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## International Law and Prospects for Justice

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## **DAVID J. BEDERMAN LECTURE INTERNATIONAL LAW AND PROSPECTS FOR JUSTICE**

*The Honorable Rosalie Silberman Abella\**

**DEAN MARY ANNE BOBINSKI:** Greetings and welcome. I'm Mary Anne Bobinski, Dean of the Emory University School of Law. I'm delighted to welcome everyone to this year's annual David J. Bederman Lecture. The late David J. Bederman was the K.H. Gyr Professor of Private and International Law. He was a world class scholar in International Law, who also served as an advocate on these topics before various courts including the Supreme Court of the United States.

And with that introduction, I'm already telling you a little bit how special this person was, to hold a named professorship at Emory Law School of course means that you are among the leaders in your field. But to combine that with advocacy in front of the courts and Professor Bederman's deep devotion to students, and the way in which he was such a warm and inspiring colleague to all those who had the pleasure of working with him, all those things in combination make him truly a rare and special individual who we are honored to be recognizing today with this lecture.

Unfortunately, with all those gifts in mind, Emory lost Professor Bederman in 2011 after his battle with cancer. Thereafter, the Law School received a generous gift that allows us to hold this annual lecture series, and very importantly, that allows students to have a fellowship at The Hague Academy of International Law. Again, those two things in combination, excellence in engagement with knowledge, with the intellectual pursuits of International Law and the real-life impact of that field all around the world that we see, and that deep engagement with students in making sure that students have the very best possible challenging experiences that will allow them to be inspired in the environments that they are in, and to go on and be inspirations in their own careers moving forward. This gift that allows us to have this lecture and support those students is truly a special way of recognizing Professor Bederman.

I'm also happy to recognize today David's family, his parents, Dr. and Mrs. Bederman, who are joining us here today, his wife Lorre Cuzze, who he met at

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\* Justice Rosalie Silberman Abella has served on the Supreme Court of Canada since 2004. Prior to her appointment, Justice Abella served on the Ontario Court of Appeal. Justice Abella graduated from the University of Toronto with a Bachelor of Arts (1967) and an LL.B (1970). Justice Abella was appointed to the Ontario Family Court at the age of 29, as the youngest and first pregnant person to be appointed to the judiciary in Canada.

The Hague I'm told, although I've not heard the story yet, who also joins us. His daughter is not able to be present due to other commitments.

And in addition to our distinguished speaker, Madame Justice Rosalie Abella who I'll be introducing in a moment, I'm also delighted to welcome Nadia Theodore, the Consul General of Canada for the Southeastern United States; Judge Dorothy Beasley, formerly of the Georgia Court of Appeals; Chief Judge Chris McFadden, Georgia Court of Appeals; Judge Amy Totenberg, U.S. District Court for the Northern District of Georgia; Mr. James Gerstenlauer, Chief Executive of the United States Court of Appeals for the Eleventh Circuit; and of course the friends, alumnae, family, students and others who have come to hear today's speaker.

I'd also like to say a special word of thanks to Laurie Blank, who is the Director of the Emory Law Center for International and Comparative Law, and the International Humanitarian Law Clinic, and who is the organizer for this event, and who has been tireless in her efforts to insure that this lecture is available to us all, and that we have in particular our esteemed lecturer who I will now introduce.

It is my honor to introduce Madam Justice Rosalie Silberman Abella. I have to say just as a personal aside, that some of you may know that I was a dean of a law school in Canada for some period of time. It was one of the highlights of my time as dean to be able to go to the Supreme Court of Canada and to meet Justice [Abella] who I had heard so much about in every possible context you can imagine, from the excited engagement with what was important and true and real and an emerging thing that should be paid attention to in Canadian constitutional law, to people who've been touched by Justice Abella personally who felt their lives and careers and way of viewing the world had been changed as a consequence of that connection.

So, it was with some trepidation that I stood outside the door of Justice Abella's chambers, knowing that I was about to meet one of Canada's most illustrious jurists, who was recognized around the world for her work in human rights. And I was drawn into the office, and it was this intense, there was art, there was intellectual engagement. She started asking me about health law, which was my field of interest which I had managed not to think about in my time as dean for as much time as I should have, I realized, because she was asking very penetrating questions about the developments of bio-ethics in the law. It was truly an extremely important moment and one in which everything that I had heard about Justice Abella was reinforced just in those few moments that we had to spend together. So when I came to Emory and realized that I had

the good fortune of being able to encounter Justice Abella again, I was amazed and delighted, and did everything I could not to take credit for Professor Blank's initiative, and yet to be drafted along, swept along in the excitement of the moment for our community.

