



# Dædalus

Journal of the American Academy of Arts & Sciences

Winter 2003

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on international  
justice

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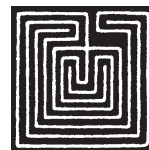
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*Inside front cover*: The wages of global injustice: a photograph of a mass grave in Rwanda, 1994. “Over a period of four and a half months, and out of a population of about eight million Rwandans, eight hundred thousand died, two million became refugees, and two million became internally displaced persons.” See Carl Kaysen & George Rathjens on *The case for a volunteer UN military force*, pages 91 – 103. Photograph © 2003 by David Turnley/Corbis.

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The labyrinth designed by Daedalus for King Minos of Crete, on a silver tetradrachma from Cnossos, Crete, c. 350 – 300 B.C. (35 mm, Cabinet des Médailles, Bibliothèque National, Paris): “Such was the work, so intricate the place, / That scarce the workman all its turns cou’d trace; / And Daedalus was puzzled how to find / The secret ways of what himself design’d.” – Ovid, *Metamorphoses*, Book 8

Dædalus was founded in 1955 and established as a quarterly in 1958. The journal’s namesake was renowned in ancient Greece as an inventor, scientist, and unriddler of riddles. Its emblem, a maze seen from above, symbolizes the aspiration of its founders to “lift each of us above his cell in the labyrinth of learning in order that he may see the entire structure as if from above, where each separate part loses its comfortable separateness.”

The American Academy of Arts & Sciences, like its journal, brings together distinguished individuals from every field of human endeavor. It was chartered in 1780 as a forum “to cultivate every art and science which may tend to advance the interest, honour, dignity, and happiness of a free, independent, and virtuous people.” Now in its third century, the Academy, with its more than four thousand elected members, continues to provide intellectual leadership to meet the critical challenges facing our world.

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## Comment by Anthony Lewis

### *The challenge of global justice now*

How should the world deal with violations of human rights? Consider two tests of that question.

In the early 1990s, Serbian forces, carrying out what they called ethnic cleansing, raped and tortured and murdered thousands of Muslims in Bosnia. Serbian snipers in the surrounding hills picked off children on the streets of Sarajevo. The world did nothing meaningful to stop the savagery. West European countries sent troops and promised to protect declared 'safe areas' – a promise whose emptiness was exposed when Serbian forces entered the 'safe area' of Srebrenica and killed seven thousand Muslim men. Two U.S. presidents, the first Bush and Clinton, rejected proposals that America intervene with force. But the shame of Srebrenica finally forced President Clinton to act. He called for the NATO bombing of Serbian military targets. The Serbs quickly agreed to a ceasefire, and then accepted the Dayton agreements that ended the fighting.

In December of 2002, the British foreign secretary, Jack Straw, published a dossier of human rights violations by the Iraqi dictator, Saddam Hussein: systematic rape, torture, gassing, public beheadings, mass executions. All were de-

signed to suppress any resistance to the Saddam government, which the British dossier called a "regime of unique horror." That Saddam had engaged in inhumanities on a gross scale could not be doubted. He used chemical weapons against Halabja, a Kurdish town in northern Iraq. He has killed more people than the two hundred thousand who died in the Bosnian war. Yet many supporters of human rights who had pressed for international intervention to stop the atrocities in Bosnia strongly opposed President Bush's idea of war on Saddam Hussein's Iraq. Amnesty International accused Foreign Secretary Straw of "cold and calculated manipulation" of human rights violations in Iraq to advance the cause of war.

The two cases show that whether and how to intervene on behalf of human rights is a complicated question. What was right in Bosnia does not provide a sure answer for other times, other places. And the two cases show something else: The presidency of George W. Bush has drastically changed the terms of the discussion on international human rights.

The essays in this issue of *Dædalus* explore fundamental aspects of the human rights question. Martha Nussbaum's discusses a human trait that underlies much of the cruelty that human beings have inflicted on each other over the ages: our ability to believe that people of a different race or nation or color or religion are less human than ourselves. The Holocaust might have been expected to shock

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*Anthony Lewis, a Fellow of the American Academy since 1991, frequently writes about political, legal, and foreign policy issues for "The New York Review of Books," among other publications. Until his retirement in 2001, he was for thirty-two years a columnist for "The New York Times."*

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us out of such thinking. But its lesson did not prevent genocide in Bosnia or Rwanda, or make the supposedly civilized countries of the world act against it in a timely way. There seems to me to be a tinge of despair in Professor Nussbaum's prescription that "an education in common human weakness and vulnerability should be a very profound part of the education of all children." Athenians and Trojans, Hutus and Tutsis: If you prick us, do we not bleed?

At the other end of the problem from its origins is the question of how international society in the twenty-first century can control the base instincts of man. The essays range from the vision of Stanley Hoffmann – a world with institutions to investigate abuses and punish the abusers – to the skepticism of Jack Goldsmith and Stephen D. Krasner, their warnings about political realities and the dangers of utopianism.

The discussion of whether and how to intervene comes in a remarkable historical context. Consciousness of the problem – of the possibility of international intervention – developed slowly, then suddenly accelerated and became a major strand of policy in the world.

What might be called the beginning came in 1876, when Gladstone, the great Liberal British prime minister, then out of office, published a pamphlet on what he called the "Bulgarian Horrors," the reported Turkish massacre of thousands of Bulgarians in what was then the Ottoman Empire. Disraeli, Gladstone's longtime political opponent, said the pamphlet was "vindictive and ill-written," adding with characteristic Disraeli mockery that the pamphlet was "of all the Bulgarian horrors perhaps the greatest." But the British public bought two hundred thousand copies.

The idea that outsiders should stop a government from mistreating its own

citizens was blocked then, and for nearly a century after, by the concept, in international law and politics, of inviolate national sovereignty. The U.S. ambassador to the Ottoman Empire, Henry Morgenthau Sr., made that plain in a cable to the State Department during the Armenian genocide in 1915. "It is difficult for me to restrain myself from doing something to stop this attempt to exterminate a race," he said, "but I realize that I am here as ambassador and must abide by the principles of non-interference with the internal affairs of another country."

After World War II the United Nations adopted the Convention Against Genocide, giving the phenomenon a name and committing all the ratifying powers – including, eventually, the United States – to act if and when there was another mortal assault on a population group. But the convention was not enforced. Samantha Power tells the story in her chilling book *A Problem From Hell*. The title comes from a comment by Warren Christopher, President Clinton's first secretary of state. It was what he called the genocidal situation in Bosnia, where America did not act for years because Clinton thought no serious American interest at stake. Or, to put it more realistically, he thought the American public might not support a risky venture in a far-off country of which it knew little. The same lack of political will led the U.S. and other governments to ignore warnings of genocide in Rwanda. Extremist Hutus were left free to kill eight hundred thousand of their fellow citizens in one hundred days.

But the failed response to genocide was paralleled, in the last third of the twentieth century, by a development of quite a different character: the rise of private organizations that took up the cause of international human rights and had an enormous impact on public opin-



ion and official policy. Amnesty International, then Human Rights Watch, and many other groups achieved far more than nearly anyone expected.

The human rights organizations publicized individual cases of tyranny, capturing the public imagination with the stories of Soviet dissidents and the victims of Latin-American dictatorships. At their urging, Congress passed legislation limiting U.S. relationships with governments that violated human rights. President Carter created the new position of Assistant Secretary of State for Human Rights.

The growing concern about human rights had a powerful effect – a quite unexpected one – on the Soviet Union. Soviet leaders pressed for years for a Conference on Security and Cooperation in Europe, which they wanted to legitimize the division of the continent between East and West. Western governments reluctantly agreed to hold the conference at Helsinki in 1975. The Helsinki Act, agreed there, included passages protecting human rights – among other things forbidding punishment for political beliefs. That ‘basket’ of the act, as it was called, was considered unimportant. It turned out otherwise. Soviet and East European dissidents set up what they called Helsinki Watch Committees. In the words of Michael Ignatieff, director of the Carr Center on Human Rights Policy at Harvard, “They created an alternative pole of moral legitimacy.”

In the West, Professor Ignatieff wrote, the idea of human rights went “from being the insurgent creed of dissidents and activists to something like the ruling ideology.” It happened in the time of a generation: an astonishing event.

The concept of inviolate national sovereignty yielded to new mechanisms for the international enforcement of human

rights. One is regional systems of protection, the notable example being the European Covenant on Human Rights, enforced by a commission and a court; Britain, for instance, has been forced to change a number of its laws after they were found in violation of the covenant. Another is the exercise of jurisdiction by national courts against wrongdoers from other countries; the dramatic case was the decision by Britain’s highest court, the House of Lords, that Augusto Pinochet, the former Chilean tyrant, who was in Britain as a visitor, should be delivered up to a Spanish judge investigating him for violations of the international convention against torture.

War crimes have been dealt with by various methods. Military intervention was used in Bosnia and then Kosovo to stop the brutality. Perpetrators were tried in special war crimes courts: not only to bring them to justice but, by holding them accountable, to meet the feelings of the victims and break the cycle of violence. The United Nations set up war crimes tribunals for the former Yugoslavia and Rwanda. And then almost all the countries of the world agreed to create an International Criminal Court to try those charged with genocide and crimes against humanity. It was the capstone of the new structure of human rights enforcement.

An International Commission on Intervention and State Sovereignty,<sup>1</sup> established by the government of Canada and several foundations, produced a report in 2001 that stated with admirable clarity the contemporary view on these issues. The report was entitled “The Responsibility to Protect,” and that was its

1 The commission’s co-chairmen were Gareth Evans of Australia and Mohamed Sahnoun of Algeria. Members included Cyril Ramaphosa of South Africa, Klaus Naumann of Germany, and Michael Ignatieff.

message: All states have a responsibility to protect their citizens; if their leaders are unable or unwilling to do so, they render their countries liable to military intervention – authorized by the Security Council or, failing that (as in the case of Kosovo), by individual countries in “conscience-shocking situations.”

That was the framework, the international state of mind, in which this issue of *Dædalus* was conceived. Though there would be sharp differences over the wisdom of acting this way or that in particular situations, there was a general sense that human rights had become a prime concern of the international order. National governments, most of all the U.S. government, were under public pressure to act against what Gladstone long ago called horrors – to act unilaterally if need be.

But President Bush has shaken that framework. He set out to destroy the International Criminal Court, on the ground that somehow, some day, an American might be prosecuted before it. He took a dim view generally of treaties and other international obligations limiting American freedom of action; he rejected the Kyoto Agreement on climate change and withdrew from the Anti-Ballistic Missile Treaty.

The terrorist attacks of September 11, 2001, might have been met by a U.S. call for international justice. Gary Bass, in his essay, makes a compelling case for treating the World Trade Center massacre as a crime against humanity. By seeking an international tribunal of some kind, the Bush administration could have focused the minds of people around the world on the criminal nature of the enterprise.

Instead, President Bush opted for the metaphor, and the reality, of war. His course has turned millions from sympathy with America to hatred. But it was

never likely that George W. Bush would look to law, least of all international law, as one way of answering terrorism. Indeed, his administration has followed the events of September 11 with repressive domestic legal measures – including the claim of a right to hold anyone termed an “enemy combatant” indefinitely without access to counsel. With that course, his administration has lost the great moral and political advantage of being able to hold up the United States as an exemplar of respect for law in contrast to the violent lawlessness of the terrorists.

In another way, too, the framework of thinking on human rights has been drastically affected by President Bush’s course of action since September 11. He quickly shifted his emphasis from a war on terrorism to a proposed war on Iraq. And he claimed a right to launch that war unilaterally if it was not authorized by the UN Security Council.

Mr. Bush’s unilateralism raised hard questions for those of us who argued strongly for unilateral intervention, if necessary, to stop the savagery of human rights violators – who called specifically for American intervention against Slobodan Milosevic of Serbia. The disquiet caused by Mr. Bush is indicated by the reaction of Amnesty International to Foreign Secretary Straw’s dossier of human rights outrages by Saddam Hussein.

Professor Stephen Holmes of New York University, writing in the *London Review of Books*,<sup>2</sup> blames the supporters of human rights intervention for laying the groundwork for President Bush’s imperial view of American power and right: “The 1990s advocates of humani-

2 The issue of 14 November 2002. He was reviewing Samantha Power’s book and one by David Halberstam, *War in a Time of Peace: Bush, Clinton and the Generals*.

tarian intervention . . . have helped rescue from the ashes of Vietnam the ideal of America as a global policeman, undaunted by other countries' borders, defending civilization against the forces of 'evil.' By denouncing the U.S. primarily for *standing idly by* when atrocity abroad occurs, they have helped repopularize the idea of America as a potentially benign imperial power. They have breathed new life into old messianic fantasies. . . . By focusing predominantly on grievous harms caused by American inaction, finally, they have obscured public memory of grievous harms caused by American action."

The human rights movement, in its swift rise to influence, did present a danger of utopian overreaching. But the occasional, and hard-won, instances of American intervention seem to me a

long way from what Stanley Hoffmann calls President Bush's "boastful unilateralism." There was no great world public recoil from the tardy effort to stop the slaughter of Bosnians; it was seen, rather, as a rare example of a great power acting for unselfish, largely moral reasons. That is hardly 'imperial' in the same sense as President Bush's assertion that America has the duty and right to initiate preemptive war when it perceives a threat.

The essays in this issue explore the pros and cons, the advantages and dangers of taking human rights seriously. For me, one thing is certain. We should not want the twenty-first century to be what Hannah Arendt called its predecessor: "this terrible century."

– December 6, 2002

# Martha C. Nussbaum

## *Compassion & terror*

The name of our land has been wiped out.

– Euripides, *Trojan Women*

Not to be a fan of the Greens or Blues at the races, or the light-armed or heavy-armed gladiators at the Circus.

– Marcus Aurelius, *Meditations*

### 1

The towers of Troy are burning. All that is left of the once-proud city is a group of ragged women, bound for slavery, their

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husbands dead in battle, their sons murdered by the conquering Greeks, their daughters raped. Hecuba their queen invokes the king of the gods, using, remarkably, the language of democratic citizenship: “Son of Kronus, Council-President [*prytanis*] of Troy, father who gave us birth, do you see these undeserved sufferings that your Trojan people bear?” The Chorus answers grimly, “He sees, and yet the great city is no city. It has perished, and Troy exists no longer.” Hecuba and the Chorus conclude that the gods are not worth calling on, and that the very name of their land has been wiped out.

This ending is as bleak as any in the history of tragic drama – death, rape, slavery, fire destroying the towers, the city’s very name effaced from the record of history by the acts of rapacious and murderous Greeks. And yet, of course, it did not happen that way, not exactly: this story of Troy’s fall is being enacted, some six hundred years after the event, by a company of Greek actors, in the Greek language of a Greek poet, in the presence of the citizens of Athens, most powerful of Greek cities. Hecuba’s cry to the gods even casts Zeus as a peculiarly Athenian official – president of the city council.

So the name of Troy wasn’t wiped out after all. The imagination of its con-

querors was haunted by it, transmitted it, and mourned it. Obsessively the Greek poets returned to this scene of destruction, typically inviting, as here, the audience's compassion for the women of Troy and blame for their assailants. In its very structure the play makes a claim for the moral value of compassionate imagining, as it asks its audience to partake in the terror of a burning city, of murder and rape and slavery. Insofar as members of the audience are engaged by this drama, feeling fear and grief for the conquered city, they demonstrate the ability of compassion to cross lines of time, place, and nation – and also, in the case of many audience members, the line of sex, perhaps more difficult yet to cross.

Nor was the play a purely aesthetic event divorced from political reality. The dramatic festivals of Athens were sacred celebrations strongly connected to the idea of democratic deliberation, and the plays of Euripides were particularly well-known for their engagement with contemporary events. *The Trojan Women's* first audience had recently voted to put to death the men of the rebellious colony of Melos and to enslave its women and children. Euripides invited this audience to contemplate the real human meaning of its actions. Compassion for the women of Troy should at least cause moral unease, reminding Athenians of the full and equal humanity of people who live in distant places, their fully human capacity for suffering.

But did those imaginations really cross those lines? Think again of that invocation of Zeus. Trojans, if they worshipped Zeus as king of gods at all, surely did not refer to him as the president of the city council; *prytanis* is strictly an Athenian legal term. So it would appear that Hecuba is not a Trojan but a Greek. And her imagination is a Greek democratic (and, we might add, mostly male) imagina-

tion. Maybe that's a good thing, in the sense that the audience is surely invited to view her as their fellow and equal. But it still should give us pause.

Did compassion really enable those Greeks to comprehend the real humanity of others, or did it stop short, allowing them to reaffirm the essential Greekness of everything that's human? Of course compassion required making the Trojans somehow familiar, so that Greeks could see their own vulnerability in them, and feel terror and pity, as for their own relations. But it's easy for the familiarization to go too far: they are just us, and we are the ones who suffer humanly. Not those other ones, over there in Melos.

America's towers, too, have burned. Compassion and terror now inform the fabric of our lives. And in those lives we see evidence of the good work of compassion, as Americans make real to themselves the sufferings of so many people whom they never would otherwise have thought about: New York firefighters, that gay rugby player who helped bring down the fourth plane, bereaved families of so many national and ethnic origins. More rarely our compassion even crosses national boundaries: the tragedy led an unprecedented number of Americans to sympathize with the plight of Afghan women under the Taliban.

Yet at the same time, we also see evidence of how narrow and self-serving our sense of compassion can sometimes be. Some of us may notice with new appreciation the lives of Arab Americans among us – but others regard the Muslims in our midst with increasing wariness and mistrust. I am reminded of a Sikh taxi driver describing how often he was told to go home to 'his own country' – even though he came to the United

States as a political refugee from the miseries of police repression in the Punjab. And while our leaders have preached the virtues of tolerance, they have also resorted to the polarizing language of 'us' versus 'them,' as they marshal popular opinion to pursue a war on terrorism.

Indeed, the events of September 11 make vivid a philosophical problem that has been debated from the time of Euripides through much of the history of the Western philosophical tradition. This is the question of what to do about compassion, given its obvious importance in shaping the civic imagination, but given, too, its obvious propensity for self-serving narrowness. Is compassion, with all its limits, our best hope as we try to educate citizens to think well about human relations both inside the nation and across national boundaries? So some thinkers have suggested. I count Euripides among them, and would also include in this category Aristotle, Rousseau, Hume, and Adam Smith. Or is compassion a threat to good political thinking and the foundations of a truly just world community? So the Greek and Roman Stoics thought, and before them Plato, and after them Spinoza and (again) Adam Smith.

The enemies of compassion hold that we cannot build a stable and lasting concern for humanity on the basis of such a slippery and uneven motive; impartial motives based on ideas of dignity and respect should take its place. The friends of compassion reply that without building political morality on what we know and on what has deep roots in our childhood attachments, we will be left with a morality that is empty of urgency – a 'watery' concern, as Aristotle put it.

This debate continues in contemporary political and legal thought. In a recent exchange about animal rights, J. M. Coetzee invented a character who argues

that the capacity for sympathetic imagination is our best hope for moral goodness in this area. Peter Singer replies, with much plausibility, that the sympathetic imagination is all too anthropocentric and we had better not rely on it to win rights for creatures whose lives are very different from our own.<sup>1</sup>

I shall not trace the history of the debate in this essay. Instead, I shall focus on its central philosophical ideas and try to sort them out, offering a limited defense of compassion and the tragic imagination, and then making some suggestions about how its pernicious tendencies can best be countered – with particular reference throughout to our current political situation.

## 2

Let me set the stage for the analysis to follow by turning to Smith, who, as you will have noticed, turns up in my taxonomy on both sides of the debate. Smith offers one of the best accounts we have of compassion, and of the ethical achievements of which this moral sentiment is capable. But later, in a section of *The Theory of Moral Sentiments* entitled "Of the Sense of Duty," he solemnly warns against trusting this imperfect sentiment too far when duty is what we are trying to get clear.

Smith's concern, like mine, is with our difficulty keeping our minds fixed on the sufferings of people who live on the other side of the world:

Let us suppose that the great empire of China, with all its myriads of inhabitants, was suddenly swallowed up by an earthquake, and let us consider how a man of humanity in Europe, who had no sort of

<sup>1</sup> J. M. Coetzee, *The Lives of Animals*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1999).

connexion with that part of the world, would be affected upon receiving intelligence of this dreadful calamity. He would, I imagine, first of all, express very strongly his sorrow for the misfortune of that unhappy people, he would make many melancholy reflections upon the precariousness of human life, and the vanity of all the labours of man, which could thus be annihilated in a moment . . . . And when all this fine philosophy was over, when all these humane sentiments had been once fairly expressed, he would pursue his business or his pleasure, take his repose or his diversion, with the same ease and tranquillity, as if no such accident had happened. The most frivolous disaster which could befall himself would occasion a more real disturbance. If he was to lose his little finger to-morrow, he would not sleep to-night; but, provided he never saw them, he will snore with the more profound security over the ruin of a hundred millions of his brethren, and the destruction of that immense multitude seems plainly an object less interesting to him, than this paltry misfortune of his own.

