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Introduction

This study explores the comparative historical evolution of the world's three most institutionally developed regional human rights systems: the European, the Inter-American, and the African. The history of the systems is important for several reasons. Between them, the three regional systems have been responsible for a great deal of the human rights work that has been conducted on the supranational level in the post–World War II period. Thanks both to the fact that they are closer to the ground, as it were, than the global human rights mechanisms, and thanks also to the fact that they are more “bottom-up” – with a major part of their work dedicated to responding to communications and complaints from individuals or groups – the regional human rights systems have been dynamic institutions, involved in extensive ongoing interactions with rights advocates and organizations.

The history of the regional human rights systems is also important because they have been less studied than the global-level rights system.¹ To be sure, there is a dedicated body of work focused on each of the three regional systems. This work is often closely focused on one component of caselaw or institutional development or another, however, and rarely examines the systems from a broader perspective. Against this backdrop, examining the development of the European, Inter-American, and African systems collectively and comparatively is helpful both in that it allows each system to be understood in novel ways, and insofar as it helps to clarify the significance of the collective work of those systems relative to the post–World War II development of the field of international human rights considered on the whole.

¹ As another pair of authors who have considered the history of the regional human rights systems have observed, “the broader debate on the history of human rights” that took off in the 2010s “paid surprisingly little attention to regional human rights systems, thereby missing some of the most salient strands of the larger history.” Alexandra Huneeus and Mikael Madsen, “Between Universalism and Regional Law and Politics: A Comparative History of the American, European and African Human Rights Systems,” 16 *International Journal of Constitutional Law* (2018), 136.

Bringing greater attention to the work of the regional human rights systems is valuable for another reason as well. Many of the explorations of human rights to date, whether considering post-World War II developments or broader histories of “the idea” of human rights, tend to focus on particular component parts of the broader field of rights: exploring the influence of important thinkers, the drafting of international conventions, the development of particular human rights organizations and/or of the broader “human rights movement,” or the like. Less explored and emphasized are the forms that different human rights institutions have taken, the manner in which they have approached their work, and the impacts such institutions have had on the human rights field, and on understandings of the meaning of rights, over time. In squarely focusing on the development of some of the most complex and dynamic human rights institutions, this work aims to address that deficit.

In addition, a great deal of the work on international human rights to date has tended to imagine human rights as a western concept, rooted in the European experience. On one level, the ability of various parties to form such an impression is rooted in and closely connected to the history of European imperialism. On another, it has been facilitated by the fact that the European human rights system has produced the greatest volume of caselaw, has the largest body of literature devoted to it, and has often been unreflectively lauded and held up as a model to follow. A focus on the work of the Inter-American and African systems is particularly helpful in this context, in that it helps to expand and complicate that picture, complimenting work that has been done in other contexts, focused for instance on the use made of rights in decolonization struggles,² or on the more radical approaches to rights work that have developed in various national contexts.³

To observe that the regional systems have been comparatively understudied does not mean, of course, that scholarship is lacking; rather, a rich and informative body of work has addressed each system, from a number

² A model text here is Ibhawoh’s *Imperialism and Human Rights*, which highlights both the manner in which invocations of rights were used to attempt to resist repressive components of British rule, as well as the manner in which rights language was used by the British in order to attempt to justify their rule, capturing the polyvalent potential inherent in rights discourse. Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (State University of New York Press, 2007). See also Bonny Ibhawoh, *Human Rights in Africa* (Cambridge University Press, 2017).

³ See, e.g., Daniel Bonilla Maldonado ed., *Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia* (Cambridge University Press, 2013).

of different angles. In the European context, the most comprehensive historical overview is Ed Bates' *The Evolution of the European Convention on Human Rights*,⁴ which provides a progressivist narrative of the first several decades of the system's development, together with an account of the challenges faced by the system since the turn of the millennium. Extensive detail concerning the system's founding is provided both by Brian Simpson's lengthy *Human Rights and the End of Empire*⁵ as well as by Marco Duranti's *The Conservative Human Rights Revolution*,⁶ both of which adopt critical lenses relative to the circumstances in which the European human rights system was formed. Important information concerning specific periods and components of the system's evolution can be found in a number of other more tightly focused works.⁷

To date, the Inter-American system lacks comparably comprehensive historical chronicling. Cecilia Medina Quiroga's *The Battle of Human Rights*⁸ provides a general overview of the system's formation up to the late 1980s, highlighting the significance of the system's struggle with "gross, systematic violations" to the formation of its approach to rights work.