It's also important as I shared my personal anecdote, to think about the way in which Justice Abella's life and career actually connect so deeply to the purposes of the Bederman Lecture, the reason for our being here today. It's hard really to imagine a speaker who could connect in any more deep or profound way with the things that we are recognizing today with David Bederman's life and life's work. To the idea of International Law as an avenue for justice and the protection of rights, to be together thinking about how deep study of international laws, values and norms are an essential aspect of our humanity and the society that we live in.

Justice Abella's life story reflects these very goals and values. She has received international recognition for her lifelong commitment to human rights and equality. Her life story mirrors the issues that we are talking about today. She was born in a displaced persons' camp in Stuttgart, Germany. Her family came to Canada, went to Canada as refugees in 1950. Among the many firsts that you'll hear me talk about in the next few moments, she's the first refugee appointed to the bench in Canada.

Justice Abella earned her Bachelor in Law degree from the University of Toronto, and she was appointed to the Ontario Family Court at the age of 29, the youngest person and first pregnant person to be appointed to the judiciary in Canada, two more firsts.

Justice Abella is well known, nationally and internationally, for the work that she did as the sole commissioner of the 1984 Royal Commission on Equality in Employment, where, as part of that work, she created the concepts of employment equity, and her view on equality and discrimination that she developed in that report were later adopted by the Supreme Court of Canada, and also by governments in Canada, New Zealand, Northern Ireland and South Africa.

She was appointed to the Ontario Court of Appeals in 1992, and to the Supreme Court of Canada in 2004, becoming the first Jewish woman to serve in that role. She has written over 90 articles and written or co-edited four books. It will be no surprise, given her distinguished career and impact nationally and globally, she holds 39 honorary degrees. It is my true pleasure and honor to introduce you to Justice Abella, this year's annual Bederman lecturer.

**JUSTICE ROSALIE SILBERMAN ABELLA:** I don't think it's very polite for a dean to introduce a speaker and make her cry before she even opens her mouth. But thank you, Dean Bobinski. It is America's gain and Emory's gain that we have lost one of the best American gifts we got when you came to join UBC. Dean Bobinski was famous in Canada for being an extraordinary leader who inspired and encouraged and turned the UBC Law School into one of the finest in the world. So, she is here now at one of the finest universities in the world, and again, this law school and Dean Bobinski deserve each other. Thank you for that very generous introduction.

And how great is it to come here thanks to Laurie Blank's persistence and find that we have not only Laurie Blank in common, but Dean Bobinski in common, and now all of you, my new best friends. So, thank you for being here, Chief Justice McFadden and Judge Beasley. I know how busy you are, and I really appreciate the fact that you're here, and Consul General Theodore.

Mostly, though, it's just an honor to be here with the family of David Bederman, his parents and his wife. I read about Professor Bederman, and I must say I was just overwhelmed by the depth of his humanity and his scholarship. Usually you have people in an area like International Law who are experts in an aspect of it, because it's huge. He seems to have been an expert in about six different areas of law, and world renowned in every single one of them.

To be able to give a lecture in his name on International Law, the issue that he cared most about, to do it in the name of such a fine scholar and a mensch, from everything that I read, is something that makes me very, very proud.

As I prepared this, I thought, what would David Bederman have thought about International Law today? And I think he would have been worried. We are on the edge of a new future, one unlike any I've seen in my lifetime. It's a future that's very divisive, very insensitive, and at times very macho. That makes it very dangerous.

The moral climate is changing the world and creating an atmosphere polluted by bombastic anti-intellectualism, sanctimonious incivility, and a moral free-for-all. Everyone is talking, and no one is listening. It was not supposed to be like this. What happened?

I'm a lawyer. That means I believe in law and justice. Like most of you, I also care deeply about human rights. The recent events in Syria, with the unconscionable sacrifice of the Kurds, have been like a Polaroid picture of international law. With time, the picture comes into clear focus. And with clarity,

my deepest fears are increasingly confirmed. What do I mean? I mean that increasingly I have come to see international law, in particular international human rights law, as having a dysfunctional relationship with justice. The rhetoric is beautiful, but it's all dressed up with no place to go. So, this International Law lecture is about global democracy, rights and justice, all of them missing in action far too frequently.