That's just the issue that should trouble us as we think about American reactions to September 11. We see a lot of 'humane sentiments' around us, and extensions of sympathy beyond people's usual sphere of concern. But more often than not, those sentiments stop short at the national boundary.

We think the events of September 11 are bad because they involved *us* and *our* nation. Not just human lives, but *American* lives. The world came to a stop – in a way that it rarely has for Americans when disaster has befallen human beings in other places. The genocide in Rwanda didn't even work up enough emotion in us to prompt humanitarian intervention. The plight of innocent civilians in Iraq never made it onto our national radar screen. Floods, earth-

quakes, cyclones, the daily deaths of thousands from preventable malnutrition and disease – none of these makes the American world come to a standstill, none elicits a tremendous outpouring of grief and compassion. At most we get what Smith so trenchantly described: a momentary flicker of feeling, quickly dissipated by more pressing concerns close to home.

Frequently, however, we get a compassion that is not only narrow, failing to include the distant, but also polarizing, dividing the world into an 'us' and a 'them.' Compassion for our own children can so easily slip over into a desire to promote the well-being of our children at the expense of other people's children. Similarly, compassion for our fellow Americans can all too easily slip over into a desire to make America come out *on top* and to subordinate other nations.

One vivid example of this slip took place at a baseball game I went to at Comiskey Park, the first game played in Chicago after September 11 – and a game against the Yankees, so there was heightened awareness of the situation of New York and its people. Things began well, with a moving ceremony commemorating the firefighters who had lost their lives and honoring local firefighters who had gone to New York afterwards to help out. There was even a lot of cheering when the Yankees took the field, a highly unusual transcendence of local attachments. But as the game went on and the beer began flowing, one heard, increasingly, the chant "U-S-A. U-S-A," a chant first heard in 1980 during an Olympic hockey match in which the United States defeated Russia. In that context, the chant had expressed a wish for America to humiliate its Cold War enemy; as time passed, it became a general way of expressing the desire to crush an

opponent, whoever it might be. When the umpire made a bad call against the Sox, a group in the bleachers turned on him, chanting “U-S-A.” From ‘humane sentiments’ we had turned back to the pain in our little finger.

With such examples before us, how can we trust compassion and the imagination of the other that it contains? But if we don’t trust that, what else can we plausibly rely on to transform horror into a shared sense of ethical responsibility?

I shall proceed as follows. First, I shall offer an analysis of the emotion of compassion, focusing on the thoughts and imaginings on which it is based. This will give us a clearer perspective on how and where it is likely to go wrong. Second, I shall examine the countertradition’s proposal that we can base political morality on respect for dignity, doing away with appeals to compassion. This proposal, at first attractive, contains, on closer inspection, some deep difficulties. Third, I will return to compassion, asking how, if we feel we need it as a public motive, we might educate it so as to overcome, as far as we can, the problem that Smith identified.

More than a warm feeling in the gut, compassion involves a set of thoughts, often quite complex.<sup>2</sup> We need to dissect them, if we are to make progress in understanding how it goes wrong and how it may be steered aright. There is a good deal of agreement about this among philosophers as otherwise diverse as Aristotle and Rousseau, and also among contemporary psychologists and sociolo-

2 I am drawing on an analysis of compassion for which I argue at greater length in Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (New York: Cambridge University Press, 2001), chaps. 6–8.

gists who have done empirical work on the emotion.<sup>3</sup>

Compassion is an emotion directed at another person’s suffering or lack of well-being. It requires the thought that the other person is in a bad way, and a pretty seriously bad way. (Thus we don’t feel compassion for people’s loss of trivial items like toothbrushes and paper clips.) It contains within itself an appraisal of the seriousness of various predicaments. Let us call this *the judgment of seriousness*.

Notice that this assessment is made from the point of view of the person who has the emotion. It does not neglect the actual suffering of the other, which certainly should be estimated in taking the measure of the person’s predicament. And yet it does not necessarily take at face value the estimate of the predicament this person will be able to form. As Smith emphasized, we frequently have great compassion for people whose predicament is that they have lost their powers of thought; even if they seem like happy children, we regard this as a terrible catastrophe. On the other side, when people moan and groan about something, we don’t necessarily have compassion for them: for we may think that they are not really in a bad predicament. Thus when very rich people grumble about taxes, many of us don’t have the slightest compassion for them: for

3 C. Daniel Batson of the University of Kansas should be mentioned with honor here, because he has not only done remarkable empirical work, but has also combined it with a conceptual and analytic clarity that is rare in social science research of this type. See in particular *The Altruism Question* (Hillsdale, N.J.: Lawrence Erlbaum, 1991). Candace Clark’s sociological study is also exemplary: *Misery and Company: Sympathy in Everyday Life* (Chicago: University of Chicago Press, 1997).



we judge that it is only right and proper that they should pay what they are paying – and probably a lot more than that. So the judgment of seriousness already involves quite a complex feat of imagination: it involves both trying to look out at the situation from the suffering person's own viewpoint and then assessing the person's own assessment. Complex though the feat is, young children easily learn it, feeling sympathy with the suffering of animals and other children, but soon learning, as well, to withhold sympathy if they judge that the person is just a crybaby, or spoiled – and, of course, to have sympathy for the predicament of an animal who is dead or unconscious, even if it is not actually suffering.

Next comes *the judgment of nondesert*. Hecuba asked Zeus to witness the undeserved sufferings of the Trojan women, using the Greek word *anaxia*, which appears in Aristotle's definition of tragic compassion. Hecuba's plea, like Aristotle's definition, implies that we will not have compassion if we believe the person fully deserves the suffering. There may be a measure of blame, but then in our compassion we typically register the thought that the suffering exceeds the measure of the fault. The Trojan women are an unusually clear case, because, more than most tragic figures, they endure the consequences of events in which they had no active part at all. But we can see that nondesert is a salient part of our compassion even when we do also blame the person: typically we feel compassion at the punishment of criminal offenders, to the extent that we think circumstances beyond their control are at least in good measure responsible for their becoming the bad people they are. People who have the idea that the poor brought their poverty upon themselves

by laziness fail, for that reason, to have compassion for them.<sup>4</sup>

Next there is a thought much stressed in the tradition that I shall call *the judgment of similar possibilities*: Aristotle, Rousseau, and others suggest that we have compassion only insofar as we believe that the suffering person shares vulnerabilities and possibilities with us. I think we can clearly see that this judgment is not strictly necessary for the emotion, as the other two seem to be. We have compassion for nonhuman animals, without basing it on any imagined similarity – although, of course, we need somehow to make sense of their predicament as serious and bad. We also imagine that an invulnerable god can have compassion for mortals, and it doesn't seem that this idea is conceptually confused. For the finite imaginations of human beings, however, the thought of similar possibilities is a very important psychological mechanism through which we get clear about the seriousness of another person's plight. This thought is often accompanied by empathetic imagining, in which we put ourselves in the suffering person's place, imagine their predicament as our own.

Finally, there is one thing more, not mentioned in the tradition, which I believe must be added in order to make the account complete. This is what, in writing on the emotions, I have called *the eudaimonistic judgment*, namely, a judgment that places the suffering person or persons among the important parts of the life of the person who feels the emotion. In my more general analysis of emotions, I argue that they are always eudaimonistic, meaning focused on the agent's most important goals and proj-

<sup>4</sup> Clark's empirical survey of American attitudes finds this a prominent reason for the refusal of compassion for the poor.

ects. Thus we feel fear about damages that we see as significant for our own well-being and our other goals; we feel grief at the loss of someone who is already invested with a certain importance in our scheme of things. Eudaimonism is not egoism. I am not claiming that emotions always view events and people merely as means to the agent's own satisfaction or happiness. But I do mean that the things that occasion a strong emotion in us are things that correspond to what we have invested with importance in our account to ourselves of what is worth pursuing in life.

Compassion can evidently go wrong in several different ways. It can get the judgment of nondesert wrong, sympathizing with people who actually don't deserve sympathy and withholding sympathy from those who do. Even more frequently, it can get the judgment of seriousness wrong, ascribing too much importance to the wrong things or too little to things that have great weight. Notice that this problem is closely connected to obtuseness about social justice, in the sense, for example, that if we don't think a social order unjust for denying women the vote, or subordinating African Americans, then we won't see the predicament of women and African Americans as bad, and we won't have compassion for them. We'll think that things are just as they ought to be. Again, if we think it's unjust to require rich people to pay capital gains tax, we will have a misplaced compassion toward them. Finally, and obviously, compassion can get the eudaimonistic judgment wrong, putting too few people into the circle of concern. By my account, then, we won't have compassion without a moral achievement that is at least coeval with it.

My account, I think, is able to explain the unevenness of compassion better than other more standard accounts. Compassion begins from where we are, from the circle of our cares and concerns. It will be felt only toward those things and persons we see as important, and of course most of us most of the time ascribe importance in a very uneven and inconstant way. Empathetic imagining can sometimes extend the circle of concern. Thus Batson has shown experimentally that when the story of another person's plight is vividly told, subjects will tend to experience compassion toward the person and form projects of helping. This is why I say that the moral achievement of extending concern to others needn't antedate compassion, but can be coeval with it. Still, there is a recalcitrance in our emotions, given their link to our daily scheme of goals and ends. Smith is right: thinking that the poor victims of the disaster in China are important is easy to do for a short time, but hard to sustain in the fabric of our daily life; there are so many things closer to home to distract us, and these things are likely to be so much more thoroughly woven into our scheme of goals.

Let us return to September 11 armed with this analysis. The astonishing events made many Americans recognize with a new vividness the nation itself as part of their circle of concern. Most Americans rely on the safety of our institutions and our cities, and don't really notice how much they value them until they prove vulnerable – in just the way that lovers often don't see how much they love until their loved one is ill or threatened. So our antecedent concern emerged with a new clarity in the emotions we experienced. At the same time, we actually extended concern, in many

cases, to people in America who had not previously been part of our circle of concern at all: the New York firefighters, the victims of the disasters. We extended concern to them both because we heard their stories and also, especially, because we were encouraged to see them as a part of the America we already loved and for which we now intensely feared.

When disaster struck in Rwanda, we did not similarly extend concern, or not stably, because there was no antecedent basis for it: suffering Rwandans could not be seen as part of the larger 'us' for whose fate we trembled. Vivid stories can create a temporary sense of community, but they are unlikely to sustain concern for long, if there is no pattern of interaction that would make the sense of an 'us' an ongoing part of our daily lives.

Things are of course still worse with any group that figures in our imaginations as a 'them' against the 'us.' Such groups are not only by definition non-us, they are also, by threatening the safety of the 'us,' implicitly bad, deserving of any misfortune that might strike them. This accounts for the sports-fan mentality so neatly depicted in my baseball story. Compassion for a member of the opposing team? You've got to be kidding. "U-S-A" just means kill the ump.

### 3

In light of these difficulties, it is easy to see why much of the philosophical tradition has wanted to do away with compassion as a basis for public choice and to turn, instead, to detached moral principles whose evenhandedness can be relied on. The main candidate for a central moral notion has been the idea of human worth and dignity, a principle that has been put to work from the Stoics and Cicero on through Kant and beyond. We are to recognize that all humans have

dignity, and that this dignity is both inalienable and equal, not affected by differences of class, caste, wealth, honor, status, or even sex. The recognition of human dignity is supposed to impose obligations on all moral agents, whether the humans in question are conationals or foreigners. In general, it enjoins us to refrain from all aggression and fraud, since both are seen as violations of human dignity, ways of fashioning human beings into tools for one's own ends. Out of this basic idea Cicero developed much of the basis for modern international law in the areas of war, punishment, and hospitality.<sup>5</sup> Other Stoics used it to criticize conventional norms of patriarchal marriage, the physical abuse of servants, and many other aspects of Roman social life.

This Stoic tradition was quite clear that respect for human dignity could move us to appropriate action, both personal and social, without our having to rely at all on the messier and more inconstant motive of compassion. Indeed, for separate reasons, which I shall get to shortly, Stoics thought compassion was never appropriate, so they could not rely on it.

What I now want to ask is whether this countertradition was correct. Respect for human dignity looks like the right thing to focus on, something that can plausibly be seen as of boundless worth, constraining all actions in pursuit of well-being, and also as equal, creating a kingdom of ends in which humans are ranked horizontally, so to speak, rather than vertically. Why should we not follow the countertradition, as in many respects we do already – as when constitutions make the notion of human dignity central to the analysis of constitutional

5 See my "Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy," *Journal of Political Philosophy* 7 (1999): 1–31.

rights,<sup>6</sup> as when international human rights documents apply similar notions. Now it must be admitted that human dignity is not an altogether clear notion. In what does it consist? Why should we think that all human life has it? The minute the Stoic tradition tries to answer such questions, problems arise. In particular, the answer almost always takes the form of saying, Look at how far we are above the beasts. Reason, language, moral capacity – all these are seen as worthy of respect and awe at least in part because the beasts, so-called, don't have them, because they make us better than others. Of course they wouldn't seem to make us better if they didn't have some attraction in themselves. But the claim that this dignity resides equally in all humanity all too often relies on the better-than-the-beasts idea. No matter how we humans vary in our rational and moral capacities, the idea seems to be, the weakest among us is light-years beyond those beasts down there, so the differences that exist among us in basic powers become not worth adverting to at all, not sources of differential worth at all. Dignity thus comes to look not like a scalar matter but like an all-or-nothing matter. You either have it, or, bestially, you don't.

This view has its moral problems, clearly. Richard Sorabji has shown how it was linked with a tendency to denigrate the intelligence of animals;<sup>7</sup> and of course it has been used, too, not only by

6 Germany is one salient example. In a forthcoming book, James Whitman describes the way this central notion has constrained legal practices in Europe generally, especially in the area of criminal punishment. Dignity, he argues, is a nonhierarchical notion that has replaced hierarchical orders of rank.

7 Richard Sorabji, *Animal Minds and Human Morals: The Origins of the Western Debate* (Ithaca, N.Y.: Cornell University Press, 1993).

the Stoics but also by Kant and modern contractarians to deny that we have any obligations of justice toward nonhuman forms of life. Compassion, if slippery, is at least not dichotomous in this way; it is capable of reaching sympathetically into multiple directions simultaneously, capable, as Coetzee said, of imagining the sufferings of animals in the squalid conditions we create for them.

There is another more subtle problem with the dignity idea. It was crucial, according to the Stoics, to make dignity radically independent of fortune: all humans have it, no matter where they are born and how they are treated. It exerts its claim everywhere, and it can never be lost. If dignity went up or down with fortune, it would create ranks of human beings: the well-born and healthy will be worth more than the ill-born and hungry. So the Stoics understood their project of making dignity self-sufficient as essential for the notion of equal respect and regard.

But this move leads to a problem: how can we give a sufficiently important place to the goods of fortune for political purposes once we admit that the truly important thing, the thing that lies at the core of our humanity, doesn't need the goods of fortune at all? How can we provide sufficient incentive for political planners to arrange for an adequate distribution of food and shelter and even political rights and liberties if we say that dignity is undiminished by the lack of such things?<sup>8</sup> Stoic texts thus look oddly quietistic: respect human dignity, they say. But it doesn't matter at all what

8 I deal with this question at greater length in "Duties of Justice," and also in "The Worth of Human Dignity: Two Tensions in Stoic Cosmopolitanism," in *Philosophy and Power in the Graeco-Roman World: Essays in Honour of Miriam Griffin*, ed. Gillian Clark and Tessa Rajak (Oxford: Oxford University Press, 2002), 31–49.

conditions we give people to live in, since dignity is complete and immutable anyway. Seneca, for example, gives masters stern instructions not to beat slaves or use them as sexual tools (*Moral Epistle* 47). But as for the institution of slavery itself? Well, this does not really matter so much, for the only thing that matters is the free soul within, and that cannot be touched by any contingency. Thus, having begun his letter on slavery on an apparently radical note, Seneca slides into quietism in the end, when his master scornfully says, “He is a slave,” and Seneca calmly replies, “Will this do him any harm? [*Hoc illi nocebit?*]”

Things are actually even worse than this. For the minute we start examining this reasoning closely, we see that it is not only quietistic – it is actually incoherent. Either people need external things or they do not. But if they do not, if dignity is utterly unaffected by rape and physical abuse, then it is not very easy, after all, to say what the harm of beating or raping a slave is. If these things are no harm to the victim, why is it wrong to do them? They seem not different from the institution of slavery itself: will they really do him any harm, if one maintains that dignity is sufficient for eudaimonia, and that dignity is totally independent of fortune? So Seneca lacks not only a basis for criticizing the institution of slavery, but also for the criticism his letter actually makes, of cruel and inhumane practices toward slaves.

Kant had a way of confronting this question, and it is a plausible one, within the confines of what I have called the countertradition. Kant grants that humanity itself, or human worth, is independent of fortune: under the blows of “step-motherly nature” goodwill still shines like a jewel for its own sake. But external goods such as money, health,

and social position are still required for happiness, which we all reasonably pursue. So there are still very weighty moral reasons for promoting the happiness of others, reasons that can supply both individuals and states with a basis for good thoughts about the distribution of goods.

The Stoics notoriously deny this, holding that virtue is sufficient for eudaimonia. What I want to suggest now is that their position on human dignity pushes them strongly in this direction. Think of the person who suffers poverty and hardship. Now either this person has something that is beyond price, by comparison to which all the money and health and shelter in the world is as nothing – or she does not have something that is beyond price. Her dignity is just one part of her happiness – a piece of it that can itself be victimized and held hostage to fortune; her human dignity is being weighed in the balance with other goods and it no longer looks like the thing of surpassing, even infinite worth, that we took it to be. There are, after all, ranks and orders of human beings; slavery and abuse can actually change people’s situation with regard to their most important and inclusive end, eudaimonia itself.

Because the Stoics do not want to be forced to that conclusion, they insist that external goods are not required for eudaimonia: virtue is sufficient. And basic human dignity, in turn, is sufficient for becoming virtuous, if one applies oneself in the right way. It is for this deep reason that the Stoics reject compassion as a basic social motive, not just because it is slippery and uneven. Compassion gets the world wrong, because it is always wrong to think that a person who has been hit by misfortune is in a bad or even tragic predicament. “Behold how tragedy comes about,” writes Epic-

tetus, “when chance events befall fools.” In other words, only a fool would mind the events depicted in Euripides’ play, and only fools in the audience would view these events as tragic.

So there is a real problem in how, and how far, the appeal to equal human dignity motivates. Looked at superficially, the idea of respect for human dignity appears to provide a principled, evenhanded motive for good treatment of all human beings, no matter where they are placed. Looked at more deeply, it seems to license quietism and indifference to things in the world, on the grounds that nothing that merely happens to people is really bad.

We have now seen two grave problems with the countertradition: what I shall call *the animal problem* and what I shall call *the external goods problem*. Neither of these problems is easy to solve within the countertradition. By contrast, the Euripidean tradition of focusing on compassion as a basic social motive has no such problems. Compassion can and does cross the species boundary, and whatever good there may be in our current treatment of animals is likely to be its work; we are able to extend our imaginations to understand the sufferings of animals who are cruelly treated and to see that suffering as significant, as undeserved, and to see its potential termination as part of our scheme of goals and projects.<sup>9</sup>

As for the problem of external goods, compassion has no such problem, for it is intrinsically focused on the damages of fortune: its most common objects, as

9 See Coetzee, *The Lives of Animals*, 35: “There are people who have the capacity to imagine themselves as someone else, there are people who have no such capacity (when the lack is extreme, we call them psychopaths), and there are people who have the capacity but choose not to exercise it.”

Aristotle listed them in the *Rhetoric*, are the classic tragic predicaments: loss of country, loss of friends, old age, illness, and so on.

But let us suppose that the countertradition can solve these two problems, providing people with adequate motives to address the tragic predicaments. Kant makes a good start on the external goods problem, at least. So let us imagine that we have a reliable way of motivating conduct that addresses human predicaments, without the uneven partiality that so often characterizes compassion. A third problem now awaits us. I shall call it *the problem of watery motivation*, though we might well call it *the problem of death within life*.