⁴ Ed Bates, *The Evolution of the European Convention on Human Rights: From Its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press, 2010).

⁵ Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford University Press, 2004).

⁶ Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press, 2017).

⁷ See, e.g., Franz Matscher and Herbert Petzold eds., *Protecting Human Rights: The European Dimension: Studies in Honour of Gérard J Wiarda* (Carl Heymanns Verlag KG, 1988); Rick Lawson and Matthijs de Blois eds., *The Dynamics of the Protection of Human Rights in Europe: Essays in Honour of Henry G Schermers* (Springer, 1994); Andrew Drzemczewski, "A Major Overhaul of the ECHR Control Mechanism: Protocol No 11," in *Collected Courses of the Academy of European Law Volume VI Book 2* (Kluwer, 1995), 162–75; Denis Huber, *A Decade Which Made History: The Council of Europe 1989–1999* (Council of Europe, 1999); Paul Mahoney, Franz Matscher, Herbert Petzold, and Luzius Wildhaber, eds., *Protecting Human Rights: The European Perspective: Studies in memory of Rolv Ryssdal* (Carl Heymanns, 2000); Philip Leach, Helen Hardman, Svetlana Stephenson, and Brad K. Blitz, *Responding to Systemic Human Rights Violations: An Analysis of "Pilot Judgments" of the European Court of Human Rights and their Impact at National Level* (Intersentia, 2010); Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (Cambridge University Press, 2006); Stephan Breitenmoser, Bernhard Ehrenzeller, Marco Sassoli, Walter Stoffel, and Beatrice Wagner Pfeifer, eds., *Human Rights, Democracy and the Rule of Law: Liber Amicorum Luzius Wildhaber* (Nomos, 2007); Rudiger Wolfrum and Ulrike Deutsch eds., *The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions* (Springer, 2009).

⁸ Cecilia Medina Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System* (Brill, 1988).

Tom Farer's article-length piece extends this history by another decade or so, considering the system's growing strength over the 1990s in particular.⁹ Robert Goldman's "History and Action" provides a brief but compelling exploration of the system's history up to the end of the first decade of the twenty-first century,¹⁰ while Victor Abramovich explores the manner in which the system moved from a focus on gross and systematic violations, as highlighted by Quiroga, to an emphasis on entrenched, structural patterns of violation, over the course of the 2000s.¹¹ Other authors have explored other aspects of the system. Klaas Dykmann's work examines the relationship between the regional human rights endeavor and the Organization of American States as a whole.¹² Pioneering work on the role of civil society in developing human rights in the region was done by Kathryn Sikkink, while more recent important studies along similar lines have been conducted by authors such as Vania Markarian and Patrick William Kelly.¹³ Thomas Antkowiak and Jo Pasqualucci have highlighted the importance of the system's jurisprudence on indigenous peoples,¹⁴ in

⁹ Tom Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox," 19 *Human Rights Quarterly* (1997), 510–46.

¹⁰ Robert Goldman, "History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights," 31 *Human Rights Quarterly* (2009), 856–87.

¹¹ See Victor Abramovich, "From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System," 6 *Sur International Journal of Human Rights* (2009), 7–37.

¹² See Klaas Dykmann, *Philanthropic Endeavors or the Exploitation of an Ideal? The Human Rights Policy of the Organization of American States in Latin America, 1970–1991* (Iberoamericana Vervuert, 2004).

¹³ See Kathryn Sikkink, "The Emergence, Evolution, and Effectiveness of the Latin American Human Rights Network," in Elizabeth Jelin and Eric Hershberg eds., *Constructing Democracy: Human Rights, Citizenship and Society in Latin America* (Westview Press, 1996), 59–84; Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998); Vania Markarian, *Left in Transformation: Uruguayan Exiles and the Latin American Human Rights Networks, 1967–1984* (Routledge, 2005); Patrick William Kelly, *Sovereign Emergencies: Latin America and the Making of Global Human Rights Politics* (Cambridge University Press, 2018).