Let's start with the term, rule of law, the holy grail of democratic discourse today, and the one everyone invokes to justify legitimacy of their perspective. I confess that I've always been somewhat confused by the use of the term rule of law as an organizing principle. Beyond students of scholars like Joseph Raz, H. L. A. Hart, and Ronald Dworkin, I think the debate between positivists who see the rule of law as a procedural concept, and those who see it as one with moral substance, is lost on most lawyers, let alone members of the public. Universal principles to which most of us are expected to give aspirational loyalty should not be shackled with semantic ambiguity. After all, this generation has seen the rule of law oppose apartheid, segregation, and genocidal discrimination. It frankly makes me wonder why we cling so tenaciously to the moniker.

So, what are we really talking about? We're talking about, I think, some universal goals, insuring limitations on arbitrary state power, protection against rule by whim, and about our belief in law as an instrument of procedural and substantive justice. If I'm right, that that's what we're really talking about when we talk about a just rule of law, doesn't that mean that what we're talking about is what we've come to see as the indispensable instruments of democracy, due process, an independent bar and judiciary, protection for minorities, a free press, and rights of association, religion and expression?

Those are core democratic values, and I for one am not the least bit embarrassed to trumpet them. Because when we trumpet those core democratic values, we trumpet the instruments of justice. And justice is what laws are supposed to promote.

I think we need to emphasize that when we talk about democracy, we're not just talking about elections. To say democracy is only about elections is like saying you don't need the whole building if you have the door. Elections tell democracy it's welcome to come in. But elections are only the entrance. Without a home, democracy can't settle down. It needs an edifice of rules and rights and respect to grow up healthy and secure. So, we should be out there promoting the universalism of democratic values rather than a euphemism like rule of law. We need the rule of justice, not just the rule of law.

I know democratic values aren't a guarantee, but they're the best goals because without democracy, there are no rights. Without rights, there's no tolerance. Without tolerance, there's no justice. Without justice, there's no hope.

What kinds of rights are we talking about? Two kinds: human rights and civil liberties, both crucial mainstays of our democratic catechism, and both at risk. To understand the difference between them, and why that difference matters to how we deliver justice internationally and nationally, we have to start at the beginning of the story.

The rights story in North America, like many of our legal stories, started in England. The rampant religious, feudal and monarchical repression in the 17<sup>th</sup> Century in England inspired new political philosophies, like those of Hobbes, Locke, Hume, and John Stuart Mill, philosophies protecting individuals from having their freedoms interfered with by governments. Those were the theories of civil liberties which came to dominate the rights discussion for the next 300 years.

They were also the theories which journeyed across the Atlantic Ocean and found themselves firmly planted in American soil, receiving confirmation in the Declaration of Independence, guaranteeing that every man enjoyed the right to life, liberty, and the pursuit of happiness, and that government existed only to bring about the best conditions for the preservation of those rights. And thus, was born the essence of social justice for Americans, the belief that every individual American had the same right as every other American individual to be free from government intervention. To be equal was to have the same right, no differences, neutrality, leading, as Anatole France wryly observed, to the rich and the poor having the same right to sleep under bridges and steal bread.

Unlike the United States, we in Canada were never concerned only with the rights of individuals. Our historical roots involved a constitutional appreciation that the two cultural groups at the constitutional bargaining table, the French and the English, could remain distinct and unassimilated, and yet of equal worth and entitlement. That is, unlike the United States whose individualism promoted assimilation, we in Canada have always conceded that the right to integrate based on differences has as much legal and political integrity as the right to assimilate. Integration based on difference, equality based on inclusion despite difference, and compassion based on respect and fairness. Those are the principles that to me form the moral core of Canada's national values, and the values that make us, I think, the most successful practitioners of multiculturalism in the world. But I digress.

In any event, the individualism at the core of the political philosophy of rights articulated in the American Constitution ascribing equal civil, political and legal rights to every individual regardless of differences became America's most significant international export, and the exclusive rights barometer for countries in the western world. It was formal equality, it was diocesan, it ignored group identities and differences, and indeed regarded collective interest as subversive of rights. It was a theory that saw no distinction between yelling fire in a crowded theater and yelling theater in a crowded fire hall.

It wasn't until 1945 that we came to the realization that having chained ourselves to the pedestal of the individual, we'd been ignoring rights abuses of a fundamentally different kind, namely, the rights of individuals in different groups to retain their different identities without fear of the loss of life, liberty or the pursuit of happiness. It was World War II which jolted us permanently from our complacent belief that the only way to protect rights was to keep governments at a distance and protect each individual individually. And what jolted us was the horrifying spectacle of group destruction, a spectacle so far removed from what we thought were the limits of rights violations in civilized societies, that we found our entire vocabulary and remedial arsenal inadequate. We were left with no moral alternative but to acknowledge that individuals could be denied rights, not in spite of but because of their differences, and we started to formulate ways to protect the rights of the group in addition to those of the individual.

