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## A Human Rights Challenge: Advancing Economic, Social and Cultural Rights

Mary Robinson

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*Justice Mathew O. Tobriner  
Memorial Lecture\**

**A Human Rights Challenge: Advancing  
Economic, Social and Cultural Rights**

MARY ROBINSON\*\*

Chancellor Mary Kay Kane,  
Distinguished Guests, Faculty and Students,  
Ladies and Gentlemen:

It is a great pleasure to be here at the Hastings College of the Law to deliver the Mathew O. Tobriner Memorial Lecture. I would like to thank the Hastings community for inviting me to return to San Francisco, one of my favorite cities, and to address all of you this evening.

I had the pleasure of meeting a number of judges at lunchtime, and then a group of students this afternoon. Let the record show: the students asked tougher questions!

I would like to thank Tom Nolan for his very kind introductory words—given how much he really knows about me!

As I was reading through the background materials about this lecture series I was struck by how a reference to Justice Tobriner related to the issue I would like to speak with you about this evening. In writing about Justice Tobriner's distinguished career, Judge Robert Peckham summed up his legacy this way: "His life's work teaches us that the

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\* The Mathew O. Tobriner Memorial Lecture, University of California, Hastings College of the Law, San Francisco, California, October 4, 2004. The annual Mathew O. Tobriner Memorial Lecture was established in honor of former California Supreme Court Justice and former Hastings faculty member Mathew O. Tobriner. Each year Hastings College of the Law sponsors a lecture by a distinguished legal scholar or prominent personality to build on the legacy of Justice Tobriner's outstanding accomplishments as a legal scholar and jurist.

\*\* Executive Director, Ethical Globalization Initiative; United Nations High Commissioner for Human Rights, 1997–2002; President of Ireland, 1990–1997; Chancellor, Dublin University; Founding Member and Chair, Council of Women World Leaders; Former Senator, Ireland, 1969–1989; Reid Professor of Constitutional Law, Trinity College, Dublin, 1969–1975; LL.M., Harvard University, 1968; Barrister at Law, King's Inns, Dublin, 1967; M.A., LL.B., Dublin University, 1967.

pursuit of justice demands vigilant attention to the ‘social imperatives of our times.’”

I find this to be a powerful notion—that justice must be linked to an evolving social consciousness about the pressing problems of our day. It is a useful frame for engaging you all in a discussion about the international human rights agenda. As those of you who work in the field of international law know, that broad agenda is one that is still not fully embraced here in the United States. It covers civil and political rights—to liberty, to freedom of speech and religion, freedom from torture and fair trial—which are all part of the best American traditions. But it includes as well economic, social and cultural rights—to an adequate standard of living, to health, education and decent work which are much less familiar yet also spring directly from U.S. leadership here at home and on the world stage.

It is my deep conviction that if we hope to address the underlying and unresolved human problems of injustice and despair, problems which incubate the indiscriminate rage and violence we see around the world today, problems which have widened the divides between North and South, rich and poor, secular and religious, we must take the international human rights agenda seriously here in the United States and around the world.

In beginning down that road, we might first ask ourselves: What are the social imperatives that shape our times? We would undoubtedly include among today’s most pressing challenges issues such as maintaining security and civil liberties in the midst of heightened terrorist threats, lifting billions of people out of poverty and despair and making globalization a positive force for all, empowering the millions of women who continue to be discriminated against in many parts of the world and combating diseases like HIV/AIDS which threaten to set back human development for generations. I believe our lack of significant progress to date in addressing these challenges has been due in large part to our failure to confront them as problems of injustice instead of seeing them simply as problems of inadequate resources, or lack of political will.

We can and should look to the best traditions of U.S. leadership for guidance and inspiration in changing that outlook. In an important new book titled, *The Second Bill of Rights: FDR’s Unfinished Revolution and Why We Need It More than Ever*, University of Chicago law professor Cass Sunstein recalls how President Franklin Roosevelt, in his 1944 State of the Union Address, argued that security “means not only physical security which provides safety from attacks by aggressors,” but also “economic security, social security, moral security.” He stressed that “essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want.”

While in the United States and Europe the focus since 9/11 has been on state security and combating acts of terrorism, millions of other people on the planet have continued to be at daily risk from violence, disease and abject poverty. Their insecurity continues to stem from worry about where the next meal will come from, how to acquire medicines for a dying child, how to avoid the criminal with a gun, how to manage the household as a ten year old AIDS' orphan—their is the comprehensive insecurity of the powerless.