The term ‘watery motivation’ comes from Aristotle’s criticism of Plato’s ideal city. Plato tried to remove partiality by removing family ties and asking all citizens to care equally for all other citizens. Aristotle says that the difficulty with this strategy is that “there are two things above all that make people love and care for something, the thought that it is all theirs, and the thought that it is the only one they have. Neither of these will be present in that city” (*Pol.* 1262b22-3). Because nobody will think of a child that it is all theirs, entirely their own responsibility, the city will, he says, resemble a household in which there are too many servants so nobody takes responsibility for any task. Because nobody will think of any child or children that they are the only ones they have, the intensity of care that characterizes real families will simply not materialize, and we will have instead, he says, a ‘watery’ kind of care all round (*Pol.* 1262b15).

If we now examine the nature of Stoic motivation, I think we will see that Aristotle is very likely to be correct. I shall focus here on Marcus Aurelius, in many ways the most psychologically profound

of Stoic thinkers. Marcus tells us that the first lesson he learned from his tutor was “not to be a fan of the Greens or Blues at the races, or the light-armed or heavy-armed gladiators at the Circus” (I.5). His imagination had to unlearn its intense partiality and localism; his tutor apparently assumed that already as young children we have learned narrow sectarian types of loyalty. And it is significant, I think, that the paradigmatic negative image for the moral imagination is that of sports fandom: for in all ages, perhaps, such fandom has been a natural way for human beings to express vicariously their sectarian loyalties to family, city, and nation. It was no accident that those White Sox fans invoked the hockey chant to express their distress about the fate of the nation.

The question is whether this negative lesson leaves the personality enough resources to motivate intense concern for people anywhere. For Marcus, unlearning partiality requires an elaborate and systematic program of uprooting concern for all people and things in this world. He tells us of the meditative exercises that he regularly performs in order to get himself to the point at which the things that divide people from one another no longer matter. One side of this training looks benign and helpful: we tell ourselves that our enemies are really not enemies, but part of a common human project:

Say to yourself in the morning: I shall meet people who are interfering, ungracious, insolent, full of guile, deceitful and antisocial . . . But I, . . . who know that the nature of the wrongdoer is of one kin with mine – not indeed of the same blood or seed but sharing the same kind, the same portion of the divine – I cannot be harmed by any one of them, and no one can involve me in shame. I cannot feel anger against him who is of my kin, nor hate

him. We were born to labor together, like the feet, the hands, the eyes, and the rows of upper and lower teeth. To work against one another is therefore contrary to nature, and to be angry against a man or turn one’s back on him is to work against him.<sup>10</sup>

Notice how close these thoughts are to the thought-content of a greatly extended sort of compassion. Passages such as these suggest that a strong kind of even-handed concern can be meted out to all human beings, without divisive jealousy and partiality; that we should see ourselves not as team players, not as family members, not as loyal citizens of a nation, but, most essentially, as members of the humankind with the advancement of our kind as our highest goal.

Now even in this good case problems are lurking: for we notice that this exercise relies on the thoughts that give rise to the animal problem and the external goods problem. We are asked to imagine human solidarity and community by thinking of a ‘portion of the divine’ that resides in all and only humans: we look like we have a lot in common because we are so sharply divided from the rest of nature. And the idea that we have a common work relies, to at least some extent, on Marcus’s prior denigration of external goods: for if we ascribed value to external goods we would be in principle competing with one another, and it would be difficult to conceive of the common enterprise without running into that competition.

But I have resolved to waive those two difficulties, so let me do so. Even then, the good example is actually very complex. For getting to the point where we can give such concern evenhandedly to all human beings requires, as Marcus

<sup>10</sup> II.1, trans. G. Grube (Hackett edition). Cf. also VI.6: “The best method of defense is not to become like your enemy.”

makes abundantly clear, the systematic extirpation of intense cares and attachments directed at the local: one's family, one's city, the objects of one's love and desire. Thus Marcus needs to learn not only not to be a sports fan, but also not to be a lover. Consider the following extraordinary passage:

How important it is to represent to oneself, when it comes to fancy dishes and other such foods, "This is the corpse of a fish, this other thing the corpse of a bird or a pig." Similarly, "This Falernian wine is just some grape juice," and "This purple vestment is some sheep's hair moistened in the blood of some shellfish." When it comes to sexual intercourse, we must say, "This is the rubbing together of membranes, accompanied by the spasmodic ejaculation of a sticky liquid." How important are these representations, which reach the thing itself and penetrate right through it, so that one can see what it is in reality. (VI.13)<sup>11</sup>

Now, of course, these exercises are addressed to the problem of external goods. Here as elsewhere, Marcus is determined to unlearn the unwise attachments to externals that he has learned from his culture. This project is closely connected to the question of partiality, because learning not to be a sports fan is greatly aided by learning not to care about the things over which people typically fight. (Indeed, it is a little hard to see how a Kantian project can be stable, insofar as it teaches equal respect for human dignity while at the same time teaching intense concern for the externals that go to produce happiness, externals that strongly motivate people not to

11 Based on the translation in Pierre Hadot, *The Inner Citadel: The Meditations of Marcus Aurelius*, trans. Michael Chase (Cambridge, Mass.: Harvard University Press, 1998), with some modifications.

treat all human beings equally.) In the Marcus passage, however, the link to partiality seems even more direct: for learning to think of sex as just the rubbing of membranes really is learning not to find special value or delight in a particular, and this extirpation of eroticism really does seem to be required by a regime of impartiality.

But getting rid of our erotic investment, not just in bodies, but in families, nations, sports teams – all this leads us into a strange world, a world that is gentle and unaggressive, but also strangely lonely and hollow. To unlearn the habits of the sports fan we must unlearn our erotic investment in the world, our attachments to our own team, our own love, our own children, our own life.

Marcus suggests that we have two choices only: the world of real-life Rome, which resembles a large gladiatorial contest (see Seneca *De Ira* 2.8), each person striving to outdo others in vain competition for externals, a world exploding with rage and poisoned by malice; or the world of Marcus's gentle sympathy, in which we respect all human beings and view all as our partners in a common project whose terms don't seem to matter very much, thus rendering the whole point of living in the world increasingly unclear.<sup>12</sup>

And this means something like a death within life. For only in a condition close to death, in effect, is moral rectitude possible. Marcus repeatedly casts life as a kind of death already, a procession of meaningless occurrences:

The vain solemnity of a procession; dramas played out on the stage; troops of

12 It is significant that this adopted emperor did not, as the movie *Gladiator* shows us, make a principled rational choice of the best man to run the empire. In real life, Marcus chose his worthless son Commodus, tripped up yet once more by the love of the near.



sheep or goats; fights with spears; a little bone thrown to dogs; a chunk of bread thrown into a fish-pond; the exhausting labor and heavy burdens under which ants must bear up; crazed mice running for shelter; puppets pulled by strings . . . . (VII.3)<sup>13</sup>

(This, by an emperor who was at that very time on campaign in Parthia, leading the fight for his nation.) And the best consolation for his bleak conclusion also originates in his contemplation of death:

Think all the time about how human beings of all sorts, and from all walks of life and all peoples, are dead . . . . We must arrive at the same condition where so many clever orators have ended up, so many grave philosophers, Heraclitus, Pythagoras, Socrates; so many heroes of the old days, so many recent generals and tyrants. And besides these, Eudoxus, Hipparchus, Archimedes, other highly intelligent minds, thinkers of large thoughts, hard workers, versatile in ability, daring people, even mockers of the perishable and transitory character of human life, like Menippus. Think about all of these that they are long since in the ground . . . . And what of those whose very names are forgotten? So: one thing is worth a lot, to live out one's life with truth and justice, and with kindness toward liars and wrongdoers. (VI.47)

Because we shall die, we must recognize that everything particular about us will eventually be wiped out: family, city, sex, children – all will pass into oblivion. So really, giving up those attachments is not such a big deal. What remains, and all that remains, is truth and justice, the moral order of the world. So only the true city should claim our allegiance.

Marcus is alarming because he has gone deep into the foundations of cosmopolitan moral principle. What he has

seen is that impartiality, fully and consistently cultivated, requires the extirpation of the eroticism that makes life the life we know – unfair, uneven, full of war, full of me-first nationalism and divided loyalty.<sup>14</sup> So, if that ordinary erotic humanity is unjust, get rid of it. But can we live like this, once we see the goal with Marcus's naked clarity? Isn't justice something that must be about and for the living?

## 4

Let me proceed on the hypothesis that Marcus is correct: extirpating attachments to the local and the particular delivers us to a death within life. Let me also proceed on the hypothesis that we will reject this course as an unacceptable route to the goal of justice, or even as one that makes the very idea of justice a hollow fantasy. (This is Adam Smith's conclusion as well: enamored as he is of Stoic doctrine, he thinks we must reject it when it tells us not to love our own families.) Where are we then?

It looks as if we are back where Aristotle and Adam Smith leave us: with the unreliability of compassion, and yet the need to rely on it, since we have no more perfect motive.

This does not mean that we need give up on the idea of equal human dignity, or respect for it. But insofar as we retain, as well, our local erotic attachments, our relation to that motive must always remain complex and dialectical, a difficult conversation within ourselves as we ask how much humanity requires of us, and how much we are entitled to give to our

14 One might compare the imagery of ancient Greek skepticism. Pyrrho, frightened by a dog (and thus betraying a residual human attachment to his own safety) says, "How difficult it is entirely to divest oneself of the human being." Elsewhere he speaks of the skeptic as a eunuch, because he lacks the very source of disturbance.

13 Translation from Hadot/Chase.

own. Any such difficult conversation will require, for its success, the work of the imagination. If we don't have exceptionless principles, if, instead, we need to negotiate our lives with a complex combination of moral reverence and erotic attachment, we need to have a keen imaginative and emotional understanding of what our choices mean for people in many different conditions, and the ability to move resourcefully back and forth from the perspective of our personal loves and cares to the perspective of the distant. Not the extirpation of compassion, then, but its extension and education. Compassion within the limits of respect.

The philosophical tradition helps us identify places where compassion goes wrong: by making errors of fault, seriousness, and the circle of concern. But the ancient tradition, not being very interested in childhood, does not help us see clearly how and why it goes especially wrong. So to begin the task of educating compassion as best we can, we need to ask how and why local loyalties and attachments come to take in some instances an especially virulent and aggressive form, militating against a more general sympathy. To answer this question we need a level of psychological understanding that was not available in the ancient Greek and Roman world, or not completely. I would suggest (and have argued elsewhere) that one problem we particularly need to watch out for is a type of pathological narcissism in which the person demands complete control over all the sources of good, and a complete self-sufficiency in consequence.

Nancy Chodorow long ago argued that this narcissism colors the development of males in many cultures in the world.<sup>15</sup> Recent studies of teenage boys in Ameri-

15 Nancy Chodorow, *The Reproduction of Mothering* (Berkeley, Calif.: University of California Press, 1978).

ca, particularly the impressive work of Dan Kindlon and Michael Thompson in their book *Raising Cain*, have given strong local support to this idea.<sup>16</sup> The boys that Kindlon and Thompson study have learned from their cultures that men should be self-sufficient, controlling, dominant. They should never have, and certainly never admit to, fear and weakness. The consequence of this deformed expectation, Kindlon and Thompson show, is that these boys come to lack an understanding of their own vulnerabilities, needs, and fears – weaknesses that all human beings share. They don't have the language to describe their own inner worlds and are by the same token clumsy interpreters of the emotions and inner lives of others. This emotional illiteracy is closely connected to aggression, as fear is turned outward, with little understanding of the implications of aggressive words and actions for others. Kindlon and Thompson's boys become the sports fans who chant "U-S-A" at the ump, who think of all obstacles to American supremacy and self-sufficiency as opponents to be humiliated.

So the first recommendation I would make for a culture of respectful compassion is a Rousseauian one: it is, that an education in common human weakness and vulnerability should be a very profound part of the education of all children. Children should learn to be tragic spectators and to understand with subtlety and responsiveness the predicaments to which human life is prone. Through stories and dramas, they should learn to decode the suffering of others, and this decoding should deliberately lead them into lives both near and far, including the lives of distant humans and the lives of animals.

16 Dan Kindlon and Michael Thompson, *Raising Cain: Protecting the Emotional Life of Boys* (New York: Ballantine Books, 1999).

As children learn to imagine the emotions of another, they should at the same time learn the many obstacles to such understanding, the many pitfalls of the self-centered imagination as it attempts to be just. Thus, one should not suppose that one can understand a family member, without confronting and continually criticizing the envy and jealousy in oneself that pose powerful obstacles to that understanding. One should not imagine that one can understand the life of a person in an ethnic or racial group different from one's own, or a sex different from one's own, or a nation, without confronting and continually criticizing the fear and greed and the demand for power that make such interactions so likely to produce misunderstanding and worse. What I am suggesting, then, is that the education of emotion, to succeed at all, needs to take place in a culture of ethical criticism, and especially self-criticism, in which ideas of equal respect for humanity will be active players in the effort to curtail the excesses of the greedy self.

At the same time, we can also see that the chances of success in this enterprise will be greater if the society in question does not overvalue external goods of the sort that cause envy and competition. The Stoics are correct when they suggest that overvaluation of external goods is a major source of destructive aggression in society. If we criticize the overvaluation of money, honor, status, and fame that Seneca saw at Rome and that we see in America now, then we may encourage people to pursue other, less problematic external goods, including love of family, of friends, of work, even, to a certain extent, of country. If people care primarily for friendship, good work, and – let's even hope – social justice, then they are less likely to see everything in terms of the hockey match and more likely to use

Marcus's image of the common project. Because my vision is not a Stoic one, there will still be important sources of good to be protected from harm, and there will still be justified anger at damage to those good things. But a lot of occasions for anger in real life are not good or just, and we can do a lot as a society to prune away the greedy attachments that underpin them.

After *Raising Cain*, Kindlon wrote a book on rich teenagers in America.<sup>17</sup> It is an alarming portrait of the greed and overvaluations of a certain class in our nation, and its tales of children who humiliate others because they don't go on the same expensive ski vacations or have the same expensive designer clothes are a chilling illustration of how overvaluation is connected to destructive violence. There is a great deal to say about how education could address such problems, but I shall not go into that here.

Instead, I want to turn back to Euripides, reflecting, in concluding, on the role of tragic spectatorship, and tragic art generally, in promoting good citizenship of the sort I have been advocating here. Tragedies are not Stoic: they start with us 'fools' and the chance events that befall us. At the same time, they tend to get their priorities straight.

Thus, the overvaluations I have just mentioned are usually not validated in tragic works of art. The great Athenian tragic dramas, for example, revolve around attachments that seem essentially reasonable: to one's children, city, loved ones, bodily integrity, health, freedom from pain, status as a free person rather than a slave, ability to speak and persuade others, the very friendship and company of others. The loss of any of

<sup>17</sup> Dan Kindlon, *Too Much of a Good Thing: Raising Children of Character in an Indulgent Age* (New York: Miramax, 2001).

these is worthy of lamentation, and the tragic dramas encourage us to understand the depth of such loss and, with the protagonists, to fear it. In exercising compassion the audience is learning its own possibilities and vulnerabilities – what Aristotle called “things such as might happen” – and learning that people different in sex, race, age, and nation experience suffering in a way that is like our way, and that suffering is as crippling for them as it would be for us.

Such recognitions have their pitfalls, and I have identified some of them in talking about *The Trojan Women*. We always risk error in bringing the distant person close to us; we ignore differences of language and of cultural context, and the manifold ways in which these differences shape one’s inner world. But there are dangers in any act of imagining, and we should not let these particular dangers cause us to admit defeat prematurely, surrendering before an allegedly insuperable barrier of otherness.

When I was out in the rural areas of Rajasthan, visiting an education project for girls, I asked the Indian woman who ran the project (herself an urban woman with a Ph.D.) how she would answer the frequent complaint that a foreigner can never understand the situation of a person in another nation. She thought for a while and said finally, “I have the greatest difficulty understanding my own sister.”

There are barriers to understanding in any human relationship. As Proust said, any real person imposes on us a “dead weight” that our “sensitivity cannot remove.” The obstacles to understanding a sister may in some instances be greater

than those to understanding a stranger. At least they are different. All we can do is trust our imaginations, and then criticize them (listening if possible to the critical voices of those we are trying to understand), and then trust them again. Perhaps out of this dialectic between criticism and trust something like understanding may eventually grow. At least the product will very likely be better than the obtuseness that so generally reigns in international relations.

As Euripides knew, terror has this good thing about it: it makes us sit up and take notice. Tragic dramas can’t precisely teach anything new, since they will be moving only to people who at some level already understand how bad these predicaments are. But they can awaken the sleepers by reminding them of human realities they are neglecting in their daily political lives.

The experience of terror and grief for our towers might be just that – an experience of terror and grief for our towers. One step worse, it could be a stimulus for blind rage and aggression against all the opposing hockey teams and bad umpires in the world. But if we cultivate a culture of critical compassion, such an event may, like Hecuba’s Trojan cry, possibly awaken a larger sense of the humanity of suffering, a patriotism constrained by respect for human dignity and by a vivid sense of the real losses and needs of others.

And in that case, it really would turn out that Euripides was right and Hecuba was wrong: the name of the Trojan land was not wiped out. It lives, in a work of the imagination to which we can challenge ourselves, again and again.

# Stanley Hoffmann

## *World governance: beyond utopia*

Ever since the rise of nation-states in the modern period, diplomats and political theorists have struggled to devise international institutions that might more effectively secure peace and some measure of justice among nations. The very complexity of the current international scene makes a fair and effective system of world governance more necessary than ever – but it also makes it unlikely. In these circumstances, it may be useful to sketch briefly a scheme for world governance that is an improvement over present circumstances, without being hopelessly utopian. That means that any such scheme must be appropriate for international politics as it actually exists.

The most salient feature of international politics has long been its anarchic character. Ever since the rise of sovereign nation-states, there has been no

sovereign power above them. The absence of a super-Leviathan, combined with the absence of a broad consensus on values or on procedures of conflict resolution, means that international politics has long been, in Rousseau's terms, a "state of war," real or potential. There have been truces, temporary remissions, and zones of peace – but so long as anarchy prevails, there can be no end to the possibility of war.

In the nineteenth century, the main European powers constituted a 'concert' to try to preserve the post-Napoleonic peace settlements. But this was primarily a mechanism of consultation, and the concert eventually fell apart over the issue of intervention in domestic affairs.

After World War I, statesmen and citizens began to think of going beyond the sovereign nation-state. The League of Nations seemed like a big step forward, because of its provisions against aggressive wars and its procedures for peaceful change. But it was a strictly international organization: its coercive powers depended on the willingness of the major states to put them into effect. Even worse, the League's strong connections with the territorial status quo established by the post-1918 treaties thwarted the application of its provisions for peaceful change.

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When the United Nations was founded in 1945, it was designed to prevent a fiasco like the League of Nations, rather than to cope with the mess left by World War II. The Security Council of the UN had much more power than the Council of the League. But within two years, the Cold War showed that this power was meaningless in practice unless the major states were able to serve as a kind of directorate – which, during the Cold War, they were not.

After the end of the Cold War and the collapse of the USSR, hopes for a new global regime flourished again. But these hopes were dashed, even though a fundamental cause of the Security Council's paralysis had been eliminated. In a unipolar world dominated by one sovereign nation-state – since 1990, the United States – the UN could function effectively only when it followed the lead of the United States.

The UN in the past half century has faced a further difficulty, caused by the collapse of the traditional distinction between international and civil conflicts. During the Cold War, one of the chief conflicts between the United States and the USSR concerned the nature and composition of domestic regimes. In the years since the Cold War ended, a number of states, especially in former colonized areas, have disintegrated, and their fragmentation has incited outside interventions, further blurring the distinction between wars waged between states and those within a state.

At the same time, an emergent concern for human rights, a secondary issue when the UN Charter was established, has also helped to erode the barrier between interstate and domestic affairs, as the UN has in recent years succeeded in extending its jurisdiction and in inventing new methods of peacekeeping. But it still does not have the kind of suprana-

tional power necessary to enforce human rights consistently. Nor does it have the power to force recalcitrant parties to resolve intractable conflicts in the Middle East, Kashmir, Cyprus, and Korea, and between the two Chinas.

As if matters in the traditional domain of world politics – whose primary actors are sovereign nation-states – had not gotten complex enough, a new domain of a very different sort has emerged: a global civil society, in which force (except in the form of terrorism) and conquest play little role, and in which the main actors are transnational financial organizations and multinational corporations. These actors are increasingly free to ignore the sovereignty of select nation-states – largely because the dominant nation-state, the United States, wills it so.