We had, in short, come to see the brutal role of discrimination, and invented the term human rights to confront it. So we blasted away over the next several decades at the conceptual world that had kept us from understanding the inhibiting role group differences played, and extended the prospect of full socio-economic participation to women, non-whites, indigenous peoples, persons with disabilities, and those with different linguistics, and sexual identities. And most significantly, we offered this full participation and accommodation based on and notwithstanding group differences.

Civil liberties had given us the universal right to be equally free from an intrusive state regardless of group identity. Human rights had given us the universal right to be equally free from discrimination based on group identity. Both are crucial for making justice real for real people.

But then we seemed to stall as the last century was winding down. What we appeared to do, having watched the dazzling success of so many individuals and so many of the groups we'd previously excluded, is conclude that the battle with discrimination had been won, and that we could as victors remove our human

rights weapons from the social battlefield. Having seen women elected, promoted, and educated in droves, having permitted parades to demonstrate gay and lesbian pride, having started to recognize our shameful treatment of indigenous people, and having constructed hundreds of ramps for persons with disabilities, many were no longer persuaded that the diversity theory of rights was any longer relevant, and sought to return to the simpler rights theory in which everyone was treated the same. And we started to dismissively call a differences-based approach political correctness, or an insult to the goodwill of the majority, and to the talents of minorities, or, you've all heard it, a violation of the merit principle.

Somehow, as the 20th Century ended, we started to let those who had enough say, enough is enough, allowing them to set the agenda while they accused everyone else of having an agenda, and leaving millions wondering where the human rights they were promised were, and why so many people who already had them thought the rest of the country didn't need them. So here we are in 2019, trapped in a frenetically fluid, intellectually sclerotic, rhetorically tempestuous, ideologically polarized, and economically myopic discourse that is clamoring for our attention.

And that brings me to what I see as the fragility of justice in too many parts of the world, where democratic institutions and values are thrown under the bus, victims of global indifferences, and where, far too often, political expediency victimizes truth.

It was not always so. After 1945, the global community demonstrated an enormous capacity for constructing legal systems and institutions to enhance and advance international human rights law. Through the UN charter, the peoples of the United Nations determined to reaffirm faith in fundamental rights, in the dignity and worth of the person, and in the equal rights of men and women, and of nations large and small.

It was created for the purpose of achieving international cooperation and promoting and encouraging respect for human rights and fundamental freedoms for all. But the human rights revolution that started after and because of World War II seems to have too few disciples in the countries that need it most.

Compare this state of affairs with the revolution in international trade law. Like international law generally, international economic law has witnessed an institutional proliferation of organs like the OECD, the ILO, the United Nations Commission on International Trade Law, and of course the IMF, the World Bank, and GATT.

Then, in 1994, the Marrakesh Agreement established the WTO, which came into being on January 1, 1995, dramatically extending the reach of trade regulation, and creating a comprehensive international legal and institutional framework for international trade. After only 25 years in operation, and until very recently, the WTO is in essence international law's child prodigy. Like the UN, the WTO struggles with reconciling the interests of the most powerful states and the least, as is obvious from the tumultuous and ongoing multi-year saga of the Doha Developmental Round of negotiations. Yet despite occasional criticism, the WTO and its dispute settlement mechanism in particular, are regarded as legitimate, effective and influential in international relations.

So, you can see that international trade law has, like international human rights law, constructed a complex network of institutions and norms to regulate state conduct. But unlike international human rights law, states comply with international trade law. And in the event of noncompliance, an effective dispute resolution mechanism is available to settle any disagreements. In other words, what states have been unable to achieve in 65 years of international human rights law, is up and running after only 25 years of international trade regulations. I find this dissonance stark and unsettling.

If we look at international trade and international human rights law in parallel, we can make a number of discouraging observations. First, unlike the United Nations, the WTO is extremely difficult to join. That means that the global community feels that obtaining membership in a trade organization should be harder than obtaining membership in an organization responsible for saving humanity from inhumanity.

Second, the global community agrees on the principles underlying international trade law, nondiscrimination, and most favored nation. In contrast, the global community cannot agree on the principles underlying international law generally, so sovereignty and human rights continue to conflict.