¹⁴ See Jo Pasqualucci, "The Evolution of International Indigenous Rights in the Inter-American Human Rights System," 6 *Human Rights Law Review* (2006), 281–322; Thomas Antkowiak, "Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court," 35 *University of Pennsylvania Journal of International Law* (2013), 113–87; Thomas Antkowiak, "A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples," 25 *Duke Journal of Comparative and International Law* (2014), 1–80.

addition to which Thomas Antkowiak has chronicled the development of the system's expansive approach to remedies.¹⁵ James Cavallaro has provided the most comprehensive accounts exploring the practical efficacy of some of the more unique components of the Inter-American system's approach.¹⁶ Other works have highlighted various other important aspects of the system's work and evolution.¹⁷

Compelling histories of the African system have been provided by Evelyn Ankumah¹⁸ and Kofi Kufuor.¹⁹ Rachel Murray has recounted the relationship between Africa's human rights systems and Africa's regional political bodies, the Organization of African Unity and the African Union.²⁰ Frans Viljoen has provided an authoritative study on the drafting of the Charter, among other important works.²¹ Chidi Odinkalu has

¹⁵ See Thomas Antkowiak, "Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond," 46 *Columbia Journal of Transnational Law* (2008), 351–419.

¹⁶ See James Cavallaro and Emily Schaffer, "Less as More: Rethinking Supranational Litigation of Economic and Social Rights in the Americas," 56 *Hastings Law Journal* (2004), 217–82; James Cavallaro and Stephanie Brewer, "The Virtue of Following: The Role of Inter-American Litigation in Campaigns for Social Justice," 8 *SUR International Journal of Human Rights* (2008), 85–97; James Cavallaro and Stephanie Brewer, "Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court," 102 *American Journal of International Law* (2008), 768–827.

¹⁷ See, e.g., Jose Cabranes, "The Protection of Human Rights by the Organization of American States," 62 *American Journal of International Law* (1968), 889–908; Thomas Buergenthal, "The Inter-American Court of Human Rights," 76 *American Journal of International Law* (1982), 231–45; S. James Anaya and Claudio Grossman, "The Case of *Awas Tingni v. Nicaragua*: A New Step in the International Law of Indigenous Peoples," 19 *Arizona Journal of International and Comparative Law* (2012), 1–15; Daniel Toda Castan, *The Transformation of the Inter-American System for the Protection of Human Rights: The Structural Impact of the Inter-American Court's Case Law on Amnesties* (EUIC Global Campus Europe, 2013); DPLF: Magazine of the Due Process of Law Foundation, Issue on The Reform of the Inter-American Commission on Human Rights (2014); Ariel Dulitzky, "An Inter-American Constitutional Court? The Invention of the Conventionality Control by the Inter-American Court of Human Rights," 50 *Texas International Law Journal* (2015), 45–93; DPLF: Magazine of the Due Process of Law Foundation, *The Inter-American Human Rights System: Changing Times, Ongoing Challenges* (2016).

¹⁸ Evelyn Ankumah, *The African Commission on Human and Peoples Rights* (Brill, 1996).

¹⁹ Kofi Oteng Kufuor, *The African Human Rights System – Origin and Evolution* (Palgrave, 2010).

²⁰ See Rachel Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge University Press, 2004).

²¹ See Frans Viljoen, "The African Charter on Human and Peoples' Rights/the Travaux Préparatoires in the Light of Subsequent Practice," 25 *Human Rights Law Journal* (2004), 313–26.

chronicled the system's procedural evolution.²² Other works have highlighted various other key components of the system's evolution.²³

The history of the regional human rights systems cannot be understood without at least some understanding of other developments in the history of human rights, including developments on the international level. The creation of the United Nations human rights system was particularly important, of course, and has been explored extensively; key works in that context include Johannes Morsink's *The Universal Declaration of Human Rights*, Mary Ann Glendon's *A World Made New*, Elizabeth Borgwardt's *A New Deal for the World*, and Christopher N. J. Roberts' *The Contentious History of the International Bill of Human Rights*.²⁴ Other scholars have turned their attention to the preparation of the international covenants and the International Convention on the Elimination of All Forms of Racial Discrimination,²⁵ and the development and impact

²² See Chidi Odinkalu, "The Individual Complaints Procedures of the African Commission on Human and Peoples' Rights: A Preliminary Assessment," 8 *Journal of Transnational Law and Contemporary Problems* (1998), 359–402; Chidi Odinkalu and Camilla Christensen, "The African Commission on Human and Peoples' Rights: The Development of Its Non-State Communication Procedures," 20 *Human Rights Quarterly* (1998), 235–80; Chidi Odinkalu, "The Role of Case and Complaints Procedures in the Reform of the African Regional Human Rights System," 1 *African Human Rights Law Journal* (2001), 225–46.