In addition, the new global civil society involves millions of private investors and speculators, thousands of non-governmental organizations (NGOs), and a number of transnational alliances of specialized bureaucracies (for example, the World Health Organization and national health ministries). Innovations in information technology and communications are meanwhile driving a steady integration of civil societies around the world.

Thus we live in a world where one crucial sector, involving security and survival, remains a zone of fragmentation, while another sector, involving prosperity and growth, is a zone of growing integration. At the same time, the globalization of civil society is gradually depriving some nation-states of many of the instruments that were once at their disposal – especially monetary and industrial policies.

Undoubtedly, globalization is a new source of conflict: the rich nations do

not agree on how – or indeed on whether – to help the poor; the poor apparently must choose between a more or less gilded dependence and an autarkic misery; the experts meanwhile disagree about the best formula for assuring global well-being; the champions of free markets often vehemently disagree with the proponents of social justice and human rights; the interests of labor clash with the needs of entrepreneurs, as environmental interests clash with demands for modernization.

And then there is the phenomenon of the new transnational forms of terrorism exemplified by the attacks of 9 – 11. The terrorists responsible for these attacks were able to exploit the open borders of the new world economy, as well as the global reach of new communication media like the Internet. They demonstrated that violence on a vast scale is no longer a monopoly of nation-states or aspiring leaders of nation-states. To make matters worse, the costs of waging the current war on terrorism are liable to make aid for international development even more scarce – thus aggravating the troubles of an already troubled world economy.

In recent years, a number of steps have been taken in order to render international affairs less chaotic. But each of these steps has been flawed in ways that have frustrated the hopes of reformers.

In the society of states, two sets of advances have been noticeable – and controversial. There have been a number of humanitarian interventions aimed at preventing mass killings for ethnic reasons, and the creation of new forms of international criminal justice has accompanied these efforts. But defenders of national sovereignty have resisted both the internationalization of human rights and the assimilation of internal to inter-

national conflict. On each of these two paths, defeats have been as conspicuous as successes: think of Rwanda, and of America's hostility to the International Criminal Court.

Indeed, the means of peacekeeping and peacemaking at the disposal of the UN and of regional organizations (both for internal and interstate conflicts) remain pitifully insufficient, in financial and military terms. And efforts to limit the spread of weapons of mass destruction have thus far been sporadic and generally ineffective.

In the global civil society that has emerged in recent decades, governance is similarly patchy and ineffective. A variety of transnational agencies that are specialized and often contradictory in their policies have been allocated varying degrees of authority and power. Existing global institutions meant to regulate such matters as the environment, population growth, and the condition of women are little more than talk shows. Governance of the global economy has been weak because of the strong opposition of interest groups and some powerful states to anything that could encumber a free market; thus, it has been all but impossible to regulate foreign investments or short-term capital flows – and there is still no international bankruptcy code. Many states and the domestic interest groups influential in them prefer to have their own national institutions provide economic and financial stability, rather than entrusting these aspects of domestic policy to multinational agencies. The United States has been especially reluctant to accept multinational constraints on trade and on the free circulation of currencies.

All of these limitations in the current system have produced a growing dissatisfaction with current forms of world governance. Critics deplore the restric-

tions imposed on the UN and regional organizations by the most powerful states – especially those on the UN Security Council endowed with veto power. The provisions of the UN Charter aimed at giving military capabilities to the Security Council have never been substantiated; a code defining the conditions in which humanitarian intervention could and should be undertaken has not been drafted. There is still disagreement, for example, on what constitutes genocide. And then there are the special problems created by the overwhelming power of the United States; it claims vociferously the right to act without UN endorsement when its security is at stake, and has often resorted to unilateral sanctions without seeking external support. More recently, the United States has pushed aside UN arms control efforts.

At the same time, critics protest that current forms of economic governance are both incomplete and unjust. Under current circumstances, states must conform to the ideology of free trade and obey the dictates of the International Monetary Fund, even if this means undermining domestic support and democratic legitimacy. Many international agencies are denounced for being pawns of U.S. interests, for exploiting the weakness of poorer countries and countries in crisis, for disregarding environmental and human rights standards, for acting in secret, etc. Multinational corporations are attacked for usurping powers of the state: they are increasingly global in their control of resources, products, banking, and insurance; their private connections with politicians make them increasingly influential (in trade negotiations, for instance); and their ability to shift their activities toward low-wage countries fosters a race to the bottom. Thanks to the absence of international oversight,

corporations are able to exploit relatively weak states with impunity.

Such is the unsatisfactory state of world governance today. But what is to be done?

If we are to improve on the present situation without being utopian, we shall have to imagine a set of institutions appropriate for the world of international politics as it presently exists.

This means that I must reject a number of familiar proposals for reform. The first – chronologically – is Kant's formulation of a confederation of representative republics. On the one hand, its provisions for the abolition of war do not deal with such pressing contemporary issues as terrorism or humanitarian interventions (Kant is, fundamentally, a noninterventionist liberal). On the other hand, Kant foresees no significant regulation of civil society on a global scale, apart from protecting freedom of trade and the right of individuals to hospitality abroad. This is too sketchy for a world in which liberal regimes are relatively few, standing armies prosper, armaments are ever more sophisticated, and the world economy is ever more inequalitarian.

Another scheme, which had many proponents just after the end of World War II, is the creation of a world-state, usually advocated in the form of a global federation not unlike the United States of America. This proposal for reform acknowledges a world of nation-states, but has little to say about the global society in which both states and a free market of individual actors and private groups and organizations operate. Furthermore, its demand that the states give up their formal sovereignty is still "a bridge too far." Kant's critique of such a world-state remains valid: such a state would have to be imposed by force, or else it would be



too weak to survive the daily crises and challenges of world and internal affairs.

Nor do I find John Rawls's scheme in *The Law of Peoples* convincing. He has little to say about governance, even though he realizes that in the world as it is – the world of “non-ideal theory” – the states would have a formidable task dealing with rogue and aggressive actors and with the “burdened societies” that need economic assistance. Paradoxically, in Rawls's ideal theory, his concern with the need for a consensus broader than that of liberal regimes leads him to a restricted conception of human rights, one that would have to be acceptable to what he calls “decent hierarchical” regimes. The priority he gives to “the justice of societies” over the “welfare of individuals” finally raises important questions about the fate of the increasingly large number of individuals – migrants, refugees, and other stateless people – who do not fall under the protection of any specific society.

I will therefore leave (with some regret) the realm of utopia and describe briefly the kind of governance that would constitute a great improvement, from the viewpoint of a rather traditional liberal with social-democratic leanings.

In the global society of sovereign nation-states, two issues are central. The first is the protection of human rights. There are, in some parts of the world, such as Europe, strong agencies that protect such rights; it is relatively easy for European citizens to lodge complaints against state violations. But these institutions do not cover the globe, and the relevant UN agencies remain weak, politicized, and state-centered.

That is why we need a world commission and a world court on human rights, on the European model, as well as the

right of monitors and inspectors to operate at the service of such a commission. The latter would have the duty to report to, if necessary to ask for action from, the secretary-general and the political organs of the UN under Chapter VII of the Charter, if necessary. States, being the most frequent violators of human rights, should not be left in charge of initiating the enforcement of covenants they have either refrained from signing or, more usually, signed but disregarded. Although there has been a gradual shift away from invariably preferring a claim of national sovereignty to a claim of human rights, the conflict between these two principles remains intense.

The second issue is that of the use of force. There has been a similar shift away from the nineteenth-century claim by states of a right to wage war – with limitations only on the means – toward a modern version of the old doctrine of *jus ad bellum*, which bans aggression and recognizes as legal only wars of self-defense and of solidarity with the victims of aggression. But here, too, two contradictory principles uneasily coexist, with uncertain implications for the practice of war.

A more consistent application of emergent principles of world governance would require an enormous reinforcement of the powers of the UN. The secretary-general should be not merely allowed to bring dangerous cases to the Security Council: he should be obliged to activate the Council and the General Assembly when the legal limitations on the use of force among states risk being violated, or when grave violations of human rights risk being committed internally. There needs to be a legal code that clearly defines when humanitarian interventions are justified. States that want to use force in (or by claiming) self-defense, individual or collective,

should need the authorization of the Security Council, or, if the Council is paralyzed, of the General Assembly – and when the General Assembly itself cannot agree on the proper course of action, the use of force as a last resort should have to be fully reported to the UN's bodies.

Above all, the Security Council should be provided with a standing force, recruited from the member states but placed under a UN military command that would have a supranational character. This command could be put in charge of preventive or reactive operations licensed by the Security Council, and a civilian board, composed of UN officials who would monitor all UN military actions, could supervise it. These bodies could also have a right to inspect countries suspected of acquiring weapons of mass destruction, and to call for sanctions by the Security Council if such weapons are indeed being acquired. The secretary-general should have the duty to be the chief negotiator for the UN in grave conflicts that threaten global or regional peace – either along with state efforts at good offices, or instead of such efforts if they are blocked by states or if state efforts have failed. A permanent supranational arms control negotiating body would put pressure on states in dangerous zones to reduce their arsenals and to open their borders to inspections.

In the case of humanitarian interventions – future Yugoslavias or Rwandas – the powers of the UN should go beyond restoring peace, and extend to the kind of nation-building or rebuilding that would be indispensable. Obviously, this would entail a vast increase of the UN's budget, and a substantial increase in the number of international civil servants working for the UN secretariat.

In order to curb terrorism, a UN agency should be created to insure the coop-

eration and coordinate the responses of state forces. Such an agency could also issue periodic reports to the relevant political and military agencies of the UN. As in cases of inter- and intra-state wars, wars against terrorism and wars against states that foment or shelter terrorism should be authorized by the Security Council and proceed under the supervision of the UN's military command.

In imagining how to improve the governance of civil society on a global scale, a traditional liberal with social-democratic leanings will proceed with caution. Global *dirigisme* is neither possible nor probably desirable. But a few important problems need to be addressed. Just as nineteenth- and twentieth-century capitalism gradually came to accept a modicum of national and international regulation – to protect workers and consumers, to preserve price stability, to prevent monetary disasters, etc. – twenty-first-century global capitalism needs a regulatory framework that is less fragmented than what exists today. I am thinking of the flaws, demonstrated by the Asian crisis of a few years ago, in the supervision of countries and of banks by the IMF, and in the IMF's frequent indifference to the domestic effects of the deflationary policies it imposes, the disastrous effects of the volatility of private capital flows, the risks created by excessively rigid exchange rates, the need to oblige foreign investors to take into account human rights and labor conditions, health standards, and environmental protection.

I have neither the competence nor the space to redesign the institutional architecture, but the need for fresh political initiatives in four areas seems to me essential.

First, there ought to be one embryonic economic government that oversees and

tries to guide the evolution of the world economy. Here the model could be the European Union, whose supranational commission functions as an economic executive, and whose Council of Ministers sets the rules. (For the global economy, a new economic and social council comparable to the Security Council would be needed.) Harmonizing the activities of the World Trade Organization with those of the International Labour Organization, the World Bank, and the IMF would be within the jurisdiction of this economic government, and a functional equivalent of the EU's commission could act as its executive agent. Divergences over economic philosophies and goals would persist, but these bodies could focus on setting common norms, in the form of codes of good practices, and on reducing the bad effects of capitalist competition – the rash of alliances and mergers, which creates a need for a global antitrust mechanism.

Second, the responsibility for giving aid to developing nations ought to be more centralized, the goals being an increase of development assistance and a reduction of the inequality between the rich and the poor countries' influence in world governance: this would entail giving the UN the power to tax its member states in order to promote more equitable patterns of global development, and to inspect, report on, and recommend changes in the policies of countries receiving such UN aid.

Third, a world environmental agency must be created. It would be in charge of negotiating global protocols and be provided with the expertise necessary to supervise their enforcement and to recommend sanctions against noncompliance.

Fourth, UNESCO would have to be revamped; from the (valuable) concern for elite cultures and endangered local ones,

UNESCO's activities should partly switch to a global effort against fanaticism, parochialism, and intolerance. This would require major funds to influence and activate governments, churches, and school systems. Once again, an agency comparable to the EU commission would serve as this new UNESCO's executive.

A final point of principle must be stressed: The improvement of global governance requires not only more powers and resources for global institutions, but also far greater democratization. The UN General Assembly, which represents the governments of states, needs to be complemented by a UN Assembly of Peoples' Representatives that, in the beginning, might have only powers of general recommendation. Even so, such a UN Popular Assembly would introduce unofficial voices into the global debates. The General Assembly might also be augmented by an additional consultative assembly, composed of representatives of NGOs and of important multinational corporations (an official and public supplement to, if not a substitute for, the Davos Conference). As I have suggested before,<sup>1</sup> mandating a routine review of the resolutions adopted by the Security Council, the General Assembly, and the new Economic and Social Council could be entrusted to the World Court, in order to increase the authority and legitimacy of these resolutions, just as supreme courts in many democratic states currently enhance the authority and legitimacy of the laws passed by their elected representatives.

Short of being mobilized by a world catastrophe – a nuclear, biological, or

1 See Stanley Hoffmann, *World Disorders* (Boulder: Rowman & Littlefield, 1998), chap. 12, 185.

chemical war that kills millions, an economic recession next to which that of 1929 would appear insignificant, a meteorite colliding with the earth, a series of global epidemics that nobody would know how to stop, global warming turning into a boil (we now understand that Hollywood science fiction can anticipate real events) – the many tribes of the human race are unlikely to launch a world constitutional convention that would do away with the sturdy residues of the Westphalian order, to abolish existing states and the creaky international institutions that serve them, and to proclaim a world state. If they occur at all, institutional reforms are likely to be gradual, and to grow out of responses to crises.

Indeed, if one recalls how difficult it has been to complete the transformation of the European Union from a complex mechanism of inter-state cooperation into what Jacques Delors likes to call, cryptically, a federation of nation-states, then one has to concede that the transnational regime I have described is, at best, a very remote possibility. The obstacles are too many to examine in detail here, but the main ones need to be faced frankly.

First, the nation-state is not yet obsolete. Despite the erosion of their legal and operational sovereignty by global markets and the claims to universal jurisdiction made on behalf of the new global institutions that have been set up to reduce violence and protect human rights, nation-states remain the ultimate locus of authoritative decisionmaking regarding most facets of public and private life. The enduring power of nation-states means, of course, that conflicts between states will not disappear – indeed, such conflicts may grow even sharper as states become more fearful of losing what power they still have. Although the number of ostensibly sover-

eign states has multiplied in recent decades, most of them lack any real clout. The fact that power is so unevenly distributed today makes an agreement on the respective weight of different states in the institutions of global governance very dubious. Military and economic giants will not be outvoted or pushed around by hordes of pygmies. They are also unlikely to embrace abstract obligations that clash with concrete calculations of national interest. (This is why the United States can deplore nuclear proliferation when it involves ‘rogue’ states such as Iraq and North Korea, while tolerating it in an ally like Israel.)

A second obstacle involves the sheer variety of cultures represented by the growing number of nation-states. Despite the partial globalization of mass culture, and the existence of pressing ecological problems that can only be solved through global cooperation, recent decades have also seen ongoing movements of nationalist secession, the rise of new religio-political movements, especially in Muslim states, and a reassertion of indigenous cultural practices in many countries around the world. In a world driven by economic and technological forces, where the political ideologies of the past two centuries have tended to exhaust themselves – through horrible excesses or humbling irrelevance – there remains an unbridgeable gulf between globalizers, whose hopes lie with capitalism, and cultural particularists, many of whom distrust the inhuman scale of global capitalism. All this has made Rousseau’s dictum about the absence of any unity of humankind truer than ever before.

A third obstacle to reform is the cleavage between liberal democratic regimes that respect human rights and the right of people to self-determination, and authoritarian or totalitarian regimes that

do not. The 'decent' authoritarians of Rawls are a fiction of his ideal theory. The many tyrants of this world have no incentive to grant to other countries, or to a global criminal court, jurisdiction over those of their subjects who have committed crimes against humanity or genocide. States whose regimes erect political walls even if they open up their economies will not welcome the democratization that I propose. A UN Assembly of Peoples' Representatives half elected by popular vote and half appointed by dictators would be a joke. Without the Kantian prerequisite – a world of liberal democracies – the institutions of world governance will remain battlegrounds.

The final obstacle that needs to be confronted lies closer to home: it is the United States, the very superpower that sees itself as the upholder of world order and the champion of liberal democracy. My scheme of world order needs not just new international institutions, but also the good will of the world's most powerful sovereign nation-state. Without moral and financial support from the United States and the other major powers, it is impossible to imagine how a new regime of global governance could enforce the

principles and procedures I have sketched.

In recent years, unfortunately, a sizable section of the American establishment has expressed skepticism about the value of U.S. support for existing global institutions – never mind creating new ones. Under President George W. Bush, furthermore, a growing number of international protocols and treaties have been abandoned or repudiated.

The underlying message of this boastful unilateralism is clear: the United States is a self-sufficient guarantor of global order, and the interpreter of last resort of what global order requires.

This is not exactly conducive to a consensual scheme. Other states do not want America to rule the world by itself. And without a thorough rejection of this new doctrine, and a return to a policy of American leadership without dictation, the prospects for creating a new and more democratic form of world governance are very dim indeed.<sup>2</sup>

2 See Joseph Nye, Jr.'s new book, *The Paradox of American Power* (New York: Oxford University Press, 2002).

# Charles Beitz

## *What human rights mean*

The Universal Declaration of Human Rights is the founding document of modern human rights doctrine. Adopted by the United Nations General Assembly in 1948, it was composed by an international committee of experts representing a great range of ethical traditions – even today we would regard the original Human Rights Commission as remarkably multicultural. At the same time, drafting the Declaration seems to have been a considerably more collegial enterprise than many international negotiations. Although members never lost sight of the political dimensions of their assignment, they made an extraordinary effort to understand each other and to identify common ground.

So it is a fact of particular importance that, early in their work, the Declaration's framers found that it was much easier to agree on the content of a declaration of human rights than about a common set of underlying principles. It was the philosophical, not the practical,

arguments that were most difficult, and in the end the framers simply agreed to disagree about the theoretical foundations of human rights.

This is why, unlike various earlier declarations of rights, the 1948 document does not propose any justifying theory. It does not, like the American Declaration of Independence, hold that people are "endowed by their Creator" with certain rights, or, like the French Declaration of the Rights of Man, describe human rights as "natural" and "sacred." After a prefatory reference to the "inherent dignity" of all human beings, the Universal Declaration simply *declares* certain values to be human rights. The framers evidently believed that people in various cultures could find reasons within their own ethical traditions to support the Declaration's practical requirements.<sup>1</sup>

From one point of view the Declaration's silence about theoretical foundations can seem to be part of its brilliance.<sup>2</sup> The framers were surely correct that their philosophical differences would never be fully resolved: without an agreement to disagree, at best the De-

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1 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), chap. 3.

2 As Michael Ignatieff suggests in *Human Rights as Politics and Idolatry* (Princeton, N.J.: Princeton University Press, 2001), 88.

claration would have been politically empty; at worst there would have been no declaration at all.

From another point of view, however, the absence of an official theory of international human rights is an embarrassment. This is partly because there is no public basis for settling the problems of interpretation and implementation that the framers bequeathed to their successors. As any reader of the Declaration will recognize, these problems can be serious. For one thing, many of its provisions are very general and need interpretation in order to be applied to particular circumstances. (What, for example, does the right “to take part in the government of [one’s] country” [art. 21] entail?) For another, under some conditions the practical requirements of various provisions might conflict and require a decision about political priorities. (Consider, for example, the potential for conflict between the right to “just and favorable remuneration” for work and the need for investment sufficient to sustain future generations.) And, of course, there is the need to determine what political actions are justified in pursuit of a right, and who is responsible to undertake them. Without a justifying theory it is unclear how these problems might be resolved.

But difficulties of interpretation are only part of the problem – and perhaps not the major part. The lack of an official theory invites a kind of philosophical subversion of the political aims of the Declaration’s framers. This is evident, for example, in a widely read article by Maurice Cranston, published in *Dædalus* nearly twenty years ago. Cranston asked the skeptical question “Are There Any Human Rights?”<sup>3</sup> His reply, only semi-

skeptical, was that there are indeed some human rights, but many fewer than the Declaration maintains: there are human rights to life and basic civil liberties (freedom of speech, press, and assembly), but there are no human rights to economic goods such as material subsistence, health care, social security, or the notorious (and unjustly maligned) “periodic holidays with pay” (art. 24).