And there was so much cheering when we thought the global community had finally resolved the rancorous longstanding debate about humanitarian intervention through the General Assembly's unanimous endorsement of the Canadian-sponsored doctrine of the Responsibility to Protect in 2005. It seemed at last that we had seen a triumph of human rights over sovereignty. But then at the end of July 2009, the United Nations General Assembly debated Responsibility to Protect for the first time since unanimously endorsing the doctrine in 2005, and the whole thing seemed to unravel before our eyes.

What's wrong with this picture and what does it tell us about our global priorities? This generation has had the most sophisticated development of international laws, treaties and conventions the international community has ever known, all saying that human rights abuses will not be tolerated. But we've also had, among others, the genocide in Rwanda, the massacres in Bosnia and The Congo, the repression in Chechnya, the child soldiers in Sudan, Zimbabwe, China, Myanmar, Pakistan, Syria, Iran, Putin, Darfur, Hungary, Poland, and Turkey, among many others. And of course, the refugees dying by the hundreds as they seek refuge from the wrath of African conflicts. And now we have the latest unconscionable global tragedy in the treatment of the Kurds.

What's going on and what do we need to do to think about how to fix it? And fix it we must. Because unless we pay attention to intolerance, the world's fastest growth industry, we risk losing the civilizing sinews that flexed the world's muscles after World War II. We changed the world's institutions and laws then because they had lost their legitimacy and integrity. We may be there again. Not so much because our human rights laws need changing, but because a good argument can be made that our existing global institutions, and especially the United Nations' deliberative role, are playing fast and loose with their legitimacy and our integrity.

I make these observations not because I have any particular solutions to propose, because I don't, but because I want to hear a serious conversation among people more expert than me, people who care deeply about the moral choices we make as a global community about how to fix the status quo in which some of the worst criticisms are directed at Western democracies, what I would call low-hanging fruit, while the worst abusers barely glance over their shoulders, too busy doing now whatever they want to their own citizens to care about history's judgment later. So, we have many laws to protect humanity from injustice, but not enough enforcement to turn those laws into justice.

The human rights abuses occurring in some parts of the world are putting the rest of the world in danger because intolerance in its hegemonic insularity seeks to impose its intolerant truth on others. Yet for some reason, we're incredibly reluctant to call to account the intolerant countries who abuse their citizens, and instead hide behind silencing concepts like cultural relativism, domestic sovereignty or root causes. These are concepts that excuse intolerance. Silence in the face of intolerance means intolerance wins. Too many rights abuses go unrecognized, let alone confronted. Too many governments have interfered with the independence of their judges and media. Too many people are strident. Too

many people have been killed. Too many people are poor. Too many children are hungry, and too many people have lost hope.

We're in danger of a new status quo where anger triumphs over dignity, and indignity triumphs over decency, and where intolerance is tolerated, and tolerance is not, too much like the old status quo we fought a world war to fix. What has happened to the miraculous regeneration and luminous moral vision that brought us the Universal Declaration of Human Rights, the Genocide Convention, and the Nuremberg trials, those phoenixes that rose from the ashes of Auschwitz and roared their outrage?

Last June, we honored the 75th anniversary of D-Day when the Allies landed in Normandy and allowed justice to emerge assertively from the injustices of World War II. Seventy-five years after the Allies fought for democracy at Normandy, this is not by any stretch the best of all possible worlds. The moral legacies that emerged triumphant from the beaches of Normandy, the legacies each and every one of us is descended from, are at risk. And here we are in 2019 watching that wonderful democratic consensus fragment all over the world. We are rolling back hard-fought human rights for minorities, refugees, immigrants, workers, and women, and rediscovering our pathological attraction to anti-Semitism. We're forgetting our compassion and making the vulnerable more vulnerable in a world that was supposed to have learned the horrendous cost of discrimination, so that being different would no longer expose someone to danger. We are a world now where, as we saw over the last few months at synagogues in Poway and Pittsburgh, in a mosque in New Zealand, and in churches in Sri Lanka, a world where prejudice poisons and hate kills.

The world was supposed to have learned three lessons from the concentration camps of Europe. One, indifference is injustice's incubator. Two, it's not just what you stand for; it's what you stand up for. Three, we must never forget how the world looks to those who are vulnerable. All this because, as Robert Jackson said in his opening address at the Nuremberg trials, the wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated.