²³ See, e.g., Emmanuel Bello, "The African Charter on Human and Peoples' Rights: A Legal Analysis," in *Collected Courses of the Hague Academy of International Law, Volume 194* (Brill, 1985); Makua Mutua, "The African Human Rights Court: A Two-Legged Stool?," 21 *Human Rights Quarterly* (1999), 342–63; Nsongurua Udombana, "Towards the African Court on Human and Peoples' Rights: Better Late Than Never," 3 *Yale Human Rights and Development Law Journal* (2000), 45–111; Frans Viljoen, "A Human Rights Court for Africa, and Africans," 30 *Brooklyn Journal of International Law* (2005), 1–66; Malcolm Evans and Rachel Murray eds., *The African Charter on Human and Peoples' Rights* (2nd edn Cambridge University Press, 2008).

²⁴ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 1999); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001); Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Harvard University Press, 2007); Christopher N. J. Roberts, *The Contentious History of the International Bill of Human Rights* (Cambridge University Press, 2015).

²⁵ For key scholarship on the drafting of those conventions, see Daniel J. Whelan and Jack Donnelly, "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight," 29 *Human Rights Quarterly* (2007), 908–49; Roland Burke, "Putting the Stamps Back On: Apartheid, Anticolonialism, and the Accidental Birth of a Universal Right to Petition," in *Decolonization and the Evolution of International Human Rights* (University of Pennsylvania Press, 2010), 59–91; Roland Burke, "Some Rights Are More Equal than Others: The Third World and the Transformation of Economic and Social Rights," 3 *Humanity: The International Journal of Human Rights, Humanitarianism and*

of the international movement against apartheid.²⁶ A number of more recent works have highlighted the importance of the 1970s to the history of human rights, including Samuel Moyn's *The Last Utopia*, Jan Eckel and Samuel Moyn's co-edited volume *The Breakthrough* and Barbara Keys' *Reclaiming American Virtue*.²⁷ Other authors have focused on the evolution of particular institutions, such as Human Rights Watch,²⁸ Amnesty International²⁹ and the International Commission of Jurists.³⁰

Development 3 (2012), 427–48; Steven Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge University Press, 2016).

- ²⁶ See Hakan Thorn, *Anti-Apartheid and the Emergence of a Global Civil Society* (Palgrave, 2006); David Hostetter, *Movement Matters: American Apartheid Activism and the Rise of Multicultural Politics* (Routledge, 2006); Carol Anderson, "International Conscience, the Cold War, and Apartheid: The NAACP's Alliance with the Reverend Michael Scott for South West Africa's Liberation," 19 *World History Journal* (2008), 297–325; Hakan Thorn, "The Meaning(s) of Solidarity: Narratives of Anti-Apartheid Activism," 35 *Journal of South African Studies* (2009), 417–36; Ryan Irwin, *Gordian Knot: Apartheid and the Unmaking of the Liberal World Order* (Oxford University Press, 2012); all the papers in the special 2014 edition of *Radical History Review* on "The Global Anti-Apartheid Movement"; and Robert Skinner, "The Dynamics of Anti-Apartheid: International Solidarity, Human Rights and Decolonization," in Andrew W.M. Smith and Chris Jeppesen eds., *Britain, France and the Decolonization of Africa: Future Imperfect?* (UCL Press, 2017), 111–30.
- ²⁷ Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010); Jan Eckel and Samuel Moyn eds., *The Breakthrough: Human Rights in the 1970s* (University of Pennsylvania Press, 2013); Barbara Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Harvard University Press, 2014). See also Jan Eckel, "'Under a Magnifying Glass': The International Human Rights Campaign Against Chile in the Seventies," in Stefan-Ludwig Hoffmann ed., *Human Rights in the Twentieth Century* (Cambridge University Press, 2011), 321–42; Barbara Keys, "Anti-Torture Politics: Amnesty International, the Greek Junta, and the Origin of the Human Rights 'Boom' in the United States," in Akira Iriye, Petra Goedde and William I. Hitchcock eds., *The Human Rights Revolution: An International History* (Oxford University Press, 2012), 201–21; Jan Eckel, "The International League for the Rights of Man, Amnesty International, and the Changing Fate of Human Rights Activism from the 1940s through the 1970s," 4 *Humanity: International Journal of Human Rights, Humanitarianism and Development* (2013), 183–214.
- ²⁸ See Peter Slezkine, "From Helsinki to Human Rights Watch: How an American Cold War Monitoring Group Became an International Human Rights Institution," 5 *Humanity: International Journal of Human Rights, Humanitarianism and Development* (2014), 345–70.
- ²⁹ See Jonathan Powers, *Against Oblivion: Amnesty International's Fight for Human Rights* (Fontana, 1981); Jonathan Powers, *Like Water on Stone: The Story of Amnesty International* (Northeastern University Press, 2001); Tom Buchanan, "'The Truth Will Set You Free': The Making of Amnesty International," 37 *Journal of Contemporary History* (2002), 575–97; Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International* (Cornell University Press, 2006).
- ³⁰ See Howard Tolley, *The International Commission of Jurists: Global Advocates for Human Rights* (University of Pennsylvania Press, 1994).