For women, gender is itself a risk factor threatening human security: the secret violence of household abuse, the private oppressions of lack of property or inheritance rights, the lifelong deprivations that go with lack of schooling and the structural problem of political exclusion.

Freedom from want is an empty promise today for more than 800 million people who suffer from undernourishment, for the 30,000 children around the world who die each day of preventable diseases, for the thousand million people still without access to clean water supplies or the 2.4 billion who lack access to basic sanitation.

An unprecedented number of countries actually saw their human development indicators slide backwards in the 1990s. In 46 countries people are poorer today than in 1990. In 25 countries more people go hungry today than a decade ago. The picture that emerges is increasingly one of two very different groups of countries: those that have benefited from more open markets, free movement of capital and new technologies and those that have been left behind.

Statistics give us the numbers we account for in addressing inequalities, but they fail to convey the humiliation, the hopelessness, the lack of dignity involved. Listening to a family living in absolute poverty it is this lack they speak of: the lack of self respect, the indignity and humiliation of a refugee camp, the invisibility of being homeless, the helplessness in the face of violence, including violence caused by those in uniform who should protect.

What I began to appreciate as President of Ireland—on visits, for example, to Somalia and Rwanda—and became convinced of during my five years serving as United Nations High Commissioner for Human Rights—is that the underlying causes of practically all human insecurity are an absence of capacity to influence change at personal or community level, exclusion from voting or participating in any way in local and national decision making, and economic or social marginalization. The key to change lies in empowering people to secure their own lives. For this people need the means to try to hold their governments accountable, at local and national levels.

Throughout my term as High Commissioner, I emphasized that we had entered a new era for human rights following the fall of the Berlin wall and the end of the Cold War. We had an opportunity to move on

from the sterile years when Western countries focused almost exclusively on the importance of civil and political rights, and used these in their critique of Soviet bloc countries and many developing countries, while those countries in turn emphasized economic and social rights while rejecting criticism of their political structures and lack of civil rights protection. I was convinced the time had finally come to take the two sets of rights equally seriously, as the drafters of the Universal Declaration of Human Rights intended, and find the most effective ways to promote and protect them.

A number of steps were taken at the international level during this period which helped strengthen efforts to better define and implement economic, social and cultural rights. For example, new mandates were created by the UN Commission on Human Rights, which appointed special rapporteurs in areas such as education, food and the highest attainable standard of health as well as an independent expert on the right to development, all of whom have made substantive contributions to advancing the agenda on these issues. At the request of the UN Committee on Economic, Social and Cultural Rights, the Office of High Commissioner for Human Rights worked to develop human rights guidelines for Poverty Reduction Strategies.

Important strides were also made by UN agencies and programs following Secretary-General Kofi Annan's call for human rights to be mainstreamed throughout the UN system. Key UN bodies, from the UN Development Program to the World Health Organization and the UN Children's Fund (UNICEF), emphasized the human rights framework in implementing their mandates. They and other UN actors adopted a common understanding of what they would mean by "a rights-based approach." As part of this effort, the Office of High Commissioner increased its cooperation with UN country teams working on economic and social development issues. Regional meetings have reviewed national case law, and shared experiences of how different national courts and regional systems were addressing international commitments concerning economic, social and cultural rights.

I also found through my travels as High Commissioner that human rights activists and NGOs in every region were increasingly using international treaties such as the International Covenant on Economic, Social and Cultural Rights (ratified by 149 states), the Convention for the Elimination of Discrimination against Women (ratified by 177 states), and the Convention on the Rights of the Child (ratified by 192 states), to press their governments into making legislative and policy changes in areas relating to education, health care and other social issues. Women's groups, environmental movements, child advocates, minority groups, those tackling poverty, were all increasingly seeing the value of applying their governments' human rights obligations to budget analysis,

legislation and social policies to expose failures to implement progressively rights to the highest standards of health, to education and adequate housing among others.

Major international NGOs such as Amnesty International and Human Rights Watch were also expanding their work to include research, policy planning and advocacy around economic and social rights concerns. Development NGOs such as Oxfam, of which I am proud to serve as Honorary President, made commitments to developing rights-based approaches to their activities.

All of these were welcome events. But there were limitations as well. Problems of precision in how human rights standards can be applied in different policy making situations remain, especially in economic and social policy fields.