To me, this is not just theory. I am the child of Holocaust survivors. My parents spent most of World War II in concentration camps. Their two-and-a-half-year-old son, my brother, and my father's parents and three younger brothers were all killed at Treblinka. My father was the only person in his family to survive the war. He was 35 when the war ended. My mother was 28. As I reached each of those ages, I tried to imagine how they felt when they faced an

unknown future as survivors of an unimaginable past. And as each of our two sons reached the age my brother had been when he was killed, I tried to imagine my parents' pain at losing a two-and-a-half-year-old child, and I couldn't.

After the War, my parents went to Germany where my father, a lawyer with a master's degree in law from the Jagiellonian University in Krakow, taught himself English. The Americans hired him as a defense counsel for displaced persons in the Allied Zone in southwest Germany. In an act that seems to me to be almost incomprehensible in its breathtaking optimism, my parents transcended the inhumanity they had experienced and decided to have more children. I was born in Stuttgart in 1946, a few months after the Nuremberg trials started, and came to Canada with my family in 1950, a few months after the trials ended.

I never asked my parents if they took any comfort from the Nuremberg trials that were going on for four of the five years we were in Germany until we got permission to come to Canada in 1950. I have no idea if they got any consolation from the conviction of dozens of the worst offenders. But of this I am sure: they would have preferred by far that the sense of outrage that inspired the Allies to establish the Military Tribunal of Nuremberg, had been aroused many years earlier before the events that led to the Nuremberg Tribunal ever took place. They would have preferred I'm sure that world reaction to the 1933 Reichstag Fire Decree suspending whole portions of the Weimar Constitution, to the expulsion of Jewish lawyers and judges from their profession that same year, to the 1935 Nuremberg laws prohibiting social contact with Jews, or to the brutal rampage of Kristallnacht in 1938. They would have preferred that world reaction to any one of these events, let alone all of them, would have been at the very least public censure. But there was no such world reaction. By the time World War II officially started on September 3, 1939, the day my parents got married, it was too late.

And so, the vitriolic language and the venal rights abuses, unrestrained by anyone, turned into the ultimate rights abuse, genocide, and millions died. I think lawyers like me, and you have a tendency to take some comfort, properly so, in the possibility of subsequent judicial reckoning such as occurred at Nuremberg. But is subsequent justice really an adequate substitute for justice? I don't for one moment want to suggest that the Nuremberg trials weren't important. Of course, they were. They were a crucial and heroic attempt to hold the unimaginably guilty to judicial account, and they showed the world the banality of evil and the evil of indifference.

But seven decades later, we still haven't learned the most important lesson of all, to try to prevent the abuses in the first place. All over the world in the name of religion, national interest, economic exigency, or sheer arrogance, men, women and children are being murdered, abused, imprisoned, tortured, and exploited with impunity. So, lesson number one not yet learned: indifference is injustice's incubator.

The gap between the values the international community articulates and the values it enforces is so wide that almost any country that wants to can push its abuses through it. No national abuser seems to worry whether there will be a Nuremberg trial later, because usually there isn't. And in any event, by the time there is, all the damage that was sought to be done has already been done.

What has kept the global community from liberating the Universal Declaration of Human Rights and the Genocide Convention from the inhibiting politics of parochialism to which they are tethered, so that they can be free to help create once again a civilized world, confident and willing to provide a future of tolerance and justice? Does this raise questions about the effectiveness of the UN as a deliberative body? It should.

We have to first acknowledge that many of the UN's agencies have achieved great success in a number of areas, peacekeeping, shelter and relief to refugees, UNICEF's extraordinary efforts on behalf of children, and the World Health Organization's fights against polio, malaria and smallpox, among others. The agencies have raised awareness about violence against women, the environment, and the plight of children. And the fact that much of international law works at all is often due to the UN-based agencies.

But the UN was the institution the world set up to implement "never again." Its historical tutor was the Holocaust. Yet it seems hardly to be an eager pupil. What was never supposed to happen again has again and again. Over 90 years ago we created the League of Nations to prevent another world war. It failed, and we replaced it with the United Nations. The UN had four objectives: to protect future generations from war, to protect human rights, to foster universal justice, and to promote social progress. Its assigned responsibility was to establish norms of international behavior. Since then, 40 million people have died as a result of conflicts in the world. Shouldn't that make us wonder whether we've come to the point where we need to discuss whether the UN is where the League of Nations was when the UN took over? I know it's all we have, but does that mean it's the best we can do?

In a world so often seeming to be on the verge of spinning out of control, can we afford to be complacent about the absence of multilateral leadership making sure the compass stays pointed in the most rights-oriented direction? Nations debate, people die. Nations dissemble, people die. Nations defy, people die. Lesson number two not yet learned: it's not just what you stand for; it's what you stand up for.

A concluding story. I've already told you that after the War, my parents went to Germany and that my father was hired as a lawyer by the Americans. A few years ago, my mother gave me some of his papers from Europe when I was preparing a speech for the opening of Pier 21, our Ellis Island, where we landed in 1950. The letters were from American lawyers, prosecutors, and judges he worked with in the USO at Stuttgart. They were warm, compassionate and encouraging letters, either recommending appointment or qualifying my father for various legal roles in the system the Americans set up in Germany after the war.

These Americans not only restored him; they gave him back his belief that justice was possible. One of the most powerful documents I found was written by my father when he was head of the displaced persons camp in Stuttgart where we lived. It was his introduction of Eleanor Roosevelt when she came to visit our DP camp in 1948. He said, we welcome you, Mrs. Roosevelt, as the representative of a great nation, whose victorious army liberated the remnants of European Jewry from death, and so highly contributed to their moral and physical rehabilitation. We shall never forget that aid rendered by the American people and army. We are not in a position of showing you many assets. The best we are able to produce are these few children. They alone are our fortune and our sole hope for the future.

And as one of those children, I am here to tell you that the gift of American justice at its best is the gift that just keeps on going. Lesson number three: We must never forget how the world looks to those who are vulnerable. My life started in a country where there had been no democracy, no rights, no justice. It created an unquenchable thirst in me for all three. My father died a month before I finished law school, but not before he taught me that democracies and their laws represent the best possibility of justice, and that those of us lucky enough to be alive and free have a particular duty to our children to do everything possible to make the world safer for them than it was for their grandparents, so that all children, regardless of race, religion or gender can wear their identities with pride, in dignity and in peace. Thank you.

**PROFESSOR LAURIE BLANK:** Thank you very much. I think we all need a boost to keep us motivated, on course. We have time for some questions. There are microphones set up. Please find your way to the microphone, and we have time to take some questions.

**QUESTION:** My name is Tallulah, and my grandmother was in the same camp as you in Stuttgart and met Eleanor Roosevelt on the same day that your father spoke. It's really powerful to meet you here. I guess my question for all of us, as many of us are the products of people who have had such horrible experiences in their life, and we want to prevent the same injustices in our own legal careers, what do you suggest that we do to remind ourselves that these things can never happen again?

**JUSTICE ABELLA:** That's quite a bond, and to find it here in Atlanta in Emory is extraordinary. I actually don't know what the answer is and what people can do, but I do know people have to do something. And I have such a romantic belief in the power of lawyers and justice. It never occurred to me to be anything else but a lawyer. And you know, it happened because my father had been a lawyer in Europe, as you heard, and when we came to Canada, one of the first things he did was go to the Law Society and say, look, I've practiced law. The Americans let me take some tests and I practiced law in southwest Germany. What tests do I have to write to become a lawyer here in Ontario? And they said, you can't be a lawyer because you have to be a citizen to be a lawyer. That would've taken five years, so he became an insurance agent and did fine, I believe. I had no complaints. He never complained. But the moment I heard that story about his not being able to be what he was, was the moment I decided that I was going to be a lawyer. I was four years old. I had no idea what being a lawyer was, but I kept saying it.

And people in the '50s, when they asked little girls what they were going to be when they grew up, what they really meant was, so you'll get married and have children. Well, I knew that was going to happen because I was Jewish, so of course I was going to get married and have children. But I kept saying, I'm going to be a lawyer, not knowing what it meant. And you know what connected me to that aspiration, and no one ever took me off it, because the two people I cared about most, my parents, said why not? I didn't know girls weren't lawyers. Anyway, I'm 12 years old. I read a lot of big books when I was young, read a lot of big books because I had a lot of time at home, because I wasn't asked out a whole lot on weekends, so I read a lot of big books. But one of them was the first that really made me feel that's what I'm there for, was *Les Misérables*, Victor Hugo's book. The idea that you could go to jail for 19 years for stealing

a loaf of bread to help your sister's child was like, ah, that's what injustice is! And lawyers are the people who are supposed to help prevent injustice. After that, it was a coast.

When I went to law school, there were five women out of 150 people. There were no women. When I was pregnant with our first son in 1973, I didn't know any lawyers who were mothers. By the way, great advocacy tool, being pregnant. Never, never lost a case.

So, I have to tell you that I think lawyers are the people with the power to make justice happen, the power and the duty to make justice happen. It's not our exclusive job. Everybody is responsible for justice. The media plays a huge role in putting a flashlight on injustice and pointing out things that we wouldn't know. But every lawyer in his or her own way has a responsibility to keep these issues going. And if you're going to be a corporate lawyer or if you're going to be a family lawyer, criminal lawyer, whatever you do, I think you still have a responsibility to keep people's eyes paying attention on who we're leaving behind.

So, there's a great temptation when you're successful to say, I made it; anybody can. I think when you become successful is when you have the biggest responsibility for seeing who's behind you and making sure that in any way you can, in any way you can, you make sure that there are, not to get a perfect world, but to get a less imperfect world, story by story, person by person, country by country. We just can't give up because we're despairing. We have to keep our eye on the despairing and call them out, and say this is not okay, what you're doing in your country. But nobody does.

I grew up loving the United Nations. I remember Dag Hammarskjöld was the apotheosis of what it meant to have global justice. And then a whole bunch of things started to get tolerated, and I thought, so what's the point? Why is it, except for the agencies which are extraordinary, setting the norms for the world, nobody says you shouldn't be doing this? It's all, leave them alone; it's their own country; they have the right to do what they want. Well, they don't. That's not international law. It says they can't. But there's nobody who stops them.

And I'm not talking boots on the ground. The United States can't be the only country doing boots on the ground. It shouldn't be. I'm talking about moral leadership, talking about western democracies getting together and saying, you cannot do this. But it's harder and harder and harder because we're losing more and more adherence to the philosophies that started when I was born after the

war. They don't remember the Holocaust. They don't remember the war. And it's so far away it doesn't feel like it has anything to do with them.

What did Martin Luther King say in his letter from Birmingham jail in 1963? Injustice anywhere is injustice everywhere. So just do what you can.

**QUESTION:** In regard to creating or working towards a solution, I've been constructing something for the past few years I think could genuinely help reduce and help create that slightly more perfect world. I was wondering if you would have time afterwards in which I could discuss it with you more elaborately.

**JUSTICE ABELLA:** I'll tell you what. One of the frustrating things for me as a judge—I can speak very openly—but in two years we have mandatory retirement in Canada. So, in two years when I'm 75, I will be free to say whatever I want to whomever I want. This is the moment when the audience says, oh my God, you can't be 73. You don't look 73!

So, I think it's bravo to you for taking the time to construct something. You're in a perfect environment with brilliant law professors and fellow law students. Work something out, and then send it to me, and whatever I can do when I'm free to do it, I will do it.

**PROFESSOR BLANK:** Okay, final words for us? Final bits of advice for all these young lawyers who are going to go do great things?

**JUSTICE ABELLA:** Can I tell you what I tell law students everywhere I go? Don't take anybody's advice. And the reason I say that was because if I had listened to people's advice, I would not have become a lawyer because girls weren't lawyers, and I certainly wouldn't have become a judge when I was 29 years old. Everybody said that family court, why are you going to the family court? It's the lowest court in the country. One day you could be a trial judge on the trial level, like a real bench? And I said, I don't even know any judges. I'm 29. I'm pregnant with my second child. If they want me to be a judge, I'm doing this. So, I ended up on the Supreme Court because I didn't have in my head, when I left law school, any dream other than to be a really, really good lawyer.

And so, I became like the songwriter Sammy Cahn. You probably don't know. Older people in this audience may remember Sammy Cahn the songwriter. He was once asked, Mr. Cahn, what came first, the words or the music? And he said, the phone call. So, my career, because I was not taking anybody's advice, was just to take opportunities as they came along. People always said you can't run a labor board; you don't know any labor law. True.

And it's very controversial. You can't do a royal commission on equality. The whole country will hate you. They did. When the report came out, every single newspaper in the country from Newfoundland to Vancouver said, this is outrageous. She's recommending that we make employers hire women and disabled people and indigenous people, and non-whites? Really? Well, what can I tell you?

So, all of that was a career-breaker, people said, which would've been a problem for me if I'd had a goal of one day ending up as. So, because I didn't have a goal of one day ending up as, I just took what came along and seemed really interesting. And you cannot imagine the joys that abound in the field of the law. You can teach. You can stay home. You can write novels. You can be a journalist. You can do anything you want with a law degree. I've never met anyone who said, I'm really sorry I got a law degree. I've met a lot of people who have said, I'm sorry I didn't.

So, whatever you do with it, just go with the flow. See what feels right. What felt right for me was not going to work for 90% of the men I went to law school with. But none of them is on the Supreme Court of Canada.