Above and beyond this literature on the history of the regional systems and international human rights more broadly, several important pieces, largely penned over the course of the new millennium, have considered how the regional human rights systems might best reorient their efforts in the face of contemporary challenges. This literature contains some of the sharpest analysis of the various systems, due both to its attention to and grounding in the manner in which the systems in question actually function, and to its willingness to squarely examine the challenges the systems face. In the European context, compelling work calling for a rethinking of the system's approach has been produced by Steven Greer and Luzius Wildhaber, a former president of the Court.³¹ In a 2012 piece, Greer and Wildhaber observed the co-existence of several different visions of the European human rights system's work: an "individual justice" perspective, a "constitutional justice" perspective, and the perspective of "pluralism." The "individual justice" perspective, on their account, "maintain[ed] that the Court exists primarily to redress Convention violations for the benefit of the particular individual making the complaint."³² Greer and Wildhaber argued this was a largely untenable position, given the Court's limited resources. The "constitutional justice" perspective, in contrast, involved cases being

selected and adjudicated by the [European Court of Human Rights] in a manner which contributes most effectively to the identification, condemnation, and resolution of violations, particularly those which are serious for the applicant, for the respondent state (because, for example, they are built into the structure or *modus operandi* of its public institutions), or for Europe as a whole (because, for example, they may be prevalent in more than one state).³³

The "pluralist" perspective, finally, was one in which "the Court has many functions and not the binary alternatives suggested by the models of individual and constitutional justice," which are all "part of an interlocking plurality of legal systems in both contemporary Europe and beyond."³⁴

³¹ Steven Greer and Luzius Wildhaber, "Revisiting the Debate about 'constitutionalising' the European Court of Human Rights," 12 *Human Rights Law Review* (2012), 655–87. See also Luzius Wildhaber, "A Constitutional Future for the European Court of Human Rights?," 23 *Human Rights Law Journal* (2002), 161–5; Steven Greer, "What's Wrong with the European Convention on Human Rights?," 30 *Human Rights Quarterly* (2008), 680–702.

³² Greer and Wildhaber, "Revisiting the Debate," 663.

³³ *Ibid.*, 671.

³⁴ *Ibid.*, 677.

Practically, Greer and Wildhaber argued the system should adopt a “constitutional pluralis[t]” approach, in which the Court would take a more active role in shaping its docket in order to attempt to achieve the maximum possible efficacy, and to be able to respond to the most severe rights violations.³⁵ Regardless of one’s take on this recommendation or the potential for it to be fulfilled in practice, Greer and Wildhaber’s piece provides a valuable analytical service, by helping to clarify the coexistence, and frequent tension, between different visions of what human rights work may entail.