As Ken Roth, Executive Director of Human Rights Watch, makes clear in a recent article in *Human Rights Quarterly* titled "Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization," in many instances a multitude of actors bear some responsibility for shortfalls concerning economic and social rights and as a result "the stigma attached to any person, government or institution is lessened, and with it the power of international human rights organizations to effect change." He points out that advocacy in support of economic, social and cultural rights is often complicated by the fact that many key decisions center around issues of "distributive justice"—how scarce resources should be allocated. Allocated for example, between health and education or health and building roads—and he notes that human rights organizations have not yet developed good methods for adjudging trade-offs between two potential goods and notes that the people directly concerned by such decisions are in a better position to make them than international human rights organizations.

These are important issues that require more discussion. The progressive realization of economic, social and cultural rights requires a complex interaction of policies and programs in a wide range of sectors and institutions. The point I wish to stress is that these rights can and should be used by citizens to lobby their representatives. Organizations like Human Rights Watch have a critical role to play in assisting countries in this process.

Of course, it may be quite effective to use such arguments where the issue is not the allocation of scarce resources, for example, between medical treatment and primary education but rather between schools, on the one hand, and unnecessary military expenditures on the other; or where the resource scarcity is the product of governmental corruption. Corruption and misguided military expenditures are instances of "arbitrary" governmental conduct, which international human rights

organizations can effectively address. The difficulties arise around competition for scarce resources in relation to economic and social outcomes that are good, in human rights terms. More work needs to be done to develop and clarify how human rights methods can improve outcomes and decision-making.

International human rights organizations, especially those like Human Rights Watch with extensive expertise and capacity, can play a critical role in promoting the recognition of economic, social and cultural rights as true legal rights (as opposed to mere aspirations) which carry with them real state obligations. It is through such recognition that the local citizenry—civil society—may be empowered to advance their interests.

Let me close by returning to the particular challenge of promoting the broad international human rights agenda here in the United States. Succeeding U.S. administrations have consistently rejected the idea of education, health, adequate housing, or food as *rights* to which citizens are entitled. Arguments most often heard contend that these are aspirations, not justiciable rights. Others point to fears that U.S. sovereignty and states' rights would be put at risk by ratifying such agreements. These philosophical and legal issues have been debated on all sides for many years now. I would be happy to hear your views about these issues during our discussion period this evening. But what shouldn't be left out of that discussion, in my view, is the extent to which the human rights vision, legal framework, methods and strategies could support and strengthen U.S. social justice activism today.

Allow me to leave you with a question and a challenge. What could this law school and the larger community of which it is part do to encourage more attention to economic, social and cultural rights in the United States? One possibility is to learn more about and engage with the emerging U.S. human rights movement, which is seeking to reclaim the full legacy and meaning of international human rights here at home. I see this movement taking shape in many places. For example, a growing number of U.S. medical professionals and groups such as Physicians for Human Rights are pushing for greater recognition of the right to the highest attainable standard of health for all and demonstrating the impact this shift would have on the way decisions are made about health spending and access to health services, especially for the most vulnerable.

U.S. development and humanitarian NGOs are increasingly aware of the human rights covenants and conventions that have been ratified in the countries where they are working, they know what reports have been submitted by governments on their rights performance and the comments of the relevant treaty monitoring committees, and they know if there have been visits and reports by UN experts. They are linking this information to their own work and in particular how they seek to

empower grass roots civil society groups in using this framework to push for results.

Many challenges face this emergent U.S. human rights movement. The government's ongoing aversion to international law and institutions and the lack of awareness about international standards amongst the general public among others must be faced. As you will know, most Americans still aren't aware of the Universal Declaration of Human Rights or the role this country played in creating the international human rights movement over 50 years ago.

The challenge now is to redouble our efforts to move the broad human rights agenda forward together. We will need both to identify new opportunities and work more effectively with new partners: including development organizations, foundations, progressive business leaders, faith-based groups and grass roots movements aimed at empowering the poor.

In the end, I believe we live in difficult, yet hopeful times. The ongoing challenge of speaking out against the erosion of civil liberties that we have witnessed in the aftermath of 9/11 will continue to be a priority in the foreseeable future. Calling on all nations to hold fast to their international legal obligations and reaffirm their commitment to multilateralism will require concerted efforts. But we should also be hopeful. A movement, which is seeking a fairer world where all people are guaranteed their fundamental rights, is growing. The people of this country should join their voices to that growing chorus. The key lies in renewing a commitment here at home to achieving all human rights for all people.

Thank you.



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