the human rights project.

In the Mid-Day Keynote, “Strategies and Limits for the IACHR – Facing Human Rights Challenges in the United States: The Case of Police Violence,” the incoming President of the IACHR and Rapporteur on the Rights of Persons of African Descent and against Racial Discrimination, Commissioner Margarete May Macaulay, addressed the challenge to universality presented by structural and systemic racism. Macaulay reviewed 2022 data on police killings of Black people in the United States, who were killed at nearly twice the rate of their presence in the national population. For Macaulay, these police killings are not isolated acts of violence, but part of a growing and structural process of systematic racial discrimination. People demanded an end to structural racism in the demonstrations following the 2020 police murder of George Floyd: the Commission documented more than 4700 citizen demonstrations throughout the United States during 2020, which is an average of 440 per day.¹⁶ In addition, the Commission documented more than 125 cases of excessive force by local or state police during the demonstrations.¹⁷ Macaulay recalled how the 2020 thematic hearing before the Commission on structural racism and police violence brought to the fore the experience of mothers who lost their sons

16. REF: Inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1, Inter-American Commission on Human Rights (Dec. 10, 2020), https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/IO/inter-american-commission-on-human-rights.pdf; see also, Press Release, Inter-American Commission on Human Rights, The IACHR expresses strong condemnation for George Floyd’s murder, repudiates structural racism, systemic violence against Afro-Americans, impunity and the disproportionate use of police force, and urges measures to guarantee equality and non-discrimination in the United States, https://www.oas.org/en/iachr/media_center/PReleases/2020/129.

17. REF: Inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1, *supra* note 16.

to police violence. The testimonies evidenced the pain of the victims of racialized violence and the psychological consequences for them and their families.

Macaulay further suggested that powerful actors' explicit or implicit invocations of white supremacy have caused a rise in hate crimes. She stressed that "racism as a phenomenon has certainly become more complex over time." The recent Inter-American Convention against Racism, Racial Discrimination and Related Intolerance has a clear definition of racism and racial discrimination.¹⁸ Notably, Article 1 of this Convention applies this definition to any area of public or private life, recognizes indirect discrimination from seemingly neutral provisions, the intersectionality of marginalized identities, and the rise of pernicious theories about race. At the same time, this definition includes an exception for measures of affirmative action, which may be required by states to remedy the harms of structural racism.¹⁹ Macaulay noted the imperative of combatting racism in the Americas, which is one of the most diverse regions in the world and bears the persistent legacies of the slave trade and colonialism. She concluded with some of the IACHR's recommendations to the United States to adopt coordinated legislative, policy and institutional measures to eliminate racial discrimination and stereotypes, and to allocate adequate human and financial resources to the task. In this regard, Macaulay asked, "how can the United States, the most powerful nation in the first world, the most powerful democratic nation, fail to guarantee real and effective access to justice for Afro-descendants, including available basic services and affirmative actions that guarantee the economic, social, cultural and environmental rights of Afro-descendants?"

The Closing Keynote, on "Leveraging U.S. Civil Society and Academia to Promote Human Rights in the Americas, the Role of the IACHR," was provided by Commissioner Roberta Clarke, Rapporteur for the United States. Underlying Clarke's presentation was a vision of human rights development and promotion rooted in the role of civil society and academia rather than state actors and institutions. In fact, these actions provide leverage for the Commission to engage the United States on human rights issues. Clarke began her presentation by saying that she was a child of the Black Power movement of the 1960s and early 1970s and a product of feminism of the 1970s and 1980s. She

18. American Convention Against Racism, Racial Discrimination and Related Intolerance, DEPARTMENT OF INTERNATIONAL LAW (DIL) (June 15, 2013), https://www.oas.org/en/sla/dil/inter_american_treaties_a-68_racism.asp.

19. *Id.*

emphasized that in 1969, the goal of education was to create people who had a genuine concern for their fellow human beings. Clarke linked this educational goal to the idea that the purpose of the human rights system is to ensure a dignified life for all, whether at the national, regional, international, or global level, and this can only be achieved if we all show a genuine concern to understand the diversity of experience of all communities, not just our community.

Clarke touched on various aspects of the theme of bringing human rights home to the U.S. context. She recognized that the United States has played and continues to play an important role in supporting the IACHR; it provides more than 50 percent of the annual resources that allow the Commission to function. Many of the international Non-Governmental Organizations (NGOs) that work with the Commission are based in the United States and advocate on behalf of and in solidarity with civil society organizations not only in the United States, but throughout Latin America and the Caribbean as well. At the same time, the United States has ratified only a few of the international human rights treaties and none of the Inter-American Conventions.²⁰ For this reason, the Commissioner urged the United States to ratify the American human rights instruments, especially the American Convention on Human Rights, which could also give people in the United States access to the IACHR if the United States accepted its jurisdiction. Doing so would send a strong and consistent message that the United States views human rights protection and strengthening the mechanisms to accomplish accountability as key priorities.

B. Symposium Panel 1: The United States and the Human Rights Project Writ Large

The first panel, led by the Promise Institute's S. Priya Morley, focused on the United States and the Human Rights Project Writ Large. The panelists recognized the real and perceived gaps between U.S. civil and constitutional law and international human rights protections, including those arising from the Inter-American System, as well as the limits of international human rights to advance economic and racial justice. The panel considered the reasons for these gaps, including how U.S. exceptionalism has created obstacles to greater U.S. accountability within the international human rights framework. Jamil Dakwar, James Cavallaro, and Aslı Bâli described some of the history of human rights in the United States with persistent impacts today. The

20. *Basic Documents in the Inter-American System*, *supra* note 8.

significant contemporary human rights struggle in the United States is a racial, economic, and gender justice struggle. Looking back in history helps to contextualize the current attacks on human rights in the United States. In his remarks, Dakwar drew on Carol Anderson's work which outlines how the U.S. State Department and government interacted with the United Nations (UN) in the past, and particularly around the creation of the UN human rights apparatus and Universal Declaration of Human Rights (UDHR). Although the National Association for the Advancement of Colored People (NAACP) and other civil rights groups in the United States were active in pushing for the United Nations, when the organization appealed to the international community to help put an end to U.S. segregation under Jim Crow, this appeal was muted even by those in the U.S. establishment who were advocating for an international human rights regime. Within the socio-political context of McCarthyism, the NAACP and other leading U.S. civil rights organizations were forced to turn away from international engagement to avoid allegations of communist ideology and instead focus solely on domestic civil rights struggles.

This bifurcation between U.S. civil rights and international human rights has persisted and is exemplified in the way that the United States engages with the IACHR and many international human rights instruments. Many of the same issues that the NAACP brought to the international community in the past are prevalent today, but there is a dearth of political capital to meaningfully engage with human rights accountability domestically. Under the Trump administration, there was significant public outcry to end draconian immigration policies such as family separation, Title 42 and the "remain in Mexico" program, yet even when the Biden administration came into power there was little shift in approach on these issues.²¹ As Cavallaro noted, the failure of the United States to robustly engage with the Inter-American System has resulted in the system becoming predominantly oriented towards Latin America. Further, the Inter-American System is not a significant site of U.S. civil society engagement. Yet, the Inter-American System has progressed on rights of Indigenous people and people of African descent, as well as economic, social, and environmental rights, and U.S. civil society could make these demands within the system. In her remarks, Bâli looked beyond the civil and political rights frame to analyze the abject rejection by the United States of the International

21. Bernd Debussman Jr., *How Joe Biden's and Donald Trump's Border Policies Compare*, BBC NEWS, June 4, 2024, <https://www.bbc.com/news/world-us-canada-65574725>.