In the Inter-American system, one key subject of attention has been whether or not to import the European system’s margin of appreciation approach. One early contemplator of the issue was Pablo Contreras, who highlighted the manner in which “the European Court has been a pioneer in the creation of deferential standards,” while the Inter-American Court “ha[d] not yet developed a theory of deference to domestic authorities.”³⁶ While Contreras presented arguments both for and against the adoption of such an approach,³⁷ other scholars have since weighed in more forcefully on one side or the other. A subsequent piece by Jorge Contesse, for instance, more directly made the case for the importation of a more deferential approach. Like others, Contesse observed that the Inter-American Court had “embrace[d] a maximalist model of adjudication – one that [left] very little, if any, room for states to reach their own decisions.”³⁸ This made sense, Contesse suggested, in the Court’s early years, when it regularly had to confront serious and widespread violations. More recently, however, in Contesse’s view, the type of cases brought before the court had changed; in light of that changing context, Contesse contended the Inter-American Court should “embrac[e] normative subsidiarity” in order to “foster, as a less aggressive and interventionist approach, a more collaborationist model for the enforcement of international human rights law,”

³⁵ Greer and Wildhaber were pessimistic as to reform efforts at the time, however, which they saw as bogged down “by a mixture of confusion about, and hostility and indifference towards, constitutionalisation.” *Ibid.*, 659.

³⁶ Pablo Contreras, “National Discretion and International Deference in the Restriction of Human Rights: A Comparison between the Jurisprudence of the European and the Inter-American Court of Human Rights,” 11 *Northwestern Journal of International Human Rights* (2012), 28, 30. Contreras made clear that while the Inter-American system had occasionally referenced the idea of a margin of appreciation, it had not deployed it in a consistent manner.

³⁷ See *ibid.*, 61–7.

³⁸ Jorge Contesse, “Contestation and Deference in the Inter-American Human Rights System,” 79 *Law and Contemporary Problems* (2016), 123–45, 124.

and to thereby avoid the blowback that would likely arise should member states repeatedly run up against an overly confrontational system.³⁹ A similar position was adopted by Andreas Follesdal, who argued that “a margin of appreciation doctrine, duly developed and specified, [could] contribute to alleviating the tension between human rights protection and due deference to sovereignty in a defensible way.”⁴⁰ As with Greer and Wildhaber’s observations in the European context, whatever one’s position on these debates, they are broadly instructive insofar as they help to highlight central tensions underlying human rights practice in general, and the difference between the European system’s more cautious, “margin of appreciation”-inflected approach and the more directly confrontational posture adopted by the Inter-American system in particular.

In the African context, insightful work probing institutional possibilities has been done by Chidi Odinkalu, a prominent litigator before both the African Commission and Court. In a piece from 2003, Odinkalu observed that “the quite complex problems of human and group survival in Africa do not easily lend themselves to diagnosis or solutions within the human rights frame of analysis.”⁴¹ The heart of the problem, Odinkalu suggested, was the fact that “[t]he African State – in its colonial and post-colonial formations – has been disabled by a combination of historical and contemporary factors from being able to play its role as a guarantor of rights, rendering it instead, for the most part, a force for their violation.”⁴² As Odinkalu further observed, traditional approaches to human rights work assumed “violations of human rights [were] the exception rather than the rule.”⁴³ In Africa, in contrast, such violations were the norm, and therefore it was necessary to adopt a different approach to rights work.⁴⁴ Odinkalu’s

³⁹ Ibid., 144.

⁴⁰ Andreas Follesdal, “Exporting the Margin of Appreciation: Lessons for the Inter-American Court of Human Rights?,” 15 *International Journal of Constitutional Law* (2017), 362.

⁴¹ Chidi Odinkalu, “Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa,” 47 *Journal of African Law* (2003), 1.

⁴² Ibid., 2.

⁴³ Ibid., 4.

⁴⁴ In particular, it was necessary to attempt to “address the vectors and causes that predispose the peoples of the continent to violations instead of concentrating on the symptoms,” including through focusing on “state building and the construction of civic citizenship,” as only by establishing “institutions credible enough to prevent [serious] violations or to effectively address them when they occur” would rights fulfillment be enabled. Ibid., citing Abdullahi An Na’im, “The Legal Protection of Human Rights in Africa: How to Do More with Less,” in Austin Sarat and Thomas Kearns eds., *Human Rights: Concepts, Contexts, Contingencies* (University of Michigan Press, 2001), 105.