Cranston regarded human rights as “the twentieth-century name for what has been traditionally known as ‘natural rights.’”<sup>4</sup> And he argued, not implausibly, that the idea of a natural right as it comes to us from the tradition sits uncomfortably with some of the rights of the Declaration. Cranston took Lockean rights to life and liberty to be paradigmatic. Such rights are minimalist: they protect people against being treated in certain ways, but they do not, except in extremis, entitle them to the affirmative support of others. This perspective led him to conclude that much of the Declaration was philosophically fraudulent: it misrepresented as universal human rights objects that were neither *universal* nor *human* nor even *rights*.

This kind of philosophical suspicion of international human rights was typical of a generation of Anglo-American writers. It can be found, for example, in the work of John Finnis, the influential natural law theorist, who, like Cranston, identified human rights as a contemporary idiom for natural rights and argued therefore that the realm of genuine human rights is significantly narrower than international doctrine maintains.<sup>5</sup> And Michael Ignatieff – himself an articulate

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length in *What Are Human Rights?* (London: Bodley Head, 1973).

4 Cranston, *What Are Human Rights?* 1.

5 John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 198, 210 – 213.

3 Maurice Cranston, “Are There Any Human Rights?” *Dædalus* 112 (4) (Fall 1983): 1 – 17. Cranston stated the same position at greater

advocate of human rights – wrote recently that human rights rest upon natural rights and thus, properly understood, set a less demanding standard than the Declaration.<sup>6</sup>

I believe, however, that the tendency to identify human rights with natural rights represents a kind of unwitting philosophical dogmatism. It leads to a damaging misconception of the legitimate scope of international human rights and of their potential for remedying injustice. As with most dogmatisms, the first challenge is to recognize it for what it is. And the best way to see this is to look first at human rights as they actually operate in the world today and then consider whether the natural rights paradigm is a help or a hindrance in grasping their ethical and political significance. Once we see how the traditional paradigm misrepresents the practice of human rights, we will be in a better position to appreciate the real nature of human rights and the reasons why we should care about them.

This is not simply a question of words. Whether it is best to think of human rights as natural rights or as something more ambitious – for example, as the rights of global justice – is ultimately a question about the kind of world we should aspire to and the range of responsibilities that follow for politics and foreign policy. It is a central ethical question about the direction of world politics in the years ahead.

Consider the way that talk about human rights actually functions in the world today. What are human rights as international doctrine conceptualizes them? And what role do ideas of human rights play in the world's conduct of its political business?

6 Ignatieff, *Human Rights as Politics and Idolatry*, 88.

We may begin with the original Universal Declaration adopted by the UN in 1948 and the two principal covenants – one on civil and political, the other on economic, social, and cultural rights – that came into force in 1976.

The Declaration itself is a remarkable document whose name, regrettably, is far better known than its contents. It consists of thirty articles stating a broad array of aims that are supposed to serve as “a common standard of achievement for all peoples and all nations.” The covenants, which unlike the Declaration have the force of law, elaborate on these aims and seek to put them into a form that has legal effect.

These documents set forth an ambitious and, in some ways, a surprisingly specific set of aspirations.<sup>7</sup> Their provisions read far more like a list of concrete institutional standards than of generalized, abstract rights that might exist in a ‘state of nature.’ They name certain core rights that evoke Lockean principles – for example, rights to life, liberty, and security of the person; and against arbitrary imprisonment, slavery, and torture, as well as the more complex right against genocide. Beyond these, there are also provisions associated with the rule of law (e.g., the right to a fair trial); political rights (including the right “to take part in the government of the country” and to “periodic and genuine elections”); economic rights (including free choice of employment, “just and favourable remuneration [sufficient for] an existence worthy of human dignity,” and health care); and rights of communities (self-determination). These enumerated rights are said to belong to everyone regardless of race, color, sex, language,

7 I rely in some of what follows on my article “Human Rights as a Common Concern,” *American Political Science Review* 95 (2) (June 2001): 269 – 282.



religion, birth, and social status, and without distinction “on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs.”

Taken together, these rights are not best interpreted as “minimum conditions for any kind of life at all.”<sup>8</sup> The rights of the Declaration and the covenants bear on nearly every dimension of a society’s basic institutional structure, from protections against the misuse of state power to requirements for the political process, health and welfare policy, and levels of compensation for work. In scope and detail, international human rights are not very much more minimal than those proposed in many contemporary theories of social justice. If we consider the list of human rights as a single package – in the words of the 1993 Vienna Declaration, as “indivisible and interdependent and interrelated”<sup>9</sup> – then we must understand international human rights as stating, or trying to state, something more like necessary conditions of political legitimacy, or even of social justice.

In the years since the UN covenants came into force, human rights have played a variety of roles in world politics. The most sensational has been the use of human rights to justify foreign interference in a state’s internal affairs. In circumstances as different as those of Haiti, Somalia, and Kosovo, local human rights violations have catalyzed military action by outside agents acting with the

authority of multinational bodies. Indeed, reflecting on these and other interventions of the 1990s, Kofi Annan called for the development of a systematic doctrine of UN-sponsored humanitarian intervention, noting that “the world cannot stand aside when gross and systematic violations of human rights are taking place.”<sup>10</sup> That the secretary-general could undertake such an initiative with any hope of success would astonish the framers of the 1948 Declaration (much as a few might welcome it – in particular, the Indian delegate Hansa Mehta, who argued explicitly that the UN should have authority for human rights-based intervention<sup>11</sup>).

But intervention in any form has been exceptional, and in recent years the political functions of human rights have more often been considerably less dramatic. For example, a government’s human rights record can serve as a criterion of eligibility for participation in bilateral and multilateral development programs and of its access to financial adjustment assistance. The impact on human rights may also be used as a standard of evaluation for the policies of international financial and trade institutions.

In the United States, legislation requires periodic reporting by the government on human rights practices in other countries (though not in the United States itself), and a country’s eligibility for preferential treatment in U.S. foreign policy can depend on satisfaction of human rights standards. In various parts of

8 Ignatieff, *Human Rights as Politics and Ideology*, 56.

9 United Nations, “Vienna Declaration and Programme of Action,” adopted by the World Conference on Human Rights, 25 June 1993 (A/CONF.157/23) <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)>.

10 Kofi Annan, “Two Concepts of Sovereignty,” *The Economist* (18 September 1999).

11 M. Glen Johnson, “A Magna Carta for Mankind: Writing the Universal Declaration of Human Rights,” in *The Universal Declaration of Human Rights: A History of its Creation and Implementation*, ed. M. Glen Johnson and Janusz Symonides (Paris: UNESCO, 1998), 32.

the world – most notably in Europe – regional codes of human rights have been adopted (though they are not always as expansive as the UN documents) and there is a developing international capacity for adjudication and something like enforcement.

Beyond the multiple roles of human rights in international organizations and national foreign policies, human rights also have important functions as foci of political activity, both within and outside the policy process, for a large and growing number of nongovernmental organizations (NGOs) – the components of a “curious grapevine,” in Eleanor Roosevelt’s evocative phrase.<sup>12</sup> These functions include education and advocacy, standard-setting, monitoring, and, sometimes, enforcement.

The human rights NGOs are often described as the core of a global civil society. That might be misleading – these organizations, after all, frequently speak with a developed-country accent, and many lack effective internal mechanisms of accountability. Still, the human rights NGOs have done important work in popularizing the idea of human rights and in drawing international attention to egregious violations. They have encouraged the growth of a global human rights culture that cuts across national political boundaries while changing the structure of incentives that those who make decisions about national foreign policy must negotiate.

Political scientists sometimes say there is a global ‘human rights regime.’ (A ‘regime,’ in the jargon of the discipline, is a set of “explicit or implicit principles, norms, rules and decision-making procedures around which actors’ expecta-

12 Quoted in William Korey, *NGOs and the Universal Declaration of Human Rights: “A Curious Grapevine”* (New York: St. Martin’s Press, 1998), ix.

tions converge in a given area of international relations.”<sup>13</sup>) It would be hard to deny that this is true, but the term does not fully embrace the reality of international human rights practice. For one thing, by focusing on norms and decision procedures, the idea of a regime deflects attention from the fact that human rights operate as normative standards in various informal political arenas; consider, for example, the annual human rights compliance reports of the Department of State, whose political significance is at best tangential to their role in the official processes of foreign policy. Moreover, the idea of a human rights regime does not properly describe the growing activity and achievements of NGOs. The transnational culture spawned by these organizations is at least as important for its diffuse effects on attitudes and beliefs as for its capacity to influence formal processes of policy-making.

Finally, the idea of a regime does not reflect the emergent and aspirational character of human rights. Unlike, say, the financial or trade regimes, human rights politics doesn’t aim only to institutionalize and regulate existing interactions; it seeks to propagate ideals and motivate political change. Human rights stand for a certain ambition about how the world might be. To whatever extent contemporary international political life can be said to have what, in the domestic analog, John Rawls calls a “sense of justice,” its language is the language of human rights.<sup>14</sup>

13 Stephen D. Krasner, ed., *International Regimes* (Ithaca, N.Y.: Cornell University Press, 1983), 2. John Gerard Ruggie argues that there is a global human rights regime in “Human Rights and the Future International Community,” *Dædalus* 112 (4) (Fall 1983): 103–104.

14 For Rawls, the “sense of justice” is a principled conception of social justice broadly shared

Human rights as we find them in international practice don't fit the mold of natural rights in at least three important ways: natural rights are supposed to be pre-institutional; they are supposed to belong to people 'naturally' – that is, solely in virtue of their common humanity; they are supposed to be timeless. But international human rights don't meet any of these standards. The question is what we should make of this. Is there something wrong with human rights?

Natural rights theorists imagined that political society developed by means of a social contract from a pre-political 'state of nature' where people had certain rights that nobody was entitled to violate. These rights, in Robert Nozick's phrase, were "side constraints."<sup>15</sup> Natural rights express protections upon which people are entitled to insist regardless of their institutional memberships. The idea of a state of nature models this fact: it imagines that individuals establish institutions in a pre-institutional situation that is already constrained by certain moral prohibitions; because people have no authority to abrogate these prohibitions, any institutions they establish must respect them.

If natural rights are pre-institutional, then it must make sense to think that they could exist in a condition where there are no institutions. It is not difficult to conceive of Lockean rights to life, liberty, and property in this way. On the other hand, many of the rights enumerated in the human rights documents

can't be so conceived. Think, for example, of rights to an impartial trial, to take part in the government of the country, and to free elementary education. Because these rights describe features of an acceptable *institutional* environment, we can't give meaning to the thought that these rights might exist in a state of nature. What force could they possibly have in a world where there are no institutions?

But why should *human* rights be conceived as pre-institutional? Natural rights theories, at least in the more liberal variants such as Locke's, were primarily attempts to formulate constraints on the use of a government's monopoly of coercive power. They were theoretical devices by which legitimate and illegitimate uses of power could be distinguished, and they make sense only against a background assumption that a central problem of political life is the protection of individual liberties against a predictable threat of tyranny or oppression. This is not the nature of the human rights of the Declaration, which describes "a common standard of achievement for all peoples and all nations." If natural rights are about guaranteeing individual liberty against infringement by the state, human rights are about this *and more*: to put it extravagantly, though I think not wrongly, international human rights, taken as a package, are about establishing social conditions conducive to the living of dignified human lives. These rights represent an assumption of moral responsibility for the public sphere that was missing in classical natural rights theories.

What the proper bounds of that responsibility are, how its burdens should be distributed, and, for that matter, whether we should believe that *any* such responsibility lodges in the public sphere – all are reasonable questions. I don't

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within a society that defines a political ideal and serves as a basis for criticism of the status quo. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), 41.

15 Robert Nozick, *Anarchy, State, and Utopia* (Cambridge, Mass.: Harvard University Press, 1974), 30–33.

mean to foreclose them. The point is that none of these questions can be resolved, so to speak, by conceptual fiat. They are substantial questions of political morality and deserve to be answered on their merits.

The Universal Declaration holds that all human beings are “born free and equal in dignity and rights” (art. 1) and that “everyone is entitled to all the rights” subsequently enumerated (art. 2). These passages say that everyone has human rights. This is one sense in which rights can be ‘universal.’

But the idea that human rights are like natural rights in belonging to people in virtue of their common humanity involves a further thesis bearing on the *justification* of human rights. It holds that human rights, if they are to be really universal, must be grounded on characteristics that all human beings possess, and therefore their justification must not depend on merely contingent social relationships.

Philosophers have given the idea of “belonging to people in virtue of their common humanity” a specific and, as it turns out, a very restrictive interpretation. It derives from H. L. A. Hart’s important article “Are There Any Natural Rights?” first published in 1955 and widely read more recently because of its influence on the political philosophy of John Rawls.<sup>16</sup> (Interestingly, the phrase ‘human rights’ does not appear in Hart’s article at all.)

Hart distinguishes between “general rights” and “special rights”: special rights arise out of “special transactions [or] special relationships,” such as promises and contracts or membership in political society, whereas general

rights belong to “all men capable of choice . . . in the absence of those special conditions which give rise to special rights.”<sup>17</sup> Hart identifies only one general right – “the equal right of all men to be free.” He does not claim that there are no other general rights, but he mentions none, and he describes every other right either as deriving from this one general right or as a special right.

Now if all rights must fall into one of these two categories, then natural rights must be general. As Hart says, this is because natural rights belong to men “*qua* men and not only if they are members of some society or stand in some special relation to each other.”<sup>18</sup> Many theorists have thought that human rights must be general rights for the same reason.<sup>19</sup>

But if we assume that human rights must be general rights as Hart understood them, then we must conclude that there are very few genuine human rights. Consider, for example, the right to an adequate standard of living. Any plausible explanation of the moral basis of this right will have to refer to certain features of people’s social relations. This may not be immediately obvious; rights talk tends to focus on the beneficiaries of rights, so it might seem that we can explain the moral importance of an adequate standard of living without having to refer to anything other than facts about the beneficiary’s ‘humanity’ – for example, her physical needs. However, this is only half the story – and the easier half at that. A complete explanation of the right would also have to say where

17 Ibid., 183, 188; on political society as a cooperative scheme, see 185.

18 Ibid., 175.

19 For example, Peter Jones, *Rights* (New York: St. Martin’s Press, 1994), 81.

16 H. L. A. Hart, “Are There Any Natural Rights?” *Philosophical Review* 64 (2) (1955): 175 – 191.

the resources should come from to satisfy the right and why anyone has a duty to provide them. Answers to these questions inevitably force us to consider people's social relations. That is why, in the domestic case, similar questions have their natural home in a discourse about social justice.

Well, so what? One might say, as one philosopher has recently written, that "[t]he correct conclusion is that many of the rights affirmed in the *Universal Declaration* are really not human rights at all...."<sup>20</sup>

But this is another case of conceptual fiat. Why must we insist that human rights be justified by considerations of common humanity as such? The mistake, I think, is to infer from the fact that human rights are supposed to be claimable by everyone, that they must be *general* rights in Hart's sense. Human rights might, instead, be conceived as a category of special rights – roughly speaking, as rights that arise out of people's relationships as participants in a global political economy. Philosophers of global justice disagree about how these relationships should be understood, and particularly, whether it is right to regard them as coincident with membership in domestic society. The latter question is worth thinking about: Why, for example, should we think that social justice requires U.S. citizens to do more for the steel worker in West Virginia than for the factory worker in a Mexican maquiladora? The question resists facile answers.

20 Carl Wellman, "Social Justice and Human Rights," in *An Approach to Rights* (Dordrecht: Kluwer, 1997), 197. Similarly, Cranston: "Another test of a human right is that it must be a universal right, one that pertains to every human being as such – and economic and social rights clearly do not." Cranston, "Are There Any Human Rights?" 13.

For the moment, fortunately, we can be agnostic; for, short of denying that there *is* such a thing as one's role as a participant in the global economy, any plausible view about global justice will generate *some* conception of the sort of 'special right' I refer to here. And this is all we need to refute the idea that human rights must be limited to those rights we can understand as belonging to people solely in virtue of their common humanity.

When we say that human rights are universal, we might mean that all human beings at all times and places would be justified in claiming them. Natural rights were supposed to have this kind of timelessness, and this might encourage someone to believe that human rights should too.

But of course few of the human rights listed in the Universal Declaration would pass the test. The framers of the Declaration could not have intended that the doctrine of human rights apply, for example, to the ancient Greeks or to China in the Ch'in Dynasty or to European societies in the Middle Ages. International human rights, to judge by the contents of the Declaration and covenants, are suited to play a role in a certain range of societies. Roughly speaking, these are societies that have at least some of the defining features of modernization: a reasonably well-developed legal system (including a capability for enforcement), an economy with some significant portion of employment in industry rather than agriculture, and a public institutional capacity to raise revenue and provide essential collective goods. It is hard to imagine any interesting sense in which a doctrine of human rights pertaining principally to societies meeting these conditions could be said to be 'timeless.'

One philosopher therefore adopts a more cautious formulation: he says that human rights should “have weight and bearing for future human beings in societies not yet existing . . .”<sup>21</sup> But this doesn’t seem right, either. International human rights are not even *prospectively* timeless. They are standards appropriate to the institutions of modern or modernizing societies coexisting in a global political economy in which human beings face a series of predictable threats. As Jack Donnelly observes, the composition of the list of human rights is explained by the nature of these threats.<sup>22</sup> As the economic and technological environment evolves, the array of threats will change, and so, over time, will the list of human rights. The lack of timelessness is a problem only if we insist that human rights should be something they were plainly not meant to be.

The mind seeks simplifying models, so perhaps we should not be surprised that in the absence of a better alternative, philosophers would persist in thinking of human rights as natural rights. The paradigm is coherent and familiar and makes the most of the historical continuity of the human rights movement with earlier efforts to advance the ‘rights of man.’ As we have seen, however, accepting the paradigm has its price: it diminishes and distorts the aspirations of international human rights doctrine. So it is worth considering how else we might conceive of human rights and whether as a matter of political theory a different conception would be more plausible.

21 Rex Martin, *A System of Rights* (New York: Oxford University Press, 1993), 74 – 75.

22 Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, N.Y.: Cornell University Press, 1989), 26.

Here is a proposal. Suppose we begin with two of the ideas central to contemporary international human rights doctrine.

First, human rights are closely connected to human dignity: they state conditions that domestic social institutions should satisfy in order to respect, in the words of the 1993 Vienna Declaration, “the dignity and worth inherent in the human person.”

Second, human rights are a global concern: their systematic violation in a society over a period of time could justify some appropriate form of remedial action by agents outside of the society where the violation occurs.

Putting these two ideas together, we might say that human rights are the basic requirements of global justice. They describe conditions that the institutions of all domestic societies should strive to satisfy, whatever a society’s more comprehensive aims. And their violation identifies deficiencies that, if not made good locally, should command the attention and resources of the international community. If a country failed to satisfy these conditions even though it were equipped to fulfill them, that country would become susceptible to outside corrective interference. If the failure were due to a lack of local resources, this could justify a requirement on others to assist.<sup>23</sup>

There is no escaping that on this view human rights represent a partisan ideal. And the reference to human dignity and human worth guarantees that the ideal will almost certainly be more congenial to some than to other conceptions of justice or political good.

23 John Rawls proposes something like this conception of human rights in *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), sec. 10.

On the other hand, it is a capacious ideal, and at this level of generality it is consistent with the aspirations of all the world's main moral cultures. If evidence is needed, one might simply look to the virtually unanimous endorsement of international human rights norms in a succession of increasingly inclusive international fora.

The qualification about level of generality is important. When we consider practices such as capital punishment in the United States or female genital mutilation in Sahelian Africa, we are reminded that there can be serious intercultural disagreement about what is necessary to respect human dignity and human worth. But one should not be misled by these examples. For one thing, neither of these cases really involves a confrontation between a morally monolithic local culture and the international culture of human rights; in both cases there are significant divisions within the local culture that conflict with majority interpretations of human rights. But even if this were not true, these examples are much more the exception than the rule. Anyone who reads the major international human rights instruments with reasonable charity would see that most of the values found there fit comfortably within a wide range of cultural moral traditions. When human rights are controversial in political practice, it is not usually because they are culturally partisan, but rather because people disagree about their relative priority over other values, or about the nature and extent of the international right and responsibility to remediate.

It is this last point that is likely to evoke the greatest concern. If human rights are requirements of global justice, and if violations could trigger an international duty to act, then human rights might

threaten to engulf many other values we care about. International human rights imperatives could undermine the integrity of local communities by encouraging indiscriminate, well-meaning intervention; they could command resource transfers from societies with their own internal problems; they could play into regional conflicts and exacerbate existing instabilities. The old view of human rights, however misleading it might have been in theory, at least had the political virtues of minimalism. Does the paradigm of global justice demand too much?