Convention on Economic, Social and Cultural Rights (ICESCR) and related norms. In the 1960–1970s, the United States worked to undermine efforts by formerly colonized nations in the Global South to adopt a New International Economic Order (NIEO) that would promote international economic and social justice through the human rights lens.²² Instead, even at the international level, civil and political rights took center stage along with neoliberal economics. In the post-Cold War period, when the Committee on Economic and Social Rights became more active and there were some efforts to re-engage the ICESCR and reimagine a normative system that promotes economic and social rights and addresses their violations, the United States increasingly turned to sanctions regimes—imposed unilaterally or multilaterally through the UN Security Council (UNSC). Iraq was the first country subjected to comprehensive multilateral sanctions by the UNSC, with U.S. leadership, at the end of the 1991 Gulf War.²³ Despite mass human rights violations against civilians flowing from this action, sanctions were deemed a justifiable price to pay. In the face of the continued imposition of sanctions by the United States on various countries, there is neither a meaningful international human rights enforcement system for economic and social rights, nor one that holds the United States accountable for the extraterritorial consequences of U.S. sanctions.

Despite the challenges faced by those seeking to assert the human rights frame domestically, all the panelists identified areas of hope and potential for transformative change. Elisa Massimino referenced the first direct action undertaken by Dr. Martin Luther King, Jr.'s Poor Peoples' Campaign, which was the occupation of the National Mall in Washington D.C.; this was a turning point in Dr. King's work to build political power across division with a focus on economic justice. As she described, there is currently a moral revival of the Poor Peoples' Campaign, from intersectional and grassroots movements, for example the Fight for \$15, Dreamers, and Black Lives Matter movements. Massimino also noted the way the UN's Sustainable Development Goals (SDGs) are being embraced by advocates to make change at a grassroots level. Dakwar and Bâli also discussed how the Movement for Black Lives connected domestic racial justice advocacy with anti-Black racism globally as well as other struggles like demands for justice

22. Vanessa Ogle, *State Rights against Private Capital: The "New International Economic Order" and the Struggle over Aid, Trade, and Foreign Investment, 1962–1981*, in 5.2 HUMANITY 211–234 (2014).

23. Abbas Alnasrawi, *Iraq: Economic Sanctions and Consequences, 1990–2000*, 22.2 *Third World Quarterly* 205–218 (2001).

and liberation by Palestinians. There are obstacles to translating this movement building into results within international mechanisms, including the lack of enforcement mechanisms at the international level and a deadlocked U.S. political system. Yet there has been visible progress. For example, scholars and advocates who are critical of the existing human rights system are increasingly taking up institutional positions in the UN or IACHR, advancing broader conceptions of justice from within.

C. Symposium Panel 2: The Struggle for Human Rights in the United States

Panel 2 explored the use of the human rights frame in ongoing U.S. social justice struggles, with a focus on the reproductive rights of Indigenous women, the rights of migrants and other victims of police violence, the rights of the unhoused, and the struggle for economic, social, cultural and environmental rights.

Native American legal scholar Lauren van Schilfgaarde discussed how an international human rights frame can offer a productive alternative to federal Indian law to understand and respond to Native American women's reproductive health issues. Native American women's reproductive and overall health is in a dire situation: the infant mortality rate among Native American births is three times the national average; Native American women experience high maternal death rates; and Native American women face limited access to abortion.²⁴ These statistics reflected the dire for Indigenous women even before the U.S. Supreme Court held, in *Dobbs v. Jackson Women's Health Organization*,²⁵ that the U.S. Constitution does not confer a right to abortion. Instead, the primary precipitant of Indigenous reproductive health challenges was the Hyde Amendment's effective prohibition on abortion access through federally run Indian Health Services.²⁶

Moreover, the consequential health outcomes for Indigenous women clearly result from the United States' constitutive nature as a settler colony, and the disproportionate impact of settler colonial violence

24. Jennifer L. Heck, et al., *Maternal Mortality Among American Indian/Alaska Native Women: A Scoping Review*, 30.2 J. OF WOMEN'S HEALTH 220–229 (2021); Lauren van Schilfgaarde, et al., *Tribal Nations and Abortion Access: A Path Forward*, 46 HARV. J. OF L. & GENDER 1 (2023).

25. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

26. The Hyde Amendment prohibits the expenditure for any abortion of funds authorized or appropriated by federal law or funds in any trust fund to which funds are authorized or appropriated by federal law. This includes federally funded Indian Health Services.

on Native women in particular.²⁷ Settler colonialism led to institutions and policies that were at best paternalistic and at worst genocidal, including the legacy of boarding schools and explicit denial of parental rights based on biases and prejudices against Native families, and a period of forced sterilization of Native women and girls without their consent.²⁸ Native women also experience a massive exposure to violence due to their hyper-sexualization and discrimination. There are limited vehicles to enact preventative measures as well, due to a lack of jurisdiction over such crimes as rape and sexual violence.²⁹

According to van Schilfgaarde, the U.S. civil rights framework is inadequate to address these historical, structural harms, as the vocabulary of civil rights fails to accommodate tribal sovereignty and collective rights. Conversely, the emerging framework on Indigenous rights in international human rights law is rooted in the notion of indigeneity as collective identity and centered on the sacred human relationship to land and one another. For example, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognized the collective right to free, prior and informed consent (FPIC) with respect to, *inter alia*, state action and measures involving major development projects that impact Indigenous lands and livelihoods.³⁰ FPIC serves as a safeguard against the intrusion and dispossession of Native lands and resources by extractive industries, with their subsequent impacts on Native women's health in the form of increased sexual violence and environmental pollution.³¹ Recently, the Committee charged with promoting the Convention on the Elimination of Discrimination Against Women (CEDAW) incorporated this Indigenous perspective in its intersectional approach to gender discrimination and violence against women, recognizing the collective way Indigenous women experience discrimination and violence and the importance of Indigenous sovereignty.³² Indigenous women and girls experience discrimination and violence in conjunction with the violation of their rights to self-determination;

27. Maia C. Behrendt, *Settler Colonial Origins of Intimate Partner Violence in Indigenous Communities*, 16.9 SOCIOLOGY COMPASS e13019 (2022).

28. *Id.*

29. Jessica Allison, *Beyond VAWA: Protecting Native Women from Sexual Violence Within Existing Tribal Jurisdictional Structures*, 90 U. COLO. L. REV. 225 (2019).

30. G.A. RES/61/295, arts. 5, 15(2), 17, 18, 19, 27, 30(2), 36(2), 38, Declaration on the Rts. of Indigenous Peoples (Oct. 2, 2007).

31. Ana Condes, *Man Camps and Bad Men: Litigating Violence Against American Indian Women*, 116 Nw. U. L. REV. 515 (2021).

32. U.N. Committee on the Elimination of Discrimination Against Women, General Recommendation 39: The Rights of Indigenous Women and Girls, CEDAW/C/GC/39 (Oct. 31, 2022).

territories and natural resources; FPIC; culture; and to a clean, healthy, and sustainable environment. Professor van Schilfhaarde argued that Indigenous women must be involved with decision-making and the programs addressing this structural condition, changing the paradigm from interventions directed at them to interventions developed with them. This was echoed concretely in the Conference keynote presentation by Judge Marion Buller, detailed below, in relation to the work of the Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG).

Next on the panel, Andrea Guerrero, from the community-based immigrant and human rights organization Alliance San Diego, illustrated how the human rights frame and the Inter-American System were both used to push beyond the limits of U.S. law and hold the United States accountable in the murder of Anastasio Hernández Rojas by U.S. Border Patrol agents. The Inter-American System uses the victim-centered standard on the use of excessive force by police under international human rights law (“necessary and proportionate”), whereas U.S. constitutional law uses the police-centered “reasonableness” standard. In the words of Guerrero, bringing Anastasio’s case to the IACHR shifted the narrative on police accountability in the United States.

Further, mobilization around Anastasio’s case promoted an ethos of care and respect for human dignity within the U.S. immigrants’ rights movement and their allies. Guerrero repeated the words of her fellow collaborator Roxanna Altholz of the International Human Rights Clinic at U.C. Berkeley School of Law, who emphasized that with the human rights struggle, “the journey is a destination.”³³ The work of Alliance San Diego is demonstrating “human rights in real time,” creating a community of people realizing and standing up for their dignity; this was what Anastasio did by standing up for his rights against the U.S. Border Patrol agents, and is now what his widow, Maria Pulga, is doing as a human rights defender.

