

Richard Rodgers: My name is Richard Rodgers. I'm a British lawyer also qualified in California. I've worked for over twenty years on war crimes and international human rights issues. For much of that time I worked for the United Nations in some of their international criminal tribunals including the genocide tribunal in Rwanda, and then in The International Criminal Tribunal for the former Yugoslavia, the tribunal that looked at the war in Bosnia, Kosovo, and Croatia. Then I moved and lived in Kosovo for some time and worked on transitional justice issues on the ground trying to help rebuild that state which had been largely destroyed because of the war. Then I moved to Cambodia and worked for the U.N. again at the Khmer Rouge Tribunal which was set up to prosecute the former leaders of the Khmer Rouge who had committed a genocide against their own people in 1970s.

Once I left the UN I started my law firm called Global Diligence, which specializes in international human rights issues. As part of that I've continued to work on issues relating to Cambodia, including representing the opposition leader who has many legal battles with the prime minister, who has been in power for around thirty years and is one of the world's longest serving dictators.

Q: TK

RR: I started my career as a criminal defense barrister in London, and then I moved to San Francisco to work in a law firm there. It was a commercial law firm and it was interesting but it wasn't what I wanted to do. I applied for a job at the Rwandan genocide tribunal to work for a judge. I was phoned up about two in the morning and was told a judge wants you to hire you to be his assistant, can you be here next week? I enjoyed working in the trial chambers dealing with the trials and the transcripts and writing decisions and judgements for quite some time, both in Rwanda and later in the Yugoslav Tribunal.

Q: TK

RR: Transitional justice is a broader term, it came about really when a country is trying to deal with massive human rights abuses of the past, because it was under a dictatorship, the classic system, or because it suffered armed conflict. And transitional justice measures tend to refer to a range of measures that can't be dealt with through the justice system because of their nature. They tend to be broader and involve more people and have a more historical aspect to them. They include criminal prosecutions, truth commissions, reparations, and also trying to further develop the security in judicial systems. These criminal tribunals that the U.N. set up after conflicts, which are mainly the Rwandan tribunal, the Yugoslav tribunal, the Sierra Leone tribunal, the tribunal in East Timor and then in Cambodia. But those are really part of a broader transitional justice process of trying to deal with an armed conflict situation.

The idea is that tribunals would try the main perpetrators, those people most responsible for the crimes, whether they were war crimes or crimes against humanity or genocide. They would try anywhere between ten or six people, like in the Khmer Rouge tribunal, or a hundred people or a hundred and twenty people like in the Yugoslav tribunal. The idea was that the lower perpetrators would be dealt with in the national

courts of the state and that certainly happened in Yugoslavia and Rwanda. It didn't happen in Cambodia partly because the current government are fallen Khmer Rouge commanders and also because it happened such a long time ago.

So those are part of the criminal prosecution side of transitional justice and often, not always, those tribunals are outside of the country where the events happen, and that's because the infrastructure after the war isn't good enough or there's worries that it's too close to the events and it might be manipulated by the government in power, so few of them have been taken outside of the country. That's the case in Rwanda and Yugoslavia.

In the case of Sierra Leone and East Timor and Cambodia they would mix tribunals, so they included national judges as well as international judges, and they were tried within the country where they happened. On the good side, that means the courts were more accessible to victims who could see justice being done, and on the downside there were real issues with interference by the government, like in the case of the Khmer Rouge tribunal.

Another term is truth commissions, and there's been many, many truth commissions around the world. Sometimes there's truth commissions within the same country where there's a U.N. court, for example in Sierra Leone. But you also get situations like South Africa where the truth commission was one of the main and certainly most public form of accountability for dealing with the past abuses. That performed a very significant part of the movement from autocracy to democracy in that country.

There are examples of truth commissions in countries that have suffered nasty crimes, but crimes that wouldn't necessarily amount to international crimes. For example in Seychelles now they're setting up a truth commission to look into the communist coup of 1977 where only a handful of people were killed, though many were exiled and many were imprisoned. Because it's a very small population it really affected the country. So they now feel like thirty years later it's time to have a truth commission and to try to help people to turn the page and to move forward with a sense of reconciliation.