Part of the answer depends on the content of the idea of global justice, and part depends on the nature of the remedial rights and responsibilities that flow from human rights violations. The first question is interesting and points to a large, unresolved set of philosophical issues. But I think the second one is more important practically. Here the key point is that the ideas of corrective interference and requirement to assist could each encompass many kinds of action. Interference, for example, could mean military intervention (as in Kosovo) but could also involve nonviolent forms of intervention (like making foreign aid conditional on upholding human rights). Similarly, assistance might consist of direct transfers (as in development aid), but it might also entail less direct forms of help (like reforming discriminatory trade practices). Indeed, human rights violations could command international attention in a meaningful way even if neither corrective interference nor tangible assistance were feasible – for example, by triggering advocacy or cross-border political action by NGOs.

Moreover, the fact that persistent violations *could* justify international action does not mean they always *do*. As in any aspect of political morality, a host of

practical considerations bear on a decision whether and how to act, even when there is an uncontroversially meritorious cause of action. The theory of the just war presents a useful parallel: even when there is a just cause, a country may not resort to war if there is no reasonable expectation that the cause can be won without disproportionate use of force or unacceptable collateral damage. Nor may a country resort to war if it is unable or unwilling to commit the resources necessary to win its cause – that would simply inflict harm without hope of achieving a just result. Similarly in the case of human rights, the international community should act only if there is a reasonable hope of stopping egregious violations of human rights without incurring disproportionate costs or causing unacceptable collateral harm.

These reflections do not add up to a philosophical defense of the idea that human rights are requirements of global justice; they only aim to make that idea plausible as a description of international practice, and to show that the most common worries about it may be overstated.

But someone who is still attached to the traditional paradigm might say it was a mistake from the beginning to give so much weight to the international doc-

trine of human rights and to the role of ideas of human rights in real-world international political practice. Perhaps international doctrine and practice are simply wrong – perhaps they amount to no more than the reification of a bad idea – and perhaps we would be better off dispensing with human rights talk altogether.

I doubt that this will turn out to be right, but the point to be made in conclusion is that there is only one way to find out. Theory has to begin somewhere. We begin with the observation that there is an international practice of human rights, and we ask some distinctively theoretical questions: What kinds of things are these human rights, why should we believe in them, and what follows if we do?

But whereas present practice is the beginning, it need not be the end; in fact, it would be surprising if a critical theory of human rights did not argue for revisions in the practice – conceivably substantial ones. If so, however, one should expect this to be the conclusion of an argument that takes seriously the aspirations of the practice as we have it. To dismiss the practice because it doesn't conform to a received philosophical construction seems to me dogmatic in the most unconstructive way.



# Jack Goldsmith & Stephen D. Krasner

## *The limits of idealism*

In 1939 E. H. Carr published what was to become a modern classic on international relations, *The Twenty Years Crisis, 1919 – 1939*. Carr has usually been seen as a defender of realism and a debunker of idealism, but his thinking was much more subtle. He believed that power and

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*The views expressed in this article are those of the authors and do not reflect the official policy or position of the Department of Defense or the U.S. government.*

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interest – the bread and butter of realism – were the primary determinants of state behavior. But he also believed that peoples and their nations were motivated by normative values and aspirations, not merely by a desire to marshal power and defend material interests. Carr concluded that “Utopia and reality are thus the two facets of political science. Sound political thought and sound political life will be found only where both have their place.”

For Carr the problem of the interwar years was not international idealism itself, but rather international idealism run amuck. At the core of the international idealism he criticized was the assumption that right-minded human beings could agree on abstract normative principles to guide national behavior, and that these principles, once understood and embodied in international law, would influence nations to act with greater justice. By his account, international idealism discounted other factors, including the distribution of power and economic and political interests.

Carr famously argued that such idealism was self-defeating. Some nations, such as Germany, failed to comply with the principles of reason embodied by the League of Nations and similar institutions, and appealed instead to compet-

ing principles of law and morality to justify their self-interested and rapacious acts. Other nations, such as Britain and France, relied too heavily on the paper guarantees of international law, and not on a clear-eyed analysis of power and interest (both their own and Germany's), to secure international harmony. Carr attributed the growing international crisis in 1939 (his book was sent to the printer in July of that year) to the idealistic international institutions that were supposed to make a second world war impossible.

The kind of idealism that Carr understood to be so damaging to international peace and stability in the interwar years is again informing many aspects of international politics. Three developments in particular – the rise of universal jurisdiction, the creation of a new International Criminal Court, and recurring demands for humanitarian intervention – reflect a renewed commitment to international idealism. Supporters of these institutions and policies tend to believe that justice is best served when it is isolated from politics and power. Only by insulating international institutions and practice from the bargaining and compromise that characterize political decision-making, and from the domestic political pressure to which politicians must always be alert, can justice be fully realized. On this view, institutions and principles that minimize the influence of power better achieve justice than those in which power plays an important role; and decisions made by unaccountable actors, especially judges, are more likely to be just than decisions made by political leaders responsible to their electorates.

We believe the new international idealism suffers from four fundamental flaws:

- First, it assumes the utopian premise that a global consensus can be reached,

not just on normative principles, but also on when and how they should be applied.

- Second, it minimizes considerations of power, and assumes that norms of right behavior can substitute for national capabilities and material interests.
- Third, it neglects political prudence: it offers a deontological rather than a consequentialist ethics.
- Fourth, it consistently slights the value of democratic accountability.

Our claim is not that idealism in international politics is irrelevant or inherently harmful. With Carr, we believe that normative ideals can provide a hope for progress, an emotional appeal, and a ground for international action. But we also agree with Carr that ideals can be pursued effectively only if decisionmakers are alert to the distribution of power, national interests, and the consequences of their policies. The lesson Carr teaches is that when idealism is not tempered by attention to these factors, the best can become the enemy of the good, and aspiration the enemy of progress.

## 1

Universal jurisdiction is the power of a domestic court to try foreign citizens, including government officials, for certain egregious international crimes committed anywhere in the world. This authority is premised on the idea that human rights violations are an affront to all humanity and thus may be punished anywhere, regardless of the defendants' nationality or the place of the crime. Universal jurisdiction aims to strengthen international human rights law by marshaling politically independent domestic courts to enforce that law. The classic modern example is the *Pinochet* case, in

which Spain attempted to extradite Pinochet from England (where he was undergoing back surgery) to stand trial in Spain for torture and related international crimes he allegedly committed in Chile. (The extradition request originally charged Pinochet with crimes against Spaniards as well, but these charges were deemed inadmissible, thus making the case one of ‘pure’ universal jurisdiction.) The House of Lords ruled that international law required England to extradite Pinochet to Spain for these crimes, but the government of Great Britain eventually sent Pinochet back to Chile after determining that he was unfit to stand trial.<sup>1</sup>

The Princeton Principles of Universal Jurisdiction, a document drafted by leading scholars and jurists from around the world,<sup>2</sup> are a comprehensive statement of the nature and scope of universal jurisdiction. The Principles extend universal jurisdiction to piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, and torture. They specify that “national judicial organs may rely on universal jurisdiction even if their national legislation does not specifically provide for it.” They strip all defendants – including sitting heads of state – of any official immunities. And they maintain that amnesties in particular “are generally inconsistent with the obligation of states to provide accountability for serious crimes under interna-

tional law.” In short, the Princeton Principles aim to replace impunity with accountability by extending universal jurisdiction as broadly as possible.

The Princeton Principles reflect conventional wisdom among idealists about the shape and direction that international law should take. The Principles will likely influence future universal jurisdiction prosecutions, because national courts interpreting international law give special deference to the views of scholars and jurists. In our view, however, the Princeton Principles are an unfortunate development that exemplifies the new idealism’s failure to take seriously the contested nature of international norms, the importance of prudence, and the possibility of abuse exacerbated by the absence of democratic accountability.

International criminal law is extraordinarily vague. Virtually everyone agrees that genocide and torture and crimes against humanity are international crimes. But when we attend to the details of what acts constitute these crimes, and of when these crimes can properly be tried by courts, there is much dispute and little definitive guidance. Consider three of many examples:

- Among the most clearly defined of international crimes is torture, which the Torture Convention defines to include any act inflicted by a public official “by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” to obtain information, punish, or intimidate.<sup>3</sup> Amnesty International claims that the United States violates this principle when its police use stun guns, pepper sprays, and restraint chairs, and when

<sup>1</sup> *Regina v. Bow Street Magistrate, Ex Parte Pinochet*, 2 WLR 827 (HL) (1999).

<sup>2</sup> The drafting committee was comprised of seven jurists from American universities, and the meeting at which the Principles were adopted was attended by scholars and jurists from Canada, Ghana, the United Kingdom, China, and Turkey as well as the United States, and included former presidents of the International Court of Justice, the American Bar Association, and Tokyo University.

<sup>3</sup> “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” art. 1.

its prison officials use solitary confinement and related maximum security detention techniques.<sup>4</sup> The United States disagrees; it believes these practices are legitimate and do not constitute torture within the meaning of the Torture Convention. There is no definitive source or judicial decision that can resolve this disagreement. Under universal jurisdiction, any national court could try these U.S. officials if it, like Amnesty International and many other human rights groups, viewed these police practices as torture.

- A crucial issue in any universal jurisdiction prosecution is whether the defendant has an official immunity from prosecution under international law. The existence and scope of these immunities as they apply to universal jurisdiction prosecutions are contested and unsettled. The House of Lords interpreted international law to lift Pinochet's immunity as a former head of state. More recently, the International Court of Justice (ICJ) interpreted international law to hold that the Congolese foreign minister was immune from a universal jurisdiction prosecution in Belgium for alleged war crimes and crimes against humanity he committed in his country.<sup>5</sup> The ICJ decision technically has no precedential effect beyond the case it decided. So the scope of official immunity from a universal jurisdiction prosecution remains an open question. Under universal jurisdiction, each national court gets to determine the proper scope for itself.

4 Amnesty International, *Rights for All* (New York: Amnesty International, 1999), chaps. 3–5.

5 *Democratic Republic of Congo v. Belgium*, judgment of 14 February 2002, available at <[http://www.icjci.org/icjwww/idocket/iCOBE/icobe-judgment/icobe\\_ijudgment\\_toc.htm](http://www.icjci.org/icjwww/idocket/iCOBE/icobe-judgment/icobe_ijudgment_toc.htm)>.

- When the United States and its NATO allies bombed Yugoslavia in 1999, they violated the UN Charter's prohibition on the use of force against sovereign nations in the absence of Security Council authorization. Under the Princeton Principles, NATO officials might be subject to universal jurisdiction prosecutions for "crimes against peace." But they might not; many international lawyers believe there is a developing customary exception to the UN Charter for certain humanitarian interventions. In addition, Amnesty International and an independent group of law professors have concluded that NATO countries committed "serious violations of the laws of war" when they purposefully destroyed civilian targets (such as a television station and electricity grids) and when they killed civilians by dropping bombs from no lower than fifteen thousand feet.<sup>6</sup> The prosecutor at the International Criminal Tribunal in The Hague investigated these allegations and concluded, after much internal wrangling, that they did not warrant prosecution.<sup>7</sup> Under a regime of universal jurisdiction, a court in any nation of the world could prosecute NATO leaders and military members and decide whether such actions constitute acceptable humanitarian intervention or criminal acts.

Because the content of international human rights law is so contested, courts exercising universal jurisdiction in good faith are likely to interpret and enforce this law in ways that affected groups will view as unconvincing, self-serving, and

6 Amnesty Report at <[http://www.amnesty.org/ailib/intcam/kosovo/docs/natorep\\_all.doc](http://www.amnesty.org/ailib/intcam/kosovo/docs/natorep_all.doc)>.

7 <<http://www.un.org/icty/pressreal/natoo61300.htm>>.

discriminatory. A universal jurisdiction prosecution can do more than provoke resentment among the affected groups; it can also provoke domestic unrest or international conflict. Until recently, Belgium was considering universal jurisdiction charges against both Ariel Sharon and Yassar Arafat for human rights violations each allegedly committed in the Middle East. (Such a prosecution remains a possibility.<sup>8</sup>) A decision by a Belgian court that Sharon or Arafat, or both, are war criminals will not likely dampen discord in the Middle East. It is much more likely to make matters worse by legitimizing views of extremists on both sides.

Proponents of universal jurisdiction claim that these leaders should be held accountable for their international crimes, no matter what the consequences. This argument presupposes a consensus on the nature of the international crimes we have just questioned. The argument also overlooks the possibility that a universal jurisdiction prosecution may cause more harm than the original crime it purports to address. Universal jurisdiction courts and prosecutors possess neither the competence nor the incentive to fully consider these harms. They are doubly unaccountable in the sense that they are relatively unaccountable to their own government (to the extent that they are politically independent), and they are completely unaccountable to the citizens of the nation whose fate they are ruling upon. It doesn't matter that they act with benevolent intent. What matters is that they may do something that harms people to

whom they have no real connection and whose interests they are poorly positioned to assess. Because relevant constituencies cannot hold courts exercising universal jurisdiction accountable for the negative consequences of their rulings, the courts themselves will invariably be less disciplined and prudent than would otherwise be the case.

The inability of universal jurisdiction courts to consider the consequences of their actions in affected countries is a particular threat to amnesties, reconciliations, truth commissions, and similar programs that can successfully facilitate transitional justice. Modern international idealists tend to see these programs as a rejection of accountability. In fact, such programs often contain elements of individual accountability. More importantly, these programs are best viewed as prudential arrangements that sacrifice some benefits – such as punishment of the guilty and restoration of the respect and integrity of victims – for the sake of other values, including the minimization of human suffering, closure, a stable peace, and the like. In recent years, amnesties have been an important component in several peaceful settlements of bloody civil conflicts, including ones in Chile, Haiti, Sierra Leone, and South Africa.

As Michael Scharf correctly notes, a rejection of amnesty and an insistence on criminal prosecutions “can prolong ... conflict, resulting in more deaths, destruction, and human suffering.”<sup>9</sup> Consider the Truth and Reconciliation process in South Africa. Under the Princeton Principles, this process would not preclude a universal jurisdiction prosecution, in a court outside South Africa,

8 The original prosecution against Sharon was thrown out on the grounds that universal jurisdiction criminal prosecutions *in absentia* were prohibited under Belgian law. The Belgium Parliament is currently considering amending that law to permit such prosecutions.

9 Michael Scharf, “The Amnesty Exception to the Jurisdiction of the International Criminal Court,” *Cornell International Law Journal* 32 (3) (1999): 507.

of Apartheid-era governmental officials. This insistence on individual accountability at any cost could have terrible effects on the still-fragile South African reconciliation. And it might have precluded the reconciliation altogether (or at least made it even more rocky) had universal jurisdiction been widely practiced in the 1990s. In this way, universal jurisdiction can make political solutions to already difficult transitions to peace and democracy even more difficult.

The inability of universal jurisdiction prosecutors to weigh judiciously the consequences of their actions distinguishes them from purely domestic prosecutors, and attests to the importance of democratic accountability in the enforcement of criminal law. In a domestic prosecution, at least in the United States, the prosecutor is accountable to the community in which she serves in the sense that she is either elected (as in many states) or (as in the federal system) appointed and subject to removal by elected officials. As a result, in deciding whether and how to prosecute a crime, a domestic prosecutor will often take into account the consequences of the prosecution for community health, safety, and morale.<sup>10</sup> In many instances the adverse community consequences of holding an individual accountable for a past crime can lead prosecutors to forgo prosecution, or to strike a plea deal favorable to the accused. (And of course political accountability also dampens the likelihood that this discretionary process will be abused.) Because universal jurisdiction prosecutions take place outside affected communities, universal jurisdiction courts and prosecutors lack the incentive, or the institutional capacity, to consider such tradeoffs.

<sup>10</sup> See generally Darryl K. Brown, "Third-Party Interests in Criminal Law," *Texas Law Review* 80 (6) (2002): 1383.

The discussion thus far has proceeded on the optimistic assumption that nations will apply universal jurisdiction principles in good faith. But there is no reason to believe this will be true. It is not only the House of Lords and the Belgian courts that can prosecute under universal jurisdiction. Corrupt courts that lack political independence can as well. And many nations will have incentives to engage in politically motivated universal jurisdiction prosecutions.

The Princeton Principles rely on legal norms to preclude such prosecutions. They insist that a "state shall exercise universal jurisdiction in good faith," and add that a "state and its judicial organs shall observe international due process norms, including . . . the independence and impartiality of the judiciary." The reliance on legal norms in this context is wholly unconvincing. The Principles fail to consider why a nation with bad-faith motives to prosecute a universal jurisdiction crime would care about such due process principles – principles that, in any event, are manipulable in opportunistic ways.

To date, the costs of universal jurisdiction have not been obvious – at least in the United States and Europe – because most universal jurisdiction prosecutions have been brought by Atlantic alliance nations against offenders in weak countries. But there is no reason to think this pattern will continue. The rate of universal jurisdiction prosecutions has increased in recent years. And, as their potential and scope become clear, as human rights groups continue to pressure nations to bring such prosecutions, and as weaker countries realize that universal jurisdiction can be a tool for creating political mischief on the international stage, especially against more powerful countries, such prosecutions will in-

crease. Enthusiasm for universal jurisdiction might dampen in light of the ICJ's recent ruling on immunity for the Congolese foreign minister. If not, we expect that the many adverse consequences of universal jurisdiction we have discussed will become more apparent.

## 2

In July of 2002, international idealists realized a long-held dream: the creation of an International Criminal Court (ICC) with jurisdiction over genocide, crimes against humanity, war crimes, and, potentially, the crime of aggression.<sup>11</sup>

In some respects, the ICC is an improvement over a regime of universal jurisdiction by national courts. The ICC is a centralized institution. Its treaty defines the international crimes within its jurisdiction. It also rejects universal jurisdiction, requiring instead a nexus to the territory or persons of a treaty signatory.

And yet the ICC has most of the other characteristics – and flaws – of universal jurisdiction. Its norms are still much too open-ended and contested to permit a consensus on proscribed behavior; it suppresses considerations of power; it lacks democratic accountability; and it cannot reliably balance legal benefits against possible political costs.

The ICC defines the crimes within its jurisdiction. But these definitions rely a great deal on contested international law norms, and they leave the ICC great interpretive flexibility. For example, “crimes against humanity” include “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.” Unfortunately, international law provides

little concrete guidance about what these fundamental rules require. After listing other examples of crimes against humanity, the ICC treaty describes as a final one “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health.” Such a criminal prohibition would almost certainly be void for vagueness under U.S. law.

To take another example, the ICC includes dozens of prohibitions under the heading of “war crimes,” including “willfully causing great suffering, or serious injury to body or health” of civilians, and “destroying or seizing the enemy’s property unless . . . imperatively demanded by the necessities of war.” The scope of these prohibitions is obviously uncertain, but it is easy to imagine them being applied to NATO actions in Kosovo and U.S. actions in Afghanistan. The ICC treaty is chock-full of many similarly vague and indeterminate criminal prohibitions.

One reason these vague norms are particularly troublesome is that the ICC prosecutor and court are unaccountable to any democratic institution or elected official. The ICC prosecutor is, to be sure, elected by a secret ballot by a majority of the signatory nations, each of which gets a single vote. But such an electoral system is problematic because, among other things, the vast majority of ICC ratifiers are weak nations that are never seriously involved in international police actions and thus have no incentive to consider the costs of zealous prosecutions.<sup>12</sup> Even more importantly, the prosecutor can initiate investigations and prosecutions on his own, or at the suggestion of the UN or any signatory nation – all

11 The ICC’s charter is available at <<http://www.un.org/law/icc/statute/romefra.htm>>; all subsequent quotes come from this document.

12 As of November 15, 2002, ICC ratifiers were: Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bul-

without review, or the threat of review, by political actors. His prosecutions are subject to legal review by the trial and appellate courts of the ICC, but these courts are similarly unaccountable to any democratic institution.

This lack of accountability means that the ICC presents many of the dangers of universal jurisdiction. Its structure is remarkably similar to the much-maligned U.S. Independent Counsel statute. By guaranteeing independence at the price of political control, it invites questionable and even politically motivated prosecutions. Legal restrictions and definitional limitations are not likely to provide real checks on the ICC's behavior, for the ICC itself is the ultimate interpreter of these norms. Experiences with the more accountable international tribunals in The Hague and Rwanda have shown that international courts will not be bound by the letter of their governing rules when justice as they conceive it requires otherwise. ICC jurisdiction can only be expected to expand.