The capacity of the collective struggle for human rights was discussed further by the Promise Institute’s Cathy Sweetser and REDESCA Special Rapporteur Soledad García Muñoz, who described her site visit to Los Angeles on the rights of unhoused people. The site visit centered voices of the unhoused, creating a space for joy and celebration of their cause for justice and human dignity. Like Alliance San Diego’s work in

33. The International Human Rights Clinic at U.C. Berkeley School of Law collaborated with Alliance San Diego in the litigation of the case of Anastasio Rodriguez at the IACHR.

the immigration space, Los Angeles Community Action Network (LA CAN) and the other organizers are shaping a new narrative to guide public policy around the unhoused; they are fighting existing policies, like in Los Angeles Municipal Code 41.18, that center housed people instead of promoting housing policy that centers unhoused people.³⁴ García Muñoz emphasized the importance of the Los Angeles Mayor declaring a state of emergency on homelessness,³⁵ but stressed that it is a human rights emergency not just a humanitarian crisis. Unhoused people lack access to justice, face the criminalization of poverty and a lack of democracy, and experience violations of the rights to housing, water, food, health, social security, environment, and decent work. One conclusion from her landmark site visit in Los Angeles was that “we must break the false idea that human rights are only violated outside the United States: 70,000 people in California and 40,000 people in Los Angeles, among the richest states and cities in the world, . . . are living and dying in the streets.”

García Muñoz emphasized that in the United States—one of the richest countries in the world—we are facing an emergency in guaranteeing the human rights of certain social groups, such as unhoused people, migrants, Latinx, Indigenous peoples, and Afro-descendant communities, and that this requires the application of a broader concept of human rights in the areas of economic, social, cultural and environmental rights. She framed REDESCA as a revolutionary project linked to the development of the concept of the indivisibility of human rights. While in theory all human rights are universal, indivisible, and interdependent, in practice there is still work to be done. REDESCA has developed new standards on cutting-edge issues like the climate emergency, the pandemic, and business and human rights, “all of which are new to the Inter-American system and are really central to the human rights agenda.” García Muñoz emphasized the need for intersectional approaches and solutions to the structural problems at the root of the housing crisis, including the failure of neoliberal market solutions. She stressed that the United States must commit fully to human rights, despite failing to recognize or comply with Article 54 of Chapter Seven of the OAS Charter on Sustainable Development, which is the basis

34. L.A. SEC. 41.18, ORD. NO. 187,127 (2021) (prohibits the “sitting, lying, or sleeping, or . . . storing, using, maintaining, or placing personal property” in a way that obstructs a public right-of-way).

35. *Mayor Karen Bass Declares a State of Emergency on Homelessness*, OFFICE OF MAYOR KAREN BASS, Dec. 12, 2022, <https://mayor.lacity.gov/news/mayor-karen-bass-declares-state-emergency-homelessness>.

for holding the country accountable for economic, social, cultural, and environmental rights. Garcia Muñoz concluded by quoting Martin Luther King, Jr.: “I have the audacity to believe that the people of the world can have three meals a day for their bodies, education and culture for their minds, and dignity, equality and freedom for their spirits.” She offered another version of that vision in her native Spanish, “Hasta que la dignidad se haga costumbre (until dignity becomes the custom).”

D. Symposium Panel 3: The United States and Human Rights Accountability

The third panel of the day addressed the theme of “The United States and Human Rights Accountability.” The Promise Institute’s Jess Peake led the panel, which was designed to broaden the understanding and application of the international human rights framework in the United States around the issue of accountability.

Zinaida Miller questioned the simple definition of accountability—holding someone or some institution responsible for harms and sanctioning them—for historical injuries. She interrogated whether it is possible to achieve accountability within the systems or structures of power that are often responsible for egregious human rights violations, or if seeking accountability aligns with the aspirations of transitional justice. From there she raised five questions or observations about the lacunae in our thinking around accountability.

First is the question of historical harm, specifically violence that originates in past systems such as slavery or colonial dispossession, but continues presently through various mechanisms of reproduction. According to Miller, accountability must go beyond merely holding some individuals accountable. Reparations are one way to seek accountability for historical harm, but there are legal constraints and political demands which impede progress. A second question related to historical harm involves the disparate accrual of privileges and dispossessions over time, and how this might be remedied on a societal plane even beyond reparations. A third question involves the way laws and legal systems themselves were responsible for historical harm: how do we address and transform these systems that were part and parcel of the structures responsible for harms such as slavery, Native American dispossession, or Japanese internment? In addition, Miller’s fourth question asked us to think about the tension between holding those involved in these harms responsible and using a criminal justice and carceral system that itself is bound up in the problem of historical harm. Her final question pertained to the “why” and for “whom”

of accountability. What do survivors want, and how do accountability mechanisms function to prevent future harm and address the aspirations of impacted communities?

Recognizing the upcoming 20th anniversary of the U.S. invasion of Iraq, Katherine Gallagher focused on the issue of accountability, reparations, and access to justice through the case study of Abu Ghraib. Abu Ghraib was a prison in Iraq that was used to detain people that U.S. forces arrested in mass roundups, mostly boys and men of military age.³⁶ In April 2004, photos surfaced showing the depravity, cruelty, and torture that Iraqi detainees were subjected to in the detention center.³⁷ For many, this is one of the most infamous horrors in the recent history of U.S. militarism. Gallagher described Abu Ghraib as an extension of what we see every day in U.S. prisons. The Taguba Report on Abu Ghraib, which detailed the torture, identified the main military contractors as Titan and CACI, two multi-million or even billion-dollar companies.³⁸ As Gallagher described, the Iraq war was a war of capitalism. It was motivated by a fervent desire for extractive resources (namely, oil), to protect corporate profits, and create additional profits through the type of outsourcing and privatization of the war exemplified by the contractors put in charge of Abu Ghraib. The contractors filled a command vacuum, and they instructed military police to “soften up” detainees by humiliating and torturing them in order to subsequently extract confessions during interrogations.³⁹

Over the last 20 years, Gallagher’s organization, the Center for Constitutional Rights (CCR), represented over 330 Iraqis who were detained at Abu Ghraib and other detention centers throughout Iraq. They brought these cases against private military contractors under the U.S. Alien Tort Statute. Echoing statements made in Panel 2, for Gallagher the process is itself a destination. CCR has battled within a legal system that often limits access to justice and perpetuates the evasion of accountability, yet there have been some victories, such as obtaining a ruling on the absolute prohibition of torture despite defense arguments that torture was permissible in certain circumstances if allowed by the U.S. military. Gallagher described her remaining case in

36. See the New York Times database “Abu Ghraib” with a running series of articles on the case, available at <https://www.nytimes.com/topic/destination/abu-ghraib>.

37. *Id.*

38. ANTONIO TAGUBA, AR 15–6 INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE 26 (2004).

39. Mallory Moench, *Abu Ghraib Military Contractor Trial Set to Start 20 Years After Shocking Images of Abuse*, TIME, April 14, 2024, <https://time.com/6966695/abu-ghraib-military-contractor-trial>.

litigation, *Al Shimari et al. vs. CACI*, where she is representing Suhail Najim Abdullah Al Shimari, Asa'ad Hamza Hanfoosh Zuba'e, and Salah Hasan Nusaif Al-Ejaili. Addressing the “why” of accountability, Gallagher emphasized how important it is to her clients to ensure that what happened to them does not happen to anyone else. They displayed great courage coming forward in the courts of their oppressor, which twice refused them visas to participate in the litigation in person. They want to break the cycle of impunity, no longer remaining faceless and being able to tell their own story. Gallagher denounced that after 20 years there has still been no real redress, reparations or accountability—a scathing indictment of the U.S. legal system’s capacity to achieve some measure of justice even in a civil proceeding.

Sarah Paoletti presented another case of decades-long advocacy to hold the United States accountable for human rights abuses, this time in the immigrant detention system. In September 2020, when the New York Times ran a front-page story documenting how women detained at the Irwin County Detention Center in Georgia were subjected to invasive and non-consensual gynecological procedures, some of which resulted in sterilization⁴⁰. The doctor performing the procedures was contracted by LaSalle Corrections, which owned and operated the detention center under the failed oversight of the U.S. Department of Homeland Security (DHS). Paoletti and the Transnational Legal Clinic at Penn Law were granted a thematic hearing before the IACHR in June 2021. On May 20, 2021, DHS Secretary Alejandro Mayorkas announced that the agency was terminating its contract with the Irwin County Detention Center.⁴¹ But in the statement, Secretary Mayorkas failed to acknowledge the harm suffered by the women or commit to meaningful action to provide accountability or redress. At the June 2021 IACHR hearing, Paoletti’s team was joined by co-requesters Project South and Detention Watch Network, and eventually by another 68 attorneys and advocacy organizations, who challenged the abuses in immigration detention in Georgia, including at Irwin County and Stewart Detention Centers, and sought accountability and redress. The hearing resulted in a substantive press release by the IACHR that details abusive conditions of detention at the detention centers, from

40. Caitlin Dickerson, et al., *Immigrants Say They Were Pressured into Unneeded Surgeries*, N.Y. TIMES, Sep. 29, 2020, <https://www.nytimes.com/2020/09/29/us-ice-hysterectomies-surgeries-georgia.html>.

41. Ben Fox & Kate Brumback, *US Ends Use of 2 Immigration Jails Accused of Mistreatment*, ASSOCIATED PRESS, May 20, 2021, <https://apnews.com/article/immigration-government-and-politics-cfa4dbb16a9db9bb25d9cd0db873a32a>.

medical neglect to substandard food, forced labor, denial of access to legal counsel and solitary confinement for persons with mental health issues, retaliation as a means of punishment, and the deaths of several detainees.⁴² The director of the Department of Homeland Security's Office for Civil Rights and Civil Liberties was forced to abandon her prepared talking points about detention standards and her office's role in investigating the allegations and frankly acknowledged that it should never have happened, and in a powerful moment apologized to Wendy Dow, who had courageously testified to the abuse she experienced in detention. As the IACHR report outlines, international law allows immigration detention only as a last resort and for the shortest possible time, and it requires reparations in response to findings of torture.

Paoletti warned that accountability for isolated incidents is not sufficient; we must look at the systemic problems and the ways these violations have occurred as part of the overall immigration enforcement system and its disproportionate impact on Black and brown people. While U.S. Immigration and Customs Enforcement's (ICE) contract with the Irwin County Detention Center was canceled, which was a significant step, this modicum of progress is overshadowed by the expansion of ICE detention in other facilities. To conclude, Paoletti asked: "Why do we continue to pursue this at the international level? If, in fact, these violations continue, does it matter?" She answered forcefully in the affirmative: First, it is essential to stand up and try to hold the government accountable for its violations, because silence is a concession, and for victims, silence is not an option. Second, it is important to hold the line on what the applicable international standards are for immigration and immigration detention. Finally, it is important to continue the alliance with the brave women and other immigrants who have stepped forward to assert their right to humanity and to play a small role in the larger movement for immigrant justice. She recalled the inestimable value of Cristina Cisneros testifying before Congress: "This shouldn't happen to anyone anymore. We are not animals, we are humans."

The final panelist, UCLA Law Professor Máximo Langer, addressed issues of international criminal law and United States accountability. He noted a double standard in the United States' relationship with human rights, namely that the United States supports

42. Press Release, IACHR, IACHR Expresses Its Concern Over Reports of Sterilizations and Surgical Interventions Without Consent in Migrant Detention Centers in the United States (October 30, 2020), https://www.oas.org/en/iachr/media_center/PReleases/2020/262.asp.

human rights when applied to other nations and peoples but is unable or unwilling to be accountable for its own human rights violations. The United States' role in international criminal law is a clear example of this contradiction. According to Langer, the United States has made significant contributions to the development of international criminal law, for example, in the Nuremberg trials, and more recently the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda. But at the same time, the United States has always seen international criminal law as a tool of international relations for external applicability rather than a system of law applying to its own actions. For example, there was no accountability for the United States after the invasion of Japan and the atomic bomb nor for human rights violations committed or supported by the United States during the Cold War.

This ambiguous record of the United States is evident with respect to the International Criminal Court (ICC). According to Langer, the United States has not ratified the Rome Statute but has nevertheless tried to influence the scope and jurisdiction of the court. When the United States invaded Afghanistan, it did everything possible to avoid accountability for American troops despite Afghanistan falling under ICC jurisdiction. When the ICC Prosecutor opened an investigation into the situation in Afghanistan, it was presumed that it would look into the conduct of three groups: the Afghanistan government, the Taliban, and the United States. But, perhaps unsurprisingly, the Prosecutor announced it would only look into the responsibility of the Taliban.⁴³

The double standard applies also to domestic prosecution under the doctrine of universal jurisdiction. The United States has ratified some international treaties applicable to international crimes and accountability, including the Genocide Convention, the Geneva Conventions, and the Convention Against Torture. These treaties have been implemented domestically and are enforceable under U.S. law, but can also be enforced as international law by universal jurisdiction. Langer noted that these statutes have been used primarily to prosecute foreign nationals for crimes committed on foreign soil. However, there have been no prosecutions responding to U.S. policies and actions post-9/11. Similarly, the United States has not provided reparations, created truth commissions, or given apologies for the war crimes, torture or crimes of genocide it committed. Even the recent Justice for Victims of War

43. Alice Speri, *How the U.S. Derailed an Effort to Prosecute Its Crimes in Afghanistan*, INTERCEPT, Oct. 5, 2021, <https://theintercept.com/2021/10/05/afghanistan-icc-war-crimes>.

Crimes Act is intended to hold Russia accountable for war crimes committed in Ukraine, but not those committed by U.S. officials.

Langer also addressed the case of international crimes committed by U.S. officials on U.S. soil, such as police killings. Given the widespread incidence of these killings, typically 1000 per year according to Langer, the United States should be held to account by the Inter-American System. Nevertheless, whenever the United States does prosecute these crimes, it does so under domestic laws and standards, or when the Department of Justice gets involved, it does so under civil rights statutes rather than as extrajudicial killings violating international human rights law.

The Bringing Human Rights Home Symposium provided a backdrop and framing of issues for the work of the Commission in its 186th period of sessions. There was a limited but significant focus on the United States in a number of the hearings, and the Promise Institute played a role in promoting hearings related to our focus area of Race and Indigeneity.

III. THE 186TH PERIOD OF SESSIONS: RACE AND INDIGENEITY⁴⁴

The IACHR set its own hearing agenda for the period of sessions based on submissions from petitioners and civil society. However, several of the hearings intersected with the major themes of the Conference. These included thematic hearings co-organized by legal clinics at UCLA School of Law and others requested by partner organizations that the Promise Institute has helped promote and support.

The Center for Immigration Law and Policy and the Promise Institute, through the Immigrants' Rights Policy Clinic and International Human Rights Clinic, collaborated with regional partners to present a thematic hearing on human mobility from an ethno-racial approach.⁴⁵ The hearing focused on the racism experienced by Black, Indigenous and Latinx people in their migrant journey through the Americas and engagement with the Mexican and U.S. immigration systems specifically.⁴⁶ The presenters analyzed processes of racialization in the Americas,

44. *186th Period of Sessions*, *supra* note 4.

45. The hearing was prepared and presented by the Black Alliance for Just Immigration (BAJI), the Center for Justice and International Law (CEJIL), the Center for Immigration Law and Policy (CILP) at the UCLA School of Law, Comunidades Indígenas en Liderazgo (CIELO), Haitian Bridge Alliance (HBA), Migrant Works Alliance for Change (MWAC), the Promise Institute for Human Rights at the UCLA School of Law, Observatorio de Racismo en México y Centroamérica, and RacismoMX.

46. UCLA CTR. IMMIGR. L. POL'Y, *Migration, Race, & Criminalization: Federal Criminal Entry & Reentry Laws in The United States*, Sept. 2023, <https://law.ucla.edu/news/>

the experience of Black and Indigenous people in human mobility, and the disparate racial impact of U.S. immigration law and policy as applied at the U.S. Southern border with reverberating impacts in Mexico and Central America. The groups advocated for an anti-racist approach to the issues, regional solutions that address root causes of forced displacement of Black and Indigenous people in human mobility in the Americas, and immediate increased protections for Black and Indigenous people in human mobility in the Americas.⁴⁷

The Haitian Bridge Alliance (HBA), a collaborative partner of the Promise Institute, organized with other organizations a thematic hearing on the rights of Haitian people in mobility in the United States. Powerful testimony was presented of the racism experienced by Haitian migrants in the U.S. immigration system and the concomitant violation of their rights, personal integrity and asylum in the United States. As HBA's Executive Director Guerline Jozef noted at the hearing, "Black bodies in mobility have no protections." A relatively high-level delegation from the United States participated in the hearing, a sign of renewed engagement with the Inter-American System. However, the state's response was a largely defensive recitation of U.S. immigration law and largely failed to engage with the specific experience and allegations presented by the organizers.

Another collaborative partner of the Promise Institute, the *Organización Fraternal Negra de Honduras* (OFRANEH), organized a thematic hearing on protections for collective property against third-party appropriation. OFRANEH and the Garifuna communities it represents have six cases in the Inter-American System, all related to protection of their land and territories. The problem of third-party appropriation of collective property is a contemporary iteration of settler colonialism. The dispossession of Garifuna lands is carried out through force, fraud, corruption, and illegal land sales, and subsequently legalized taking advantage of the weak protections for collective property and the recognition of private property rights through informal sale, occupation and improvement of land. OFRANEH sounded the alarm that the patterns of conflict and violence suffered by their communities, which brought them to the Inter-American System in the first place,

migration-race-criminalization-federal-criminal-entry-reentry-laws-united-states.

47. S. PRIYA MORLEY ET AL., *A JOURNEY OF HOPE: HAITIAN WOMEN'S MIGRATION TO TAPACHULA, MEXICO*, CTR. GENDER AND REFUGEE STUD (2021),

<https://imumi.org/attachments/2020/A-Journey-of-Hope-Haitian-Womens-Migration-to%20-Tapachula.pdf>; (adopting the definitions for "migrant," "refugee," "Black," and "sexual and gender-based violence.")

will only continue if the Commission and the Inter-American Court of Human Rights fail to recognize the way the Honduran legal and political system is sustaining settler logics and urgently strengthen standards and protections for collective property.

IV. THE CONFERENCE KEYNOTES AND KEYNOTE EVENTS

A. Marion Buller – The Future of Justice and Reparations for MMIWG in Canada⁴⁸

On March 8, 2023, in commemoration of International Women's Day, Judge Marion Buller delivered a keynote address on "The Future of Justice for Missing and Murdered Indigenous Women and Girls." Buller, a First Nations jurist and human rights advocate, was the first First Nations woman appointed to the Provincial Court of British Columbia, and later established the First Nations Courts in British Columbia. She served as Chief Commissioner for the National Inquiry in Canada into Missing and Murdered Indigenous Women and Girls (MMIWG)⁴⁹ and addressed the significance of that work. Julissa Mantilla, then IACHR Commissioner and Rapporteur for Women's Rights, participated as a discussant, and the event was moderated by Shannon Speed, Director of the UCLA American Indian Studies Center.

According to Buller, there was a prolonged struggle leading to the first National Inquiry, which "came about as a result of over 40 years of pressure from Indigenous women, Indigenous women's organizations, and others who witnessed alarming rates of murders and disappearances without adequate response or remedy." The resulting National Inquiry, which took place from September 1, 2016, to June 30, 2019, employed a historic and unique process, gathering thousands of testimonies from family members of missing or murdered Indigenous women, and Indigenous survivors of violence who continue to be affected by the historical and contemporary legacies of settler colonization in Canada.⁵⁰ Buller noted that, in total, the National Inquiry heard from

48. *The Inter-American Commission on Human Rights' March 2023 Visit to UCLA*, PROMISE INSTITUTE (Mar. 1–11, 2023), <https://promiseinstitute.law.ucla.edu/project/inter-american-commission-on-human-rights-visit-to-ucla/>.

49. MMIWG is the acronym commonly associated with the movement on behalf of Missing and Murdered Indigenous Women and Girls. Buller emphasizes the violence perpetrated against "two-spirit" persons who for many Indigenous people are recognized and respected as non-gender conforming persons. She recognized this in the use of the acronym MMIWG2+.

50. Jerry Flores & Andrea Román Alfaro, *Building the Settler Colonial Order: Police (In)Actions in Response to Violence Against Indigenous Women in "Canada"*, 373 GENDER & SOCIETY 391–412 (2023).

2,400 witnesses. The National Inquiry held 15 community hearings across the country, including in remote communities, nursing stations, Indian band offices, and even individuals' homes to record the truths of survivors, as well as nine thematic hearings on different topics from the perspective of colonization and colonial violence—an approach unprecedented in Canada. Buller emphasized that the National Inquiry took an intersectional approach, recognizing the interconnection of violence and marginalization, such as racism, misogyny, or the impacts of poverty and homelessness. In addition, the National Inquiry conducted their work through an Indigenous and human rights lens. They also identified the rights to culture, health, safety, and justice as the four most important rights to address. According to Buller, their process stood out because its approach to truth focused on highlighting the voice and truth of survivors: “There is no more doing *to* and doing for. There is doing *with* and doing for.”

The National Inquiry recognized thousands of human and Indigenous rights violations perpetrated by the Canadian state and its institutional actors. The Final Report found these violations amounted to genocide.⁵¹ Buller noted that the Report identified four avenues that sustain the violence: (i) multigenerational and intergenerational trauma, including historical trauma manifested in the present; (ii) the lack of implementation of international human rights declarations and treaties; (iii) the failures of domestic laws in Canada to protect MMIWG by victimizing and failing to ensure any accessible and reliable mechanism within Canada to seek remedies and recourse for rights violations; and (iv) Indigenous women's advocacy organizations and grassroots organizations were underfunded and under-supported. According to Buller, all four avenues involve some state responsibility. As a final result, the National Inquiry made 231 recommendations, which form the basis for demands for reparations and guarantees of non-repetition as well as ongoing struggles for structural change in Canada.⁵² The recommendations are a call for justice that includes all Canadians, urging them to work collectively.

Commissioner Mantilla, commenting on Buller's intervention, emphasized how the Canadian struggle for truth and transitional justice, particularly for women, connects with similar struggles in Latin

51. NAT'L INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, RECLAIMING POWER AND PLACE: THE FINAL REPORT OF THE NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS (June 2019), <https://www.mmiwg-ffada.ca/final-report>.

52. *Id.*

American countries such as Peru, Guatemala, or Colombia. She described progress made by the Inter-American System, including in cases of gender-based violence in the context of transitional justice, such as the case of *Miguel Castro-Castro Prison v. Peru*, or instances of structural violence, such as *Campo Algodonero v. Mexico*. In these cases, the Inter-American Court of Human Rights addressed the structural causes of gender violence and ordered reparations to address this problem.⁵³ As Mantilla described, traditional justice or conventional investigative methodologies often exclude women; for instance, she noted that the Peruvian Truth and Reconciliation Commission was established without a gender perspective. In Guatemala, however, in the aftermath of the armed conflict, the Historical Memory Commission included cases of sexual violence and specific atrocities against women, pregnant women, sexual violence, and sexual harassment against Indigenous women. In Colombia, which recently presented its Truth Commission report, Mantilla found that a gender perspective played a significant role in cases such as that of the Indigenous Embera community and Afro-Colombian communities on the Pacific coast.

B. Ferguson Rises: Film Screening and Panel Discussion

On Thursday, March 9, 2023, in conjunction with the UCLA Bunche Center for African American Studies, the Conference screened the documentary *Ferguson Rises*⁵⁴ by documentary filmmaker and director Mobolaji Olamiwonnu. Olamiwonnu was joined by Michael Brown, Sr., and Black Lives Matter-Los Angeles activist Baba Akili, for a panel discussion moderated by UCLA scholar-activist-spoken word artist Bryonn Bain. The film documents the birth of a global movement for Black Lives Matter following the murder of Michael Brown, Jr. at the hands of a white police officer in Ferguson, Missouri on August 9, 2014. It moves from the intensely personal experience of his father, Brown, Sr., through the legacy of racial divides and tension in a community, to the spontaneous and then organized outrage and demand for justice that visited Ferguson and spread across the nation and beyond. The film epitomizes the latent power of a people and their allies within a society to rise up and demand social change, redefining our humanity from a place where their humanity has been denied.

53. *Miguel Castro-Castro Prison v. Peru*, Merits, Reparations, and Costs, IACHR No. 160, ¶¶ 58 & 303 (Nov. 25, 2006); *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, IACHR, No. 205, ¶¶ 133–136; 225; 397–398; & 450–451 (Nov. 16, 2009).

54. *FERGUSON RISES*, <https://fergusonrises.com> (Apr. 2022).

The panel discussion proved to be an intimate exchange between four Black men and fathers on carrying the weight of racial injustice and finding their own resurgent humanity capable of carrying forward the work for justice with passion and love. Coming as it did a day after International Women's Day, the men noted the lack of women on the panel, yet they were able to reflect on their personal experiences and the complex issues raised by the film, finding their own way to that "radical love" proclaimed by Black liberation feminists: love as the practice of freedom, love as an ethos of the struggle.⁵⁵ At the same time, Brown, Sr. acknowledged the soulful presence and support of his wife Cal, without whom he could not shoulder the burden of speaking in these engagements.

The moderator, Bain, deftly led the discussion through these pathways of the heart, while sharing his own reflections of living and being a father in an anti-Black world. Olambiwonnu provided insight into his own struggles entering the community of Ferguson, around his social positioning, and honing his message through the creative process of making the film. Akili spoke as an elder from his experience as a lifelong activist for racial justice, including the highs and lows of movement organizing, the ins and outs of political struggle and strategizing, the virtues and vices of the human actors, and through it all keeping his eye on the ultimate goal, greater than himself or any one individual. "That's who I am, that's what I do," he calmly affirmed. Work on the self and self-healing and transcending the self are key components of radical love. Akili poignantly noted that "it takes the death of Black people to periodically awaken white people, but that is too heavy a price for any people to pay." In addition to the birth of a movement, the story told by Olambiwonnu focuses on the transformation of Brown, Sr., dealing with this burden in a very personal manner.

Brown, Sr. spoke of his personal life being swept up by the events, being carried but also consumed by those mobilizing around his and their collective grief. He confided how he struggled with his grief and anger before finally deciding to turn his "pain into purpose," settling on a project of love and care for his fellow brothers and sisters on similar journeys following the loss of a child. The Michael Brown Sr. Chosen for Change Organization, as described on its website, "provides holistic grief support and outreach programs to families who have experienced the tragic loss of a child. Our mission is to empower

55. bell hooks, *Love as the Practice of Freedom*, in *OUTLAW CULTURE: RESISTING REPRESENTATIONS* (1st ed. 1994).

families to find healing, hope, and a sense of faith in the face of unimaginable pain. Through compassionate care and community resources, we honor the memory of Michael Brown, Jr. by fostering resilience and promoting positive change for those impacted by grief.⁵⁶ The organization and its work are an amazing tribute to Michael Brown, Jr. and response to the injustice and anti-Black racism surrounding his death. Brown, Sr. described the work they do with grieving families, building community, and fostering an ethics of care.⁵⁷ In addition to work with families, Chosen for Change has a “Chosen Fathers” program for grieving men, and “Sisters with a Task” program for empowering young women and teens.

The artistic expression and intimate conversation situated the human rights conversation in a holistic way around the “beautiful struggle”⁵⁸ of Black humanity, what it means to bring about “right relationship”, and what radical love can look like. It revealed a resurgent humanity that both grounds and transcends the human rights frame, liberating and empowering, providing a north star for reimagining rights and the struggle for justice. The event exemplified the value of the arts and their contribution to the struggle for justice in developing a human and emotional connection to and animator of that struggle. In the end, the film screening and panel affirmed our shared humanity, the basic premise of the human rights struggle.

C. Tendayi Achiume, Climate Justice and Climate Reparations from a Racial Justice Perspective⁵⁹

On Friday, March 10, 2023, the public events of the Reimagining Rights on the Americas Conference concluded with keynote address by E. Tendayi Achiume, UCLA Law Professor and former UN Special Rapporteur (UNSR) on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (2017–2022). IACHR President and Rapporteur of the Rights of Persons of African Descent and against Racial Discrimination, Margarette May Macaulay,

56. THE MICHAEL BROWN SR. CHOSEN FOR CHANGE ORG., <https://www.chosenforchange.org>.

57. See Brea Johnson, *Black Women Care Ethics: Radical Love and the Anti-Black World*, BLACK WOMEN RADICALS, <https://www.blackwomenradicals.com/blog-feed/black-women-care-ethics>.

58. See TA-NEHISI COATES, *THE BEAUTIFUL STRUGGLE: A MEMOIR* (2009).

59. The Promise Institute, *Keynote: E. Tendayi Achiume on Climate Justice and Reparations from a Racial Justice Perspective*, YOUTUBE (Apr. 11, 2023), https://www.youtube.com/watch?v=_lu7x7O15_I.

provided a comment and response to Achiume's keynote address. The event was moderated by the Promise Institute's S. Priya Morley.

As outlined in her final thematic report as UNSR on Racism, which focused on the Ecological Crisis, Climate Justice and Racial Justice,⁶⁰ Achiume recognized the urgency of ecological crisis and its disproportionate impacts on racially, ethnically, and nationally marginalized people and groups. They are concentrated in "racial sacrifice zones," which are "regions rendered dangerous and even uninhabitable owing to environmental degradation" and "include the ancestral lands of Indigenous Peoples, territories of the small island developing States, racially segregated neighborhoods in the global North and occupied territories facing drought and environmental devastation."⁶¹ In the context of ecological crisis, racially, ethnically, and nationally marginalized people and groups are subjected to forced displacement and immobility. At the same time, United States, United Kingdom, and others in the Global North bear significant responsibility for the historic and current greenhouse gas emissions that cause climate change.

In her remarks, Achiume underscored the main takeaway from her Report: "[t]he global ecological crisis is simultaneously a racial justice crisis" and "there can be no meaningful mitigation or resolution of the global ecological crisis without specific action to address systemic racism, in particular the historic and contemporary racial legacies of colonialism and slavery."⁶² As she expanded, the global climate crisis is the product of historical processes of extractivism and industrialization, which remain at the heart of the global economy and lead to unsustainable levels of global consumption. The global economy is contingent on there being racially subordinated groups who can be exploited. Therefore, understanding and addressing environmental injustice requires a historicized approach to how race and racism have shaped the political economy of climate and environmental realities, as well as the governing legal frameworks and worldviews that these frameworks represent.

Achiume reflected on how the dominant human rights approaches, and the dominant approaches to global governance more broadly, often respond to race and racism in a way that obscures the histories

60. E. Tendayi Achiume, *Rep. of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance*, A/77/549 (Oct. 25, 2022), https://promiseinstitute.law.ucla.edu/wp-content/uploads/2022/10/A_77_2990_AdvanceUneditedVersion.pdf.

61. *Id.*

62. *Id.* at 2.

of colonialization, enslavement, and other forms of subordination that lead to persistent impacts of racial marginalization today.⁶³ Race and racialization must be understood as anchored in a global history of colonialism, wherein race and racial identity were relied on as criteria for ascribing ranks, places, and roles on to different people and groups. Despite formal decolonization, race and ethnicity continue to play this hierarchical ordering function. Yet, international law is “neo-colonial,” in Achiume’s words, as it reproduces the hierarchies and inequalities entrenched within the colonial period. International law also “remains in the service of global capital.”

Despite the limits of international law, Achiume recognized that it must also be mobilized, alongside other tools at our disposal, to address the ecological crisis. One area where this frame could be useful is in the case of reparations. Reparations must not only provide monetary compensation but also transform the structures in place today that perpetuate the contemporary legacies of historical injustices of colonialism and enslavement. Climate injustice, which is interwoven with racial injustice, stems from the same historical legacies. Various scholars have identified pathways to push the limits of current conceptions of reparations demands in international law and within the United Nations. Achiume, in her report, outlines some recommendations for member States to seek to transform the international framework to further its potential to effect transformative change and respond to the ecological crisis. We also need to think creatively, build movements and power, and work across disciplinary silos to address the ecological crisis.

In her comment and response to Achiume’s keynote address, Macaulay underscored the disproportionate impact that climate change has on people of Indigenous and African descent. They are exposed to environmental hazards due to natural disasters and environmental pollution, and face increased likelihood of experiencing health emergencies, humanitarian crises, and forced displacement. As Macaulay discussed, structural racial discrimination in States leads to an absence of ethno-racial approaches that would consider peoples’ historic and current needs when planning, designing, and implementing environmental policies. The IACHR has urged States to grapple with racial inequality in the context of climate change, as it poses a serious threat

63. E. Tendayi Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, 134 HARV. L. REV. 7 (May 2021), <https://harvardlawreview.org/forum/vol-134/transnational-racial-injustice-in-liberal-democratic-empire/>; see also E. Tendayi Achiume & Gay McDougall, *Symposium on Race, Racism, and International Law: Anti-Racism at the United Nations*, 117 AJIL UNBOUND 26–30 (2023).

to the enjoyment of human rights, especially the economic, social, cultural, and environmental rights of people of Indigenous and African descent in the region. Among the IACHR's relevant recommendations is to urge States to ensure participation of racially marginalized people and groups in responding to climate change. As Macaulay concluded, the IACHR calls on States to eradicate all historical patterns of structural and systemic racial discrimination, especially environmental racism, which disproportionately impacts peoples of Indigenous and African descent and tribal communities.

V. CONCLUDING CONVENING: SETTING INSTITUTIONAL PRIORITIES ON CLIMATE REPARATIONS AND RACIAL JUSTICE: LEARNING FROM SOCIAL MOVEMENTS⁶⁴

Former UNSR on Racism Achiume's keynote provided the backdrop for the following day's expert convening.⁶⁵ The uneven allocation of the burdens of climate change maps on to systemic racial discrimination, inequality, and marginalization within and between countries, all of which are the persistent impacts of global histories of colonialism, enslavement, and extractivism. The closed Convening on Setting Institutional Priorities on Climate Reparations and Racial Justice: Learning from Social Movements (the Convening), held on Saturday, March 11, 2023, brought together experts from the United Nations, Inter-American system, and social movements to discuss the disproportionate impacts of the global climate crisis on racially marginalized peoples in North America, Central America, and the Caribbean—particularly Indigenous people and people of African descent. The convening built on the work being done by social movements, including those working at the intersections of race, Indigeneity, human mobility, and climate justice. It also drew on a series of recent reports on the human rights impacts of climate change, including its intersection with racial injustice, by experts from the UN and Inter-American systems.⁶⁶

64. *Race & Human Rights Reimagined Initiative*, UCLA PROMISE INSTITUTE H.R. (Mar. 2023), <https://promiseinstitute.law.ucla.edu/project/race-human-rights-reimagined-initiative>.

65. See S. Priya Morley, *Setting International Priorities on Climate Reparations & Racial Justice: Learning from Social Movements*, PROMISE INSTITUTE FOR HUMAN RIGHTS (Mar. 2023), <https://promiseinstitute.law.ucla.edu/project/race-human-rights-reimagined-initiative>.

66. See E. Tendayi Achiume, *Report on the Ecological Crisis, Climate Justice and Racial Justice*, U.N. Doc A/77/549 (Oct. 25, 2022); S. Priya Morley, *Executive Summary: Ecological Crisis, Climate Justice, and Racial Justice*, PROMISE INSTITUTE FOR HUMAN RIGHTS (Mar. 2023), <https://promiseinstitute.law.ucla.edu/wp-content/uploads/2023/09/Executive-Summary-Ecological-Crisis-FINAL.pdf>; *Overview*, OHCHR AND CLIMATE CHANGE, <https://www.ohchr.org/en/climate-change> (publishing a wide range of the latest reports and publications from within the UN System visit); *Thematic Published Reports*, IACHR.,

In particular, the convening sought to respond to growing claims for climate reparations arising from social movements and Global South nations. It explored whether and how international law, the international human rights frame, and the institutional mechanisms of the UN and IACHR may be reimagined and wielded to meet social movements' demands for climate justice and transformative social change.

The workshop was structured with three thematic sessions. Each session opened with a framing conversation with short remarks by a few speakers to introduce the topic; this was followed by a roundtable discussion with all the participants contributing their knowledge and perspectives; and the first two sessions were closed by one speaker who made summarizing and concluding remarks. The first session, *Movement Perspectives on Climate Justice and Reparations*, foregrounded the demands for climate reparations from movement leaders across the Global South and within racially marginalized communities in the Global North, exploring how these are connected to demands for racial justice, redistributive justice, and broad systemic change. Session two focused on *Academic and Legal Perspectives on Climate Justice and Reparations*. It explored different legal and theoretical approaches to understanding climate justice and reparations transnationally and considered the potential and limitations of existing frameworks as well as the urgency of radical reimagining of these frameworks. The final session, *Institutional Perspectives on Climate Justice and Reparations*, engaged with ongoing efforts to promote climate reparations within international frameworks, seeking in particular to grapple with the limits of these institutions to meet the demands from social movements. Both the international human rights system and United Nations Framework Convention on Climate Change (UNFCCC) have recently grappled with demands for climate reparations. At COP27, progress was made towards a fund for loss and damage resulting from climate change, which has long been called for by countries in the Global South. As well, international human rights actors are increasingly advancing the duty to provide reparations for historic violations with persistent impacts, including enslavement, colonialism, and climate and environmental harms.

One of the urgent discussion topics that arose throughout the Convening, and throughout the entire *Reimagining Rights in the Americas Conference and 186th* period of sessions of the IACHR, is the current socio-political situation in Haiti, its link to forced displacement

and vulnerability to climate harms, and what a reparations framework for Haiti should look like. Haiti is the world's first Black republic, and it epitomizes the intersection between legacies of colonization, racial injustice, climate injustice and migration.⁶⁷ The current economic and political reality of Haiti today has been shaped by the history of centuries of racism, extraction, and marginalization.⁶⁸ In the first session, IACHR President and Rapporteur of the Rights of Persons of African Descent and against Racial Discrimination, Margarette May Macaulay, reflected on the heavy debt burdens that Haiti has had to carry as a result of the historic and ongoing violations committed against the state. In light of this, she invited the group to share their thoughts on what a reparations framework could look like in Haiti. In the discussion that followed, participants—including Guerline Jozef from Haitian Bridge Alliance and Nixon Boumba from Kolektif Jistis Min (Mining Justice Collective) and American Jewish World Service (AJWS-Haiti)—tied Haiti's history of colonialism by France, and the “independence debt” that France imposed upon Haiti's independence, to the demand for reparations.

The Convening underscored that a multifaced approach, which centers demands and knowledge from movement leaders and draws on the expertise of scholars and institutional actors, is essential to grapple with the challenges posed by the climate crisis. Participants emphasized the urgency of building “just relationships” between different stakeholders. Academic institutions can draw on their resources and technical expertise to support those working to combat climate injustice from the frontlines, but there must be a commitment to deep collaboration and a shift in the balance of power between academic institutions and movement actors. Scholars and institutional actors must avoid “extractivist” practices, wherein they draw on the knowledge of communities and movement actors for their research and writing; instead they must also create strategies of collaboration with communities and help develop tools to support their work. Another overarching takeaway is recognizing the tension between Indigenous demands for decolonization and demands for free movement and “migration as reparations,” which could displace Indigenous peoples or undermine

67. See S. Priya Morley, *Connecting Race and Empire: What Critical Race Theory Offers Outside the U.S. Legal Context*, 69 UCLAL REV. 100 (Mar. 2022), <https://www.uclalawreview.org/connecting-race-and-empire-what-critical-race-theory-offers-outside-the-u-s-legal-context>.

68. See Catherine Porter et al., *The Root of Haiti's Misery: Reparations to Enslavers*, N.Y. TIMES, May 20, 2022, <https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html>.

their sovereignty. Participants also emphasized the need to hold multinational corporations accountable, in addition to States, for their role in creating and perpetuating the climate crisis as well as contributing to the climate vulnerability of marginalized people and groups. All of these considerations must inform thinking around how to create a more just future where people live with equal dignity and in harmony with each other and nature. The Convening was the first step in building just relationships and imagining a just future, but there is much work to be done from inside and outside academia to support this.

CONCLUSIONS ON REIMAGINING RIGHTS IN THE AMERICAS: LOOKING TOWARDS THE HORIZON

Confronting the structuring legacies of racism, settler colonialism, and unbridled capitalism is both a challenge to and driver of reimagining rights in the Americas. Given the focus of the Conference, arriving at and highlighting this struggle comes as no surprise. The first step in meeting the most consequential human rights challenges today is recognizing their structural nature. Commissioners Margarete May Macaulay and Roberta Clarke, in their Symposium keynotes, noted that the IACHR's work to promote human rights in the United States has focused on racialized police violence as a symptom of structural racism. All of the Conference keynotes dealt with these structural legacies in one form or another. Judge Marion Buller highlighted that the work of the Canadian National Inquiry into Murdered and Missing Indigenous Women, Girls and Two-Spirits could only be transformative if it situated the crisis in the historical and structural context of settler colonialism and its genocidal logics. The documentary film *Ferguson Rises* showed the birth of a global social movement rejecting the grinding reproduction of Black deaths at the hands of police and its corresponding impunity in societies founded on white supremacy. Former UNSR on Racism E. Tendayi Achiume dissected how these legacies, particularly unbridled and racialized capitalism, produced "racial sacrifice zones" in the current climate crisis and called for reparations that take into account these structural inequities and disparate impacts.

What international human rights, and specifically international human rights law has to offer these struggles is an open question, bringing us back to the conundrum, presented in the introduction of this article, on the human rights frame embedded in these structures. What light was shed on this question during the course of the Conference came from concrete struggles and actors engaged in human

rights practices, most importantly from impacted communities themselves. In his recent book, “Inventing Human Rights,” scholar Mark Goodale argues that “instead of rearticulating some version of the natural rights heritage that finds expression in existing human rights . . . the very claim of universality itself should be abandoned.”⁶⁹ Some of the Conference participants appeared to have invoked a claim of universality or at a minimum appealed to a common humanity, but on closer look, their strategic deployment of human rights discourse may be more in line with the practice Goodale describes as “connotative power of human rights.”⁷⁰ Commissioner Julissa Mantilla invoked the notion of “not going against the heart;” Andrea Guerrero of Alliance San Diego spoke of practicing human rights “in real time” by centering and standing up for human dignity, and Special Rapporteur Soledad García Muñoz invoked Martin Luther King, Jr.’s vision of dignity, equality and freedom, rendering her own Spanish language version: “hasta que la dignidad se haga costumbre.” Michael Brown, Sr. discussed how he transformed his pain into purpose by connecting to others’ pain and creating a space for healing and liberation. This search for human connection and appeal to the heart of human dignity, whether envisioned or made effective, is distinct from the abstract, positive law claims of universality based on Western Enlightenment natural law theory. It rather comes first from a place Frantz Fanon described as one of non-being,⁷¹ of humanity denied, of embodied negation. The awareness of this denied and violated humanity drives social movements of impacted communities and their allies, and in this sense the struggle over our individual and collective humanity is also the struggle for human rights in its most fundamental sense. In the words of Goodale, this effort to claim or reclaim one’s humanity, fighting for justice against structures of oppression, “connote” the human rights of the future.

One concrete way the human rights frame is deployed by collective struggles for justice in the United States is to critique and shift the dominant civil rights narrative that masks structures of oppression. Jamil Dakwar in the Symposium’s first panel exposed the threat posed by the framing of racial justice as a human rights issue to U.S. exceptionalism, and the squashing of that current when it arose within the NAACP so that the United States would not be held accountable for the legacies of racism in the international arena. Now the flip side of that dynamic is in play, as social movements like Black Lives Matter,

69. MARK GOODALE, *REINVENTING HUMAN RIGHTS* 22–21 (2022).

70. *Id.* at 27.

71. FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 2 (Pluto Press eds., 2008).

MMIWG or the immigrant rights movement challenge the inability of the U.S. or western legal systems to address systemic racism by invoking the denial of Black humanity, the collective rights of Indigenous communities, or the dignity of persons in human mobility.

A common theme of the Conference was the way in which participation by impacted communities and their voices are driving norm creation in the Inter-American System and the human rights community at large. Commissioner Roberta Clarke acknowledged as much by noting how the Commission leverages the engagement of the system by civil society to address consequential human rights issues, their structural causes, and normative development. In Judge Marion Buller's telling, the framework for confronting the genocidal logics of settler colonialism at the root of violence against Indigenous women in Canada emerged from approaching the issue from an Indigenous perspective and listening to the truth of the survivors. The right to truth, and the purpose of truth commissions in the work of transitional justice, is redefined as the truth of the survivors. Consequently, the remedies proposed include strengthening the sovereignty and collective rights of Indigenous people and attending in a holistic way to their economic, social, cultural and environmental rights, all from the participation of Indigenous women. Similarly, UCLA Law Prof. Lauren van Schilfgaarde advocated for the reproductive rights of Native women from a perspective of collective rights tied to women's relationality to the community and the land. REDESCA Special Rapporteur García Muñoz called for shifts in Los Angeles municipal law after listening to the testimony of the unhoused and its dehumanizing implementation. In the Convening on Climate Reparations and Racial Justice, movement organizations from the Global South defined the contours of reparations in relation to racial justice, redistributive justice, and broad systemic change, urging the radical reimagining of existing frameworks by centering their knowledge and experience.

These movements are challenging oppressive structures, creating and deploying a counter-narrative in resistance to the dehumanizing logic of those structures. Admittedly, those structures transform at a glacial pace, which is only indicative of the long road ahead. However, there are small signs that movements are advocating from within for a different type of humanity, a resurgent humanity born out of the struggle and project of revindication. This was noted in the celebration of human dignity described by Alliance San Diego, Michael Brown, Sr.'s transformation of pain into purpose with his Chosen for Change

organization, and the capacity for joy and communal sharing amongst the unhoused community with the visit of the REDESCA Special Rapporteur. The construction of identities in the struggle and an ethics of relationality and care points to a redefinition of what it means to be human; this forms a basis not only for reimagining human rights, but for reimagining society beyond the structures of white supremacy, settler colonialism, capital exploitation, heteropatriarchy, ableism, or any other structure of oppression.

Through his ethnography of human rights practice, Goodale identifies a necessary engagement with the human rights frame that is creative of human rights and trans-local in character in order to engage the most consequential challenges of our times such as rising inequality, climate crisis, and structural legacies of racism and colonialism.⁷² In a modest but significant way, this was the form of human rights practice on display during the Conference. In dialog with movement actors and their experience of non-being and struggle for justice, it becomes possible to begin to reimagine and reinvent human rights to create a different collective future for society based on our fundamental relationality and an ethics of care or radical love.

72. Goodale, *supra* note 69, at 35.