The third aspect of transitional justice is reparations. Many people believe that prosecutions and truth commissions by themselves really aren't enough. You really need to have reparations as well because ultimately the people that suffer the most in any of these situations are the poorest people. Of course justice is incredibly important to them, as a concept it might be the most important thing but it's also important that they can get some help to get back on their feet after a nasty conflict to feed their children, to build their houses, to dig their wells. And so there's a sense that reparations are a very important part of the accountability process and transitional justice.

Even if that means just symbolic reparations, which can be something like a monument or community reparations, where they build a school in a region that has suffered a lot, has a lot of victims. So the school is something that will benefit the community as a whole and not necessarily individual victims.

So there's all those, and the final main type of transitional justice is institutional development, where you try to clean up the police, the security services, the army, the judiciary, which under dictatorships have been used as tools of repression, and under transitional justice process would be cleaned up and become as they all should have been which are institutions that serve the people and don't necessarily serve the brawlers. Institutions respect the rule of law meaning that everybody should be treated equally.

Transitional justice is that package of processes that are put in place to move a country forward in this transitional way. Of course there are other types of processes that might be relevant to particular situations.

Q: TK

RR: There's a growing volume of empirical evidence which suggests that countries who deal with human rights abuses through the courts are less likely to suffer from human rights abuses in the future. In other words there's a deterrent effect of carrying out prosecutions. And there's also evidence that there's a deterrent effect in holding truth commissions as well, although the evidence suggest that it's better to have a combinations of criminal prosecutions where there's actual sanctions on individuals such as imprisonment in addition to a broader truth commission type of mechanism which normally doesn't sanction individuals and sometimes doesn't name individuals depending on the commission.

So in other words if you have these processes sooner then they are more likely to act as a deterrent for human rights abuses in the future. And that's true not only in the country where it happened but apparently it's also true in the neighboring countries. So if a country has a neighbor who is actively pursuing criminal prosecutions and truth commissions in a post-conflict situation, then that country is less likely to suffer from serious human rights abuses as well.

There really is a sense that leaders who may potentially commit abuses really do listen and consider their own situation when they see others tried, prosecuted or brought before truth commissions. That's one benefit of bringing prosecutions earlier rather than leaving it for decades.

And the other one is more technical, which is that witnesses die, evidence is lost, perpetrators live amongst victims for longer. So there's a whole variety of reasons which suggest that transitional justice mechanisms should be implemented as soon as possible after a conflict. Particularly the criminal justice side of it and the truth commission side.

I think it's also true with reparations, but reparations don't necessarily act as a deterrent. Reparations are important but they could perhaps just as effective if they happen ten years after the event as one year after the event.

Q: TK

RR: What I have seen is perpetrators and abusive leaders misusing social media platforms and using them to stifle or silence oppositions or dissidence. Using them to issue threats against people who oppose them. Cambodia is a very good example of that.

In last century, before social media was powerful, when rebels took the capital or another country invaded their neighbor, the first two places that they would surround and occupy would be the airport and the television network because it's so important to control the message that goes out in the media.

And today is quite different because what the dictators have learned is that you can control a population, you can spread hatred, you can spread fear through a social media presence. As long as you're relatively organized—which is easy because many of the young people surrounding the dictator will know how to use the platforms to their best effect.

They can pay Facebook, for example, to push their messages to make sure the largest number of people are subjected to them. And they can really use these platforms as a way to spread their conspiracy theories, as a way to spread fear, to make threats, and overall to control the population.

So it's cheaper, easier, and physically safer now for dictators to control the population, to manipulate a population, and to undermine democracy and human rights by using social media. So that's something, that's a real phenomenon.

At the time of the Arab spring there was a lot of talk about how social media was a force for good in those countries that were suffering under an oppressive regime because it was a way to spread the truth about what was happening. It took five or ten years for the leaders to catch on to what was happening and for them to start using social media as a way to undermine the truth and a way to spread fake news and propaganda.

The benefits in the bigger picture, state level, of social media were relatively short-lived, and now there's been a real shift in favor of the autocrats and dictators who now seem to use the platforms effectively.

The other thing I've noticed is that there's a real issue with identifying what the truth is now, because there's such a flood of information. It's very hard for people to filter it, and less educated people find it harder to filter the information because they're less trained in how to do that. And perhaps they have less access to types of media that are more reliable because you have to pay for them.

What we're seeing, and I think we're seeing this in the West as well as developing countries, is a growing belief in certain theories that one would hope would no longer exist, certainly in societies where people are more educated. It seems crazy that people can go through fifteen years of intense schooling and even some people go through several years of university and they can still believe conspiracy theories that are ridiculous or propaganda that doesn't make any sense. They can still believe that

immigrants are gonna come and rape them and take over their country and all the rest of it.

It's quite shocking how this disinformation and these lies are spread so effectively through social media. I think that's largely because people are flooded with information that they have such a short attention span for actually reading things in any depth. And that's I think a major role of social media.

To draw an analogy, when I was working in Rwanda and Tanzania on the Rwandan genocide, I was shocked when some of the witnesses would believe what they were told in a way that I wasn't used to coming from the West where people were more educated and more likely to be critical in their analysis. The witnesses would come and they would believe that the enemy was going to come and eat their children because they have been told that. Or because they heard that on the radio. And it was kind of shocking, this kind of belief in myth.

This was in the mid '90s, and I think the situation in the West was that there was a much greater tendency to reject those types of propaganda. I think having come through the Second World War and having understood what war time propaganda is, as well as the dominance of scientific thinking in the Western world, meant that the majority of the population were quite critical and weren't going to believe things very easily just 'cause they were told.

I think that was a stage of social development that the West had got to and what seems to be happening is this regression now because of this flood of information. People now are more likely, not less likely, to believe false news, fake news, lies, propaganda, than they were twenty or thirty years ago. And really it should be moving the other way because, I think it moved the other way for quite some decades because of the educational system encouraged people to question information and provided people with a basis for what was likely in terms of facts and events.

And now we're seeing that people in the West are just as susceptible to the most ridiculous propaganda and myths and fake news. And I think the Facebook and other platforms are largely to blame for that.

Q: TK

RR: Right from the beginning they should have known because of course it's fairly obvious that human societies have developed in a such way that, if before digital media you said something to someone you would have to face their response, because things are said face-to-face. And so this face-to-face interaction in human societies has kept a control on what's said because people can respond and people can get angry and you have to be prepared to face that.

It's kind of the same thing as when people who are driving in cars can seem much braver than they would if they met the same person on the street. As soon as you get these broader platforms that allow people to say all sorts of things and be protected by space

and by anonymity sometimes. It hasn't got the same controlling factors to ensure that people are a bit more sober in what they say.

They should've known from the beginning that when you create a platform without these controls then people are going to say things much more easily that aren't true or are offensive. So yes they should have done things from the beginning. They should have had much greater control over the types of speech that they allowed on their platform.

Obviously we know now that the sort of myth that's being burst apart, that Facebook brings communities together and brings the world together. Of course it doesn't. Facebook's whole model is to steal people's private information and to sell it for a profit. That's the real reason for Facebook.

Of course they should have been much more aware of this. Of course they should've been much more careful. And we see now that's it's grown so fast, it's gotten so out of control that they're scrambling to find a solution to some of the hate speech and violence that has spread through their platform. Initially, of course, they wanted to pretend they had nothing to do with that and they'd just provided a platform and couldn't do anything about it. But now they're under more and more pressure to pull back from that position and to provide some kind of critical monitoring of what's being said on Facebook. Just today there were some examples of where they've taken a few people off Facebook. Of course it's all far, far too little and far, far too late because it's such a monster in terms of size and power.

That's a real problem, how do they proceed now, when they're dealing with so many languages in so many places. But yes of course, had they put these issues in place right from the beginning, had they cared about human rights issues and the effect on people's lives, then the protections could have grown with the company. But that's not what they did. They just grew the company for profit and now they're sort of struggling to keep it under control.

Q: TK

RR: I think people have always been susceptible to lies and propaganda. It's been going on forever. I also believe that many media outlets over the years have been responsible for spreading all sorts of lies and nonsense by being completely irresponsible. But I think the difference with social media is any person on the street can start spreading propaganda or lies, and it just happens so much faster.

Q: TK

RR: Facebook started to become more and more popular in Cambodia around 2009, 2010. It was an important source of independent news because the Hun Sen regime was consolidating control over the Khmer language news sources. There were still French and English language news sources that were independent. The theory is that the Hun Sen regime didn't care about those because not enough Cambodians read them. But there's also a feeling that they thought that they were useful for them, for the regime to

actually to find out some news about what's going on. Obviously they've cracked down on those independent news sources.

So Facebook became gradually more popular. Then, it was used very effectively by the main opposition party, the Cambodia National Rescue Party, in the run-up to the 2013 elections. There was certainly a feeling that it was a force for good at that time because it allowed the opposition, and also civil society actors, to get their message out to the Cambodian people in Khmer language. Because most of the Khmer language news was controlled increasingly. The consolidation has been going on since '97 or so. It was increasingly controlled by Hun Sen and his cronies.

Facebook became very important. I think it's fair to say that it had a positive effect in Cambodia in that period, up to the last election in 2013. And then, as I understand it, the Cambodian People's Party got into a massive panic, because they realized they would lose any free and fair election. They manipulated the last election at the eleventh hour. They lost many, many seats. But if it had been conducted fairly, then they probably would have lost the election altogether.

Then they realized that they needed to not only control the conventional media, but they also needed to start to use social media to control the opposition and to spread their own propaganda. It was really at that point, after that election, around the beginning of 2014 once things had calmed down, that Hun Sen and the other bigwigs started to use social media to pay teams of younger media-savvy people to set up accounts for themselves and to start to pay Facebook for advertising to push their message. And also, simply just to use it to reach the Cambodian people, who were probably using Facebook more than any other media source, and probably more than any of the other sources put together.

Hun Sen became increasingly reliant on Facebook as a way to not only peddle his propaganda but also to make threats against the opposition and to make his presence felt in every part of Cambodia through some very threatening, violent language. Which oftentimes was followed up by violence on the ground. I imagine most people in Cambodia believe that Kem Ley was assassinated by the Cambodian government. There's also many opposition members who have been imprisoned. Some have been dragged out of their cars and beaten in the streets outside the National Assembly. There's been a massive crackdown in the last few years by Hun Sen's regime. There's really a feeling that it's moved into a new stage of dictatorship.

Hun Sen bought fake likes in click farms. He got in this rather childish competition with Sam Rainsy about who had the most likes. When you've stolen hundreds of millions, or even billions, from your own people through resource exploitation, then you have plenty of money to buy likes. And you have plenty of money to pay Facebook for advertising to push your propaganda. So that's what he started to do with increasing confidence and increasing vigor.

I wrote to Facebook on behalf of Sam Rainsy in 2016 when it was clear that Sen was buying fake likes and he was using that false popularity as a way to justify his actions. For example, he would say obviously people support me in, let's say, my decision on the

board or on my decision to promote development which left poor people without land. It's obvious, because I've got so many likes and I've got so many people following me on Facebook.

So I pointed out to Facebook that Sen was actually a dictator who'd stolen the country's resources and committed mass crimes, that he was dishonestly using Facebook to buy fake likes and to give the false impression of being popular. I warned Facebook that he was likely to use the platform dishonestly as a way to promote his political campaign, to target dissidence, to threaten opposition leaders. I pointed out that in Cambodia this has a massive effect because many people are not educated.

My sense was this is a company that has expanded so fast and so globally that these guys in Menlo Park don't really understand where they're operating. I think they have an enormous challenge on their hands to try to be compliant with human rights expectations and human rights standards. And I thought it was reasonable and helpful to offer some information to them about what's really going on in Cambodia.

Perhaps naively, I thought that they may think, "Oh gosh, we don't want to be supporting a brutal dictator who commits crimes against humanity, crimes against his own people." I thought that they would do something about that, and I thought that they would be keen, at least, to engage in conversation, to dig a little deeper about what's happening in Cambodia in terms of the violations and the manipulation of the election. And to see if they should take some kind of preventative action, or remediate. But, nothing came back.

So I pointed all this out, and, basically, they had been communicating with my client before that, and then they just stopped communicating. Some time after that we brought a case and tried to compel them to disclose information about whether or not the prime minister of a country was buying fake likes which is against their own rules. And they've fought it as hard as they could. That case is still going on. The judge has said it's admissible but she wants us to narrow the claims, so we're still working on that.

It's amazing that Facebook wouldn't even disclose whether or not a prime minister of a country, who is known to be brutal dictator, is misusing Facebook. We also provided information that he was paying about \$500,000 a month to Facebook to promote his messages.

I find it really surprising that Facebook would not at least make a bit more of an effort, once they were informed. They can't know everything, but once they're informed about something like this by a human rights lawyer who has worked for the U.N., then you would think they would say, "Okay, we better have a look at this. If it's true he's doing this, then we're going to stop it and we may even take him off Facebook if he doesn't stop buying fake likes and promoting hatred." But of course we heard nothing back, and they chose to fight their lawsuit by spending no doubt hundreds of thousands on lawyers.

Q:

TK

RR: The reality is that dictators the world over now don't need guns and tanks anymore. They just need click farms in India, and they need Facebook to turn a blind eye. These kleptocratic dictatorships are allowed to create massive fraud against their own people. It allows them to maintain power in order to steal resources and commit human rights violations.

There is an obligation. Not only a moral obligation, but also a soft law legal obligation for companies not to cause adverse human rights impacts in areas where they operate. That's easy when you're dealing with a mining company, because they can't poison the drinking water where they operate. Industrial agriculture companies can't illegally grab land, fell all the trees, and kick all the people off the land. It's quite straight-forward in some areas. Oil companies, they can't have modern slavery in their supply chains. This applies equally to social media companies. They also have an obligation not to adversely affect their communities in their sphere of operations.

The problem, of course, is it's a little bit harder to pin down when it comes to social media than, let's say, the extractive industries. They're based in Silicon Valley. They operate all over the globe, including the remotest corners of Cambodia and Myanmar. So, they probably feel very, very distant from those populations. But the reality is that they sell access to the people's private data, whether those people are in California, or Myanmar, or Cambodia. And they sell advertising. They agree to push pages that Hun Sen pays for. So they're profiting from those people. So really, they should have human rights policies in place. They should carry out human rights impact assessments, they should carry out stakeholder engagement, and they should take preventative action if they find violations.

Q: TK

RR: These efforts can only really work if there's a political will to start truth commissions or criminal prosecutions, particularly with truth commissions. In the U.S., of course, it would depend on what crime you're talking about but you never know.

The truth about truth commissions is that they offer a carrot and a stick. The carrot is if people tell the truth then they won't be prosecuted, and the stick is that if they don't then they will. If there were events of mass crimes in the United States and there was a reasonable likelihood of prosecution and the situation was big and complex enough that it required a truth commission, then you might find there was political will.

The downside of truth commission is that sometimes they allow perpetrators to get away with it without actual sanctional punishment. But of course on the other side, if the truth commission was likely to dig up information which pointed a finger at those people in power, then they would not want to hold the truth commission and they would prefer to see lower level people prosecuted and held to account in a public mechanism like a truth commission. It depends very much on the nature of the facts and the nature of the allegations and who's involved.

I think with the case of the U.S., it's also a matter of them feeling like they have a criminal justice system that functions well. I can't imagine the U.S., as a matter of pride, accepting that they need a truth commission. Although when you have situation like the genocide against the Native Americans, or slavery, or even the proxy wars during the '70s and '80s, then they would seem good events for a truth commission, but I don't imagine that happening.