In addition, the ICC, like a universal jurisdiction court, lacks the institutional capacity to identify and balance properly the consequences of a prosecution on potentially affected groups. The ICC

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garia, Cambodia, Canada, Central African Republic, Columbia, Costa Rica, Croatia, Cyprus, Democratic Republic of Congo, Denmark, Djibouti, Dominica, Ecuador, Estonia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Lesotho, Liechtenstein, Luxembourg, Macedonia (FYR), Mali, Marshall Islands, Malawi, Mauritius, Mongolia, Namibia, Nauru, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Samoa, San Marino, Senegal, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, the Netherlands, Timor-Leste, Trinidad and Tobago, Uganda, United Kingdom, United Republic of Tanzania, Uruguay, Venezuela, and Yugoslavia.

treaty insists that "the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured." Here again we see modern international idealism's commitment to individual accountability at the expense of national amnesties and other forms of political reconciliation. The ICC theoretically permits the prosecutor to decline to investigate when there are "substantial reasons to believe that an investigation would not serve the interests of justice." But the final call rests with the prosecutor, who there is no reason to think has the perspective, information, or incentives to make this decision wisely. (When Richard Goldstone, the Yugoslav Tribunal's first prosecutor, was asked if he "worr[ie]d about the consequences to the Bosnian peace process of indicting Radovan Karadzic and Ratko Mladic," he responded that the indictment "was really done as, if you like, as an academic exercise. . . . Because our duty was clear."<sup>13</sup>)

It is true that the ICC treaty requires the court to dismiss a case if it is already under investigation in national court, "unless the State is unwilling or unable to genuinely carry out the investigation or prosecution." But the ICC has the final word on what counts as a genuine investigation based on its perception of whether the domestic proceedings are "inconsistent with an intent to bring the person concerned to justice," a provision that opens the possibility of double jeopardy if the prosecutor decides that a national conviction or investigation is too lenient and therefore not genuine. It is natural to expect the ICC to interpret its charter in ways that support its jurisdiction.

13 Gary Bass, *Stay the Hand of Vengeance* (Princeton, N.J.: Princeton University Press, 2000), 6–7.



Perhaps the most troubling element of the ICC is its relationship to the U.N. Security Council. The United States argued that the ICC should prosecute only on the basis of referrals from the Security Council. The ICC drafters rejected the U.S. proposal on the grounds that it would inject international power politics into the decision whether to prosecute, and would give each of the Big Five powers a veto over any prosecution. The drafters viewed power politics, and the opportunistic use of Security Council vetoes, as an obstacle to individual accountability under international human rights law.

The ICC in its final form does permit the Security Council to delay a prosecution for twelve-month renewable terms. But this just means that an ICC case can go forward so long as a single permanent member vetoes a resolution of delay. And even if the Security Council votes to delay an ICC initiative (as it did when it granted UN peacekeepers a twelve-month immunity from prosecution in July of 2002<sup>14</sup>), many commentators believe the ICC has the power to engage in ‘judicial review’ of the Security Council and possibly to disregard its decision.

There are at least two problems with this attempt to eliminate power politics from the enforcement of international criminal law and to subvert the recognition of national power incorporated in the UN Security Council. The first parallels a problem with universal jurisdiction: the ICC could initiate prosecutions that aggravate bloody political conflicts and prolong political instability in the affected regions. Relatedly, the possibilities for compromise that exist in a political environment guided by prudential calculation are constricted when political deliberation must compete with an independent judicial process. Many

believe that the threat of prosecution by the international tribunal in The Hague made it practically impossible for NATO to reach an early deal with Milosevic, thereby lengthening the war and the suffering in the Balkans in the summer of 1999. The best strategy for stability often depends on context and contingent political factors that are not reducible to a rule of law. There is no reason to think that a politically unaccountable prosecutor and court will make such difficult, context-specific calls wisely, even assuming they had the discretion to do so.

The second problem results from what Carr would have described as a chasm between theory and practice. Proponents of the ICC believe that it may, in the words of Human Rights Watch’s Kenneth Roth, “save many lives.”<sup>15</sup> This is wishful thinking. Even if the ICC turns out not to have the disruptive effects described above, and even if it is somehow able to prosecute low-level human rights abusers, it is hard to see how the ICC can stop, or even affect, persons responsible for large-scale human rights abuses.

The main reason for this conclusion is that the ICC can only prosecute persons it can get custody over. The Milosovics, Mullah Omars, and Pol Pots of the world, however, tend to hide behind national borders, where they are hard to reach. Moreover, the most notorious human rights abusers have been motivated by their own sense of mission and justice. They have seen themselves as saviors, not sinners. They have been determined to cling to power and they believe, as all leaders with a mission do, that they can reshape the world in their own image. If they have not been deterred by the threat of U.S. military intervention, they are unlikely to worry much about an ICC that lacks any real

14 Sec. Coun. Res. 1422.

15 “The Court the US Doesn’t Want,” *The New York Review of Books*, 19 November 1998.

enforcement mechanism of its own and that must depend on its members, whose decisions are uncertain, to arrest and surrender suspects.

This brings us to the U.S. refusal to participate in the ICC. There are many reasons for the U.S. stance, most notably the perception that the United States's disproportionate share of international policing responsibilities exposes it to a disproportionate risk of politically motivated charges being brought before the ICC.

It may seem odd that an institution that will have little effect on rogue human rights abusers could so concern the world's greatest power. But U.S. troops, unlike rogue government officials, do not hide behind national borders. Hundreds of thousands of them are deployed around the globe, making them potentially easy to grab and bring to The Hague. (The United States is trying to counter this danger by signing bilateral agreements in which the signatories agree not to surrender nationals of the other to the ICC.)

Even if no U.S. defendant is brought before the ICC, it can still cause mischief for the United States by being a public forum for official criticism and judgment of U.S. military actions. For all these reasons, the ICC will more likely affect the activities of the generally human-rights-protecting but militarily active United States than rogue state actors who hide behind walls of sovereignty (or in ungoverned areas) and care little about world public opinion and international legitimacy.

Despite his opposition to the ICC treaty, President Clinton signed it in 2001, just before he left office, so that the United States could participate in ongoing negotiations. In May of 2002, however, the Bush administration officially

notified the United Nations that "the United States does not intend to become a party to the treaty." In August of 2002, President Bush signed the American Servicemen's Protection Act (ASPA), a statute that enjoyed broad bipartisan support. ASPA is sometimes called the Hague Invasion Act because it authorizes the president to use all necessary means to release U.S. officials from ICC captivity. It also bars military aid to some nations that support the ICC, and it requires the president to certify that U.S. peacekeepers will be immune from ICC prosecution.

U.S. opposition to the ICC is important because U.S. military and financial backing have been crucial to the operation of ad hoc international criminal tribunals. Consider how Milosevic wound up in The Hague. It was not the gravitational pull of international norms that brought him there. Rather, the United States wielded enormous diplomatic and military power to oust him from office, and then threatened to withhold some \$50 million in aid to the successor regime in Yugoslavia until it turned over Milosevic to the Yugoslav tribunal.

The Milosevic episode teaches a general lesson. The ICC simply cannot, without U.S. support, fulfill its dream of prosecuting big-time human rights abusers who hide behind national borders. This is why the ICC's alienation of the United States may actually hinder rather than enhance human rights enforcement. We have already seen this effect on peacekeeping and ad hoc international tribunals. And of course the ICC will most likely chill U.S. military action not when central U.S. strategic interests are at stake (as in Afghanistan), but rather in humanitarian situations (like Rwanda and perhaps Kosovo) where the strategic benefits of military action are low, and thus even a low probability of prosecu-

tion weighs more heavily. In this way, the ICC may ironically increase rather than decrease impunity for human rights atrocities.

The establishment of an ICC that is unacceptable to the world's most powerful nation (and also to other large and powerful nations, including Russia, China, Indonesia, and India) represents a folly reminiscent of the League of Nations, and portends a similar fate. The international idealists who rejected U.S. demands for Security Council control over ICC prosecutions aimed to decouple the enforcement of international criminal law from international politics. They wanted "equal justice under law" – the equal application of international human rights law to weak and powerful nations alike. Both aims are a fantasy strongly reminiscent of the interwar idealism that Carr so effectively and presciently criticized. In demanding a full loaf of neutral justice rather than a half loaf of justice that accords with the interests of nations that can enforce it, and in creating an institution that relies on legal norms wholly removed from considerations of power, international idealists may diminish rather than enhance the protection of human rights.

### 3

In the last decade alone, many hundreds of thousands of people have died in the Balkans, central Africa, Afghanistan, Indonesia, Haiti, and elsewhere, some before our eyes on CNN. Humanitarian disasters, of which genocide is the most appalling, are not pretty things. No reasonable person would argue that they should simply be ignored.

The question is what to do about them. Universal jurisdiction and the ICC are institutions designed to redress and – if deterrence can be made to work – to prevent such gross human rights abuses.

A third practice more directly aimed at prevention or mitigation is humanitarian intervention.

Technically, humanitarian intervention in the absence of Security Council authorization violates the UN Charter. And until recently, many international idealists have viewed humanitarian intervention with suspicion on the ground that nations often use humanitarian intervention as a cover for an unjustified invasion of another country. But today many international idealists are arguing that states have a responsibility to act to prevent or rectify humanitarian catastrophes regardless of whether or not their material or security interests are at risk.

Typical of this trend is a report issued in 2001 by the International Commission on Intervention and State Sovereignty entitled *The Responsibility to Protect*.<sup>16</sup> The Commission was supported by a secretariat housed in Canada's Department of Foreign Affairs and International Trade and was composed of a group of international personages co-chaired by Gareth Evans, a former foreign minister of Australia, and Mohamed Sahnoun, an Algerian diplomat and special advisor to the UN secretary-general. The report argues that each nation has an international responsibility to avoid or mitigate humanitarian disasters that could result either from conscious policy or from indifference or ineffectiveness in the face of natural calamities. This responsibility rests first with the domestic government, but if that government fails to act then other states and international organizations have a responsibility to protect.

16 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001).

The Commission members, echoing Secretary-General Kofi Annan's statements, aim to undermine the assertion, explicit in the UN Charter, that the principle of sovereignty precludes external intervention. Their report contends that sovereignty resides with individuals as well as states. The major purpose of government is protecting individual rights; if a government manifestly fails to protect these rights by engaging, for instance, in widespread killing or ethnic cleansing, then others have an obligation to intervene. Sovereignty and the responsibility to protect are mutually constitutive, not contradictory, principles. States that massively fail to protect individuals within their own borders are not properly exercising their sovereign authority and therefore cannot claim that external intervention is illegitimate.<sup>17</sup>

No one, regardless of his understanding of international affairs, would argue that humanitarian concerns should carry no weight in decisions about intervention. The hard issue is whether nations have an obligation or responsibility to intervene for humanitarian reasons alone.

The argument that nations are obliged to intervene ignores, or, at best, minimizes, the fact that electorates in advanced industrialized democracies have been reluctant to expend blood and treasure to deal with humanitarian catastrophes that do not affect their material interests. Despite the hundreds of thousands of deaths caused by human rights abuses during the past decade, despite the millions of such deaths in the last century, humanitarian intervention has

not generated any wellspring of support among domestic publics in the advanced industrialized democracies that possess the military muscle to make a difference.

Germany and Japan have been extremely reluctant to engage in overseas deployment of their military forces for any purpose, humanitarian or otherwise. No major European state has made a sustained commitment to humanitarian intervention. Indeed, no combination of European countries has the military capability to conduct a serious military intervention of any kind outside of Europe, and none appears willing to make the budgetary commitments that would make such interventions possible. European forces do have the ability to participate in peacekeeping operations, but even here the tolerance for losses can be limited. Belgium, for instance, which had several hundred troops deployed in Rwanda at the beginning of the 1994 crisis, withdrew them after ten of its soldiers were killed by Hutu militia.

The extreme caution with which American presidents have engaged in humanitarian interventions suggests that they believe that they are walking on very thin ice when they cannot convincingly tie their activities to material interests that the voting public can understand. To be sure, the Clinton administration undertook humanitarian interventions in Somalia, Haiti, Bosnia, and Kosovo. But the last two were overtly tied to the viability of NATO and American security, and even here the United States relied on high-altitude air attacks that minimized the chances for American casualties. In Somalia, Clinton extricated the United States after eighteen soldiers were killed. He did not act in Rwanda where an estimated eight hundred thousand people died – a decision that caused him no discernible political problem.

17 International Commission, *The Responsibility to Protect*, 8; Fernando R. Tesón, "The Case for Humanitarian Intervention," *Public Law and Legal Theory Working Paper No. 39*, Florida State University College of Law, November 2001, p. 2–3.

The report of the International Commission on Intervention and State Sovereignty recognizes the problematic absence of democratic support for humanitarian intervention. It suggests that

the budgetary cost and risk to personnel involved in any military action may in fact make it politically imperative for the intervening state to be able to claim some degree of self-interest in the intervention, however altruistic its primary motive might actually be. Apart from economic or strategic interests, that self-interest could, for example, take the understandable form of a concern to avoid refugee outflows, or a haven for drug producers or terrorists, developing in one's neighbourhood.<sup>18</sup>

The Commission here acknowledges a gap between its own prescriptions about the moral obligation to act to mitigate humanitarian disasters, and the views held by democratic electorates in Europe, Japan, and North America – electorates whose money would be spent and whose sons and daughters could be killed.

This absence of democratic support is a fundamental problem for those who insist that nations should intervene to arrest human suffering in other nations. A basic tenet of the idealistic outlook that underlies demands for humanitarian intervention is that liberal democracy is the morally preferable form of domestic governance.<sup>19</sup> In a democracy, foreign policy must have national support and be justified in terms acceptable to the voting public. But this means that political leaders cannot engage in acts of

altruism abroad much beyond what constituents and/or interest groups will support. This conclusion is fatal to the interventionist project. The most we can expect is that when a nation's strategic interests dovetail with an inclination toward genuine humanitarian intervention, it will intervene – as the United States did in Bosnia, Haiti, and Kosovo.

Once again, this means that international justice will depend on the power and interest of nations, and will often result in uneven patterns of enforcement that critics deride as hypocritical. Opportunistic interventions are also what give rise to the (not unjustified) concern that many so-called humanitarian interventions are ruses for invasions motivated in large part by strategic ends. A clear-eyed analysis of interventions would realize that such mixed-motive cases are probably the best we can hope for. The presence of mixed motives does not detract from the fact that some such interventions might help local populations, as the Kosovo intervention arguably did.

**A**rguments for the duty to intervene and prevent human suffering suffer from another problem in addition to the democratic deficit: they underplay, even if they do not ignore, questions of political prudence. Political prudence demands that foreign policy actions be judged in terms of their consequences, not their intentions.

Information affecting the cost of intervention, including the state of affairs in the target country and the price of intervention – in money spent, lives lost, and other opportunities forgone – are hard to determine. Similarly, the consequences of intervention, including the costs and

<sup>18</sup> International Commission, *The Responsibility to Protect*, 36.

<sup>19</sup> Cf. Brian Barry, "Statism and Nationalism: A Cosmopolitan Critique," in *Global Justice*, ed. Ian Shapiro and Lea Brilmayer (New York :

New York University Press, 1999): "the domestic aspect of cosmopolitanism is . . . liberal democracy."

likelihood of constructing a social and political order superior to that which would exist in the absence of intervention, are hard to know in advance. These factors make it all the more difficult for responsible democratic leaders to intervene, even if they were willing to ignore the absence of domestic support.

In several articles and a widely praised book, Samantha Power has been highly critical of American policy for failing to prevent or react to the genocidal policy adopted by Hutu extremists in Rwanda. She faults, among others, American Ambassador David Rawson for his failure to anticipate the scale of the killings. She quotes Rawson as follows: "Most of us thought that if a war broke out, it would be quick, that these poor people didn't have the resources, the means, to fight a sophisticated war. I couldn't have known that they would do each other in with the most economic means."<sup>20</sup>

Rawson was, however, far from ignorant about Rwanda. He had grown up in Burundi, the son of an American missionary. He spoke the local language. He could not, in Power's words, "have been more intimate with the region, the culture, or the peril." Yet he totally missed what was about to occur. Power argues that Rawson and others suffered from what she calls "imaginative weakness." She also claims that "US officials who 'did not know' or 'did not fully appreciate' usually chose not to."<sup>21</sup> But it would be more straightforward and obvious to say that policymakers must always make guesses about alternative states of the world with limited information and time – and absent overwhelming information to the contrary, there is no rea-

son to reject that state of the world that is most consistent with the policy options they find most attractive.

*Ex ante* efforts to assess systematically the costs and benefits of any intervention are extraordinarily challenging. What is happening on the ground is rarely known with certainty. Even after the killing has begun, observers might not know whether they face a civil war or a systematic effort to murder members of a particular ethnic group. American leaders thought that bombing Serbia would provide Milosovic with the cover that he needed to withdraw from Kosovo; instead it led him to accelerate efforts at ethnic cleansing. Even ardent supporters of humanitarian intervention recognize that there must be some assessment of reasonable cost for the interveners. But it is usually difficult to know beforehand what such costs might be. How many foreign troops would have been killed if there had been a quick reaction to developments in Rwanda? How many NATO soldiers would have been lost if an aggressive, rather than cautious, air and ground campaign had been conducted against Serbia? What would the casualties be if an effective external fighting force were deployed to the Sudan? If a political leader guesses wrong, what would be the implications for his ability to secure political support from his own electorate?

Finally, and perhaps most challengingly, is the question of reconstruction. Just stopping the killing is not enough. If intervention occurs, the International Commission argues, there is an obligation to rebuild. Refugees must be allowed to return; human rights must be respected; judicial systems must be reconstructed; militaries must be demobilized.

<sup>20</sup> Samantha Power, *A Problem from Hell* (New York: Basic Books, 2002).

<sup>21</sup> Samantha Power, "Genocide and America," *The New York Review of Books*, 14 March 2002.

Success requires creating institutional arrangements to which all of the relevant local actors will adhere. This is more easily done in some areas than in others. The highly developed institutional structures of Europe – the European Community, the Organization for Security and Cooperation in Europe, and NATO – offer alternatives to conventional sovereignty for the Balkans. These alternatives make it easier to maintain minority rights and prevent conflict,<sup>22</sup> although even here the prospects for long-term success are uncertain. Other neighborhoods, such as ones in Africa and central Asia, are less hospitable. Building stable and tolerant societies in these areas is an enormous challenge, and there is no guarantee of success. Despite a clear security motive for intervention, widespread international support, and billions of dollars in assistance, the American-led effort to reconstruct Afghanistan might still fail. It is all the more difficult to sustain such efforts in countries where the direct security interests of powerful and rich states are not engaged.

The difficulty of assessing the costs and benefits of intervention and the absence of domestic support for purely humanitarian actions do not rule out such activities. But these considerations do suggest that it is wishful thinking to presume that the responsibility to protect will become a central norm in state decision-making. Any decision to engage in humanitarian intervention must take into account available resources,

22 Robert O. Keohane, "Political Authority after Intervention: Gradations in Sovereignty," in Jeff Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Principles, Institutions and Change* (Cambridge: Cambridge University Press, forthcoming); Michael Ignatieff, "State Failure and Nation Building," unpublished, Harvard University, Kennedy School of Government, 2002, *passim*.

domestic support, probabilities of success, the danger of doing more harm than good, and, most importantly, the material interests of the intervener. This once again will lead, at best, to selective justice. In international politics, selective justice is the best we can hope for.

#### 4

We have offered reasons to be pessimistic about the efficacy of three regimes – universal jurisdiction, the ICC, and (certain conceptions of) humanitarian intervention – that aim to enforce international human rights norms. Our point is not to criticize the norms themselves, but to focus attention on pathologies that may result from the inadequate institutions in which they are embedded. International institutions can damage rather than promote international ideals if they are incompatible with the interests of those states whose support is needed for their success.

Consider two successful weddings of ideals, interests, and power – the first associated with the beginning of the modern state system, and the second with its possible transformation. The treaties of Westphalia (1648) that ended the Thirty Years War are famous for embracing the principle that the prince determines the religion of his territory. But the actual terms of the treaties limited the emperor's right to regulate religious practices within the Holy Roman Empire. These restrictions, analogous to modern human rights, protected some minority religious practices, mandated the sharing of public offices in some cities with mixed populations, and most importantly, altered the domestic institutional structure of the Empire by requiring that religious questions be decided by a majority of Catholics and Protestants voting separately in the diet and courts of

the Empire.<sup>23</sup> These protections were largely efficacious, not because the norm of religious toleration motivated leaders (in fact no European leader believed in this norm), but rather because the Thirty Years War had shown that efforts to repress religious practices in Germany were so politically volatile that they could threaten the very existence of the Empire.

The European Union is another example. The Union has transformed the continent from one riven by war in the first half of the twentieth century to one in which war is unthinkable, at least among member states. European integration was motivated by ideals, by an aspiration among a small number of leaders to bind the states of Europe into a peaceful web of relations from which they could not extricate themselves. An important element of this integration was the creation of a human rights regime that fostered democracy and tolerance in the domestic realm. But these ideals could only be realized by grounding them in interests, economic and political, and by creating institutions that made it possible for European leaders to ensure that no nation had an incentive to defect.<sup>24</sup>

The Peace of Westphalia and the European Union are institutions that successfully harnessed the power and interest of nations to enforce moral ideals. These institutions worked because each nation benefited from the institution and had an interest in complying with its terms. Unfortunately, it is not always, or even

23 See Stephen D. Krasner, "Compromising Westphalia," *International Security* 20 (3) (Winter 1995/1996).

24 For a discussion of the importance of interests in the process of European integration see Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca, N.Y.: Cornell University Press, 1998).

usually, possible to yoke self-interest into such a self-enforcing mechanism to promote moral ideals.

When self-enforcement fails, the alternative is a system of selective justice enforced by the powerful, one consequence of which is effective immunity for the powerful. What has not proved possible in international affairs is universal international justice based on legal norms that operate in the absence of either self-enforcement or hegemonic dominance.

This is why we believe that the norm that states ought to intervene militarily to mitigate humanitarian catastrophes will not become accepted in practice. Persons motivated to commit the abuses have nothing to gain from forgoing the abuse out of deference to international norms alone. And the leaders of democratic states – or, perhaps more to the point, American presidents – will not be able to secure the domestic political support needed to place lives at risk when their states' security interests are not directly at stake.

Universal jurisdiction and the ICC, in contrast, can matter, because they establish judicial procedures that rely on the authority and policing powers of national states for enforcement. The problem here is not that such institutional arrangements will be ineffectual. As we have suggested, these institutions can affect the costs of political action, and can have a special impact on nations like the United States that are globally active and care about public opinion and international legitimacy. The problem with these institutions is that they can do more harm than good.

The ICC and universal jurisdiction assume a consensus on human rights ideals and their applicability, and expect that compliance will follow. But no such consensus exists; non-national judicial proceedings will always be open to



charges of bias, an ambiguity that Milosovic has exploited in his trial before the International Criminal Tribunal for the Former Yugoslavia (an institution that avoids many of the pitfalls of the ICC). The ICC and universal jurisdiction sever the link between norm enforcement and political accountability. One consequence of this separation is that the institutions are practically, and in some circumstances legally, discouraged from engaging in assessments of costs and benefits that are often so important for the prevention of human suffering. As a result, such institutions may worsen rather than alleviate human rights catastrophes.<sup>25</sup>

<sup>25</sup> The authors would like to thank Ryan Goodman, Michael Ignatieff, Robert O. Keohane, Tracey Meares, Eric Posner, and Adrian Vermeule for their comments on earlier drafts of this paper.

# Jean Bethke Elshtain

## *The responsibility of nations: A moral case for coercive justice*

Debates about international justice typically range over the well traversed terrain of distribution and redistribution. From Dame Barbara Ward's *Rich Nations, Poor Nations* published in the early 1960s, to calls during the Jubilee year of 2000 for forgiveness of the Third World debt, justice has been conceived of in economic terms, in terms of righting the balance between the world's wealthy and impoverished.

I am not going to revisit this question, in part because I believe a more exigent matter lies today before the international community: namely, the need to bring about the political stability – the minimal civic peace – requisite to attain and secure fundamental human goods, including a measure of distributive justice. Absent political stability, every attempt to prop up impoverished countries must fail; justice demands accountability and there is no political accountability where there is no structure of power and laws. Without such a structure, the likelihood of what we now routinely call 'humanitarian

catastrophes' is magnified many-fold.

Emblematic of the ills attendant upon political instability is the disaster of so-called failed states, in which human beings are prey to the ruthless and the irresponsible. Although the *raison d'être* of states ought to be maintaining stability and civic peace, many become disturbers of that peace, even agents of injustice.

What follows is an argument for meeting one essential precondition of international justice: securing political stability, if necessary by the use of outside force. Such efforts are today often understood in terms of international peace-keeping and 'humanitarian intervention.' We would be better off, I think, if we understood these efforts in terms drawn from the Christian tradition of thinking about when and where coercive armed intervention is justified in order to protect innocent victims of political instability.

One thing is clear: in recent years, stopping brutality and arbitrary violence – including the growth of terrorism and what Michael Ignatieff has dubbed 'apocalyptic nihilism' – has become both a strategic necessity and a moral requirement of the highest priority. In too many nations – one thinks of Rwanda and Bosnia – political chaos, often instigated by

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ruthless ideologues or feckless profiteers, has claimed thousands of lives.<sup>1</sup> Without political stability, justice is an empty ideal. In Ignatieff's words, "freedom becomes an issue only after order has been established."

My argument for using outside force, if necessary, to protect innocent victims is complex, and not without complications. And what I am calling for is bound to be controversial – namely, the use of force as a remedy under a justice claim based on *equal regard for inviolable human dignity*. As a claim applying to all peoples without distinction, this principle is by no means universally affirmed.

But I believe that a principle of *equal regard*, based on the right to make a claim for armed intervention rather than simply for humanitarian assistance, establishes a framework for the achievement of a decent, stable international order as the necessary prelude to both freedom and distributive justice. And I also believe that there are times when a principle of equal regard will override the reluctance to take up arms. The upshot is a presumptive case in favor of the use of armed force by a powerful state or alliance of states that has the means to intervene, interdict, and punish on behalf of those under assault.

If you are a political theorist, as I am, your starting point is almost invariably the ancient Greeks and, more particularly, the life of the citizen in the Athenian

1 It should be obvious from my description that the instability to which I refer is not the disturbance to civic peace attendant upon social and political contestation. In such cases, including those involving widespread civil disobedience, a structure of laws and accountability is in place – and it is precisely this structure that becomes a target for protesters to the extent that they believe the law encodes specific injustices. I am referring to law-less situations of cruelty, arbitrariness, violence, and caprice – and these abound at present.

polis. But what happens when you explore the contrast between the rules that applied to citizens within the polis to the norms and practices that governed their dealings with foreigners? As it turns out, justice lies at the heart of the matter.

Athenians, like most other Greeks, made a sharp distinction between internal and external affairs: justice obtained among citizens within the polis, while force governed relations with others. Accordingly, what would be counted a wrong against a citizen was not necessarily so counted if another polis, or a foreigner, was the victim of it. Perhaps the most shocking example of how this distinction was applied in practice is the so-called Melian dialogue, familiar to readers of Thucydides' *The Peloponnesian War*. After the hapless citizens of the island of Melos refused to give up their seven-hundred-year-old tradition of civic liberty, the Athenian generals proclaimed that the strong do what they will and the weak suffer what they must; the Athenians attacked the island, slew its men, and sold its women and children into slavery.<sup>2</sup> To be sure, among the ancient Greeks diplomacy and arbitration might be called upon to mediate the rule of force in relations with external others. But acts of generosity toward the foreigner were an exception, and in general the Greeks maintained a sharp presumptive divide – between justice as an internal norm, and force as an external rule.

From its inception, Christian doctrine embodied a dramatic challenge to this Greek approach to justice. Christianity

2 Thucydides, it must be noted, did not present the Melian dialogue as a depiction of exemplary behavior on the part of the Athenian generals; indeed, it presaged disaster for Athens. Oddly enough, however, contemporary realists often identify this extreme instance of the use of force as a case in point for their perspective.

put pressure on the notion that good or ill treatment should depend on tribal or political affiliations; hospitality was supposed to be extended to all without exception. The Christian parable of the Good Samaritan illustrates this claim: if a Samaritan, with whom the Jews of Jesus' day had no neighborly contact, could treat a beaten and robbed Jew with tenderness and mercy, was it not possible for a Samaritan to be good and for the normative presumptions to be reversed? Hospitality – *caritas* – became a duty for all Christians, whether the one to whom aid was proffered or from whom it was received was a family or tribal member, or a stranger.

Where moral obligation is concerned, the Christian teaching is in many ways counterintuitive. It is, after all, not surprising that we feel foremost obligated to family and friends; second, to members of our own culture, clan, or society – with foreigners and strangers coming in a distant third. An injustice meted out against one of our own pains us more keenly than an injustice perpetrated against those far removed from us by language, custom, and belief – and separated from us by borders and geographic distance. Even by St. Augustine's account in *The City of God*,

The diversity of languages separates man from man. For if two men meet and are forced by some compelling reason not to pass on but to stay in company, then if neither knows the other's language, it is easier for dumb animals, even of different kinds, to associate together than these men, although both are human beings. For when men cannot communicate their thoughts to each other, simply because of difference of language, all similarity of their common human nature is of no avail to unite them in fellowship. So true is this that a man would be more cheerful with his dog for company than with a foreigner.

Mutual unintelligibility to the contrary notwithstanding, Christian theology endorses equal consideration for all human beings, whatever the lamentable shortcomings of Christian practice over the centuries.

Of course, the ancient Greek distinction between justice and force never disappeared. It made a powerful comeback in the writings of Machiavelli and other so-called civic republicans, and was re-encoded by the Peace of Augsburg (1555) and the Treaty of Westphalia (1648).

With Westphalia, the norm of justice pertaining to members of a particular territorial entity received official sanction in its recognizably modern form, marking the beginning of the international state system. The presumption of state sovereignty held that the state alone was the arbiter of what counted as justice, law, freedom, and everything else within its bounded territory. Efforts at softening sovereign autonomy (associated with Hugo Grotius and the notion of international law) were observed most often when adherence to international norms and state self-interest could be reconciled, and were only partially successful.

Meanwhile, Christian universalism remained alive not only in theological and moral arguments now advanced within a divided Christendom, but also in several traditions of theologically grounded political practice. Where the matter of international justice is concerned, the most important of these is the justified, or 'just,' war tradition.

Many will find this claim surprising. How can a method of assessing whether a resort to war is justified bear directly on contemporary debates about international justice? The argument, simply put, is this: the just war tradition is not just about war. It is a theory of comparative justice applied to considerations of

war and intervention. Indeed, in my view, the post – World War II universalization of human rights has deepened and enhanced the importance and reach of the just war perspective.

But in order to understand what the notion of justice with universal applicability precisely means within the just war tradition, a précis of the basics of just war doctrine is required.

From the perspective of the just war tradition, no unbridgeable conceptual or political divide exists between domestic and international politics. Most thinkers within the just war tradition assume that while it would be utopian to suppose that relations between states could ever be governed by the kind of care apposite in our dealings with family, friends, and fellow citizens, it does not follow that an unbridled war of each against all may legitimately commence as soon as one crosses the borders of one's country.

Just war thinking is perhaps best known today for some of its concrete injunctions. For example: a war must be openly and legally pursued; a war must be a response to a specific instance of unjust aggression or to the certain threat of such aggression; a war may be triggered by an obligation to protect the innocent (noncombatants) – rather than simply the members of one's polity – from certain harm; a war should be a last resort. These are the so-called *ad bellum* criteria. Just war theorists also insist that means must be proportionate to ends (the rule of proportionality) and that a war be waged in such a way as to distinguish combatants from noncombatants (the principle of discrimination), the most important *in bello* criterion.

Note that one cause that justifies a forceful response, if other criteria such as last resort are also met, is sparing the innocent from certain harm. A response

to a direct attack is similarly exigent. Acts of aggression, whether against one's own people or against those who cannot defend themselves, are stipulated as cases of injustice that warrant the use of force. This does not mean one *must* respond with force, but rather that a justice claim has been triggered and a resort to force is justifiable, without being automatic.

Herein lies the rub, the point at which just war and international justice as equal regard make contact. Because the origins of just war thinking lie in Christian theology, the view that human beings are equal in the eyes of God underscores what is at stake when persons are unjustly assaulted – namely, that human beings *qua* human beings deserve equal moral regard. Equal regard means that one possesses an inalienable dignity that cannot be revoked arbitrarily by governments or other political bodies or actors. It follows that the spectacle of people being harried, deported, slaughtered, tortured, or starved en masse constitutes a *prima facie* justice claim. Depending on the circumstances on the ground, as well as on the relative scales of power, an equal regard claim may trigger a movement toward armed intervention on behalf of the hounded, tortured, murdered, and aggrieved.

If such a claim is warranted, some might cavil, ought not an international institution respond? Perhaps. But all too often UN 'peacekeepers' are obliged by their rules of engagement (rules of 'disengagement' would be more like it) to stand by as people are being slaughtered. International bodies have tended to avoid using coercive force in order to protect innocent victims of political chaos. As a result, in many cases it will be other political institutions that must respond to the grievances and horrors at

hand, provided they can do so in a manner that avoids – to the extent that this is humanly possible – either deepening the injustice at hand or creating new instances of injustice, doubly difficult to sort out.

Let's tackle the first difficulty – what it means to make a claim under the equal regard norm – before turning to the second vexation, namely, who can be called upon to use coercive force on behalf of justice.

Defining and defending international justice as the equal right to have force deployed on one's behalf means that an aggrieved group is obliged to make the case that its is a *just cause* of substantial gravity.

Genocide is the most obvious case in point. But there are others, including many man-made disasters that are now the occasion for 'humanitarian intervention' – a devastating famine, for example. As Amartya Sen has demonstrated, famine on a catastrophic scale is most often the conjunction of natural factors (many years of drought, for example) and starvation maneuvered by cruel political actors to further their own ends.

In such circumstances, it makes far more sense to speak of intervention in a just cause – and to call it justified war – than to obfuscate with the term 'humanitarian relief': if attack helicopters, armored personnel carriers, automatic weapons, and the like are involved, it is a war of one sort or another. If famine is the *casus belli*, one interdicts and punishes those responsible for preventing food from reaching starving people.<sup>3</sup> Calling such a situation 'humanitarian intervention' only clouds the issue. The real

3 I would not use U.S. military personnel to respond to authentic natural disasters, like flood relief. International humanitarian relief agencies, including non-military U.S. personnel and NGOs, should be deployed in such instances.

problem is a political one, and coercive force remains an extension of politics by other means.

Let's unpack further an equal regard claim to the deployment of armed force on behalf of a victim of systematic injustice. One implication of this claim is that a third party may be justified in intervening with force in order to defend those unable to defend themselves, to fight those who are engaged in unjust acts of harming, and to punish those who have committed unjust harm. On these grounds, a war would be justified in order to halt the kind of unlimited violence exemplified by Osama bin Laden's *fatwa* calling on all Muslims everywhere to kill all Americans wherever they may be found. Force that observes limits is frequently called upon to fight force without limits.

At the same time, it is important to note what the equal regard argument does *not* mean. It does not mean that any one nation or group of nations can or should respond to every violation of the innocent, including genocide, that most horrific of all violations. The just war tradition incorporates a cautionary note: Be as certain as you can, before you intervene in a just cause, that you have a reasonable chance of success. Don't barge in and make a bad situation worse.

A prudential warning that intervention in a just cause might exacerbate the harm, that this intervention will itself constitute unjustifiable injustice – such as massive damage to the civilian population of a country or group being harmed by another country or group –

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In light of the current war on terror, deploying our military to respond to the aftermath of hurricanes and the like will stretch us too thin. Humanitarian relief and coercive force must be kept distinct, in part to limit coercive force rather than bury it under the humanitarian rubric.

must be addressed within the equal regard/just war framework.<sup>4</sup> In such sad situations, those called upon to intervene are obliged to affirm the equal regard norm even as they spell out explicitly how and why they are unable or unwilling to undertake the risks of intervention with force. The reasons for standing down must themselves be grounded in the equal regard norm – for example, in the high probability that more innocents would die as a result of armed intervention on their behalf than would likely suffer if such intervention is not mounted.

This approach is better by far than the strategies of evasion and denial applied during the 1994 slaughter of Rwandan Tutsis by Rwandan Hutus. Exculpatory strategies at the time included claims that the full extent of the slaughter was unknown. Or that, as bad as the slaughter was, it wasn't *as* bad as other cases of genocide, so action that might put American (or other) soldiers in harm's way wasn't warranted. In this and other well-known cases, one is confronted frequently with the spectacle of officials who speak boldly about universal human rights, only to revert to a narrow doctrine of national self-interest in order to evade the implications of embracing these rights.

The safe havens for beleaguered Bosnian Muslims established under a UN umbrella during the Bosnian war were another tragic case of evasion and ineptitude. Bosnian Muslims flowed into these 'safe havens' and were there shot to pieces as UN peacekeepers, impotent

4 Here precision-guided weaponry has rolled back many arguments that modern war and the just war tradition are by definition incompatible. This is surely true of a total war absent restraint. It is not true of a limited war fought, with restraint, in order to punish egregious aggression, to interdict terrible violence, and to prevent further harm.

under standing rules of engagement, stood by. The United States, fearing unfavorable domestic political reaction, temporized, making promise after promise it never kept. As Samantha Power writes, "First, they [administration officials] wanted to avoid engagement in conflicts that posed little threat to American interests, narrowly defined. And second, they hoped to contain the political costs and avoid the moral stigma associated with allowing genocide." Because the Americans had turned the issue into one of *international peacekeeping* rather than *just war-making*, ethnic cleansing proceeded apace and its results were ratified with the Dayton Accords.

Suppose one state does intervene on behalf of a victimized state or people: does this in and of itself mean that the principle of equal regard is being honored in full? Not necessarily.

Take, for example, U.S. intervention in Kosovo under the rubric of NATO authority. The rules of NATO engagement in Kosovo exemplify the failure to abide by the central norm of the just war tradition that maintains that it is better to risk the lives of one's own combatants than those of enemy noncombatants. With its determination to keep American combatants out of harm's way – to enjoy a zero-casualty war for our soldiers – the Clinton administration embraced a principle I call *combatant immunity*, not only for our own combatants but also indirectly for Serbian soldiers. No attempt was made to interdict the Serbian forces on the ground, even as Kosovar civilian casualties escalated with NATO bombing.

In a hard-hitting piece on "War and Sacrifice in Kosovo," Paul W. Kahn scored the administration's violation of the equal regard norm. His comments are worth quoting at some length:

If the decision to intervene is morally compelling, it cannot be conditioned on political considerations *that assume an asymmetrical valuing of human life*. [The emphasis is mine.] This contradiction will be felt more and more as we move into an era that is simultaneously characterized by a global legal and moral order, on the one hand, and the continuing presence of nation-states, on the other. What are the conditions under which states will be willing to commit their forces to advance international standards, when their own interests are not threatened? Riskless warfare by the state in pursuit of global values may be a perfect expression of this structural contradiction within which we find ourselves. In part, then, our uneasiness about a policy of riskless intervention in Kosovo arises out of an incompatibility between the morality of the ends, which are universal, and the morality of the means, which seem to privilege a particular community. There was talk during the campaign of a crude moral-military calculus in which the life of one NATO combatant was thought to be equivalent to the lives of 20,000 Kosovars. Such talk meant that those who supported the intervention could not know the depth of our commitment to overcoming humanitarian disasters. Is it conditioned upon the absence of risk to our own troops? If so, are such interventions merely moral disasters – like that in Somalia – waiting to happen? If the Serbs had discovered a way to inflict real costs, would there have been an abandonment of the Kosovars?

The doctrine of ‘humanitarian intervention’ not only builds in no barriers to the kind of crude calculus Kahn condemns, but also tacitly encourages a situation of unequal regard, by making the case for relief in terms of international victimization. The more powerful are moved by a sense of pity, at best empathy – not by a sense of obligation to

achieve justice for those we perceive as equals. The humanitarian relief model in such circumstances is somewhat analogous to the bureaucratic welfare model of a needy client dependent upon the largesse of a powerful and remote provider. This creates a bizarre situation – one we witnessed frequently in the 1990s – of American soldiers, the best equipped and trained in the world, deployed as high-tech social workers.

By contrast, the equal regard doctrine as an elementary requirement of international justice sets up a *citizenship model*. We respond to attacks against persons who cannot defend themselves because they, like us, are human beings, hence equal in regard to us, and because they, like us, are members of nations, states, or would-be states whose primary obligation is to protect the lives of those citizens who inhabit their polities. Thus, all states or would-be states have a stake in building an international civic culture that averts horrors such as those of Rwanda and Kosovo.

When such horrors arise, we should send in soldiers to protect the innocent, unless grave and compelling reasons preclude it. These soldiers should fight under rules of engagement that abide by just war norms, most importantly non-combatant immunity. If we cannot intervene, other means must be resorted to immediately. People should not be slaughtered because powerful nations are dithering, hoping the whole thing will soon be over, and using domestic political considerations as a trump card in refusing to do the right thing.

In her essay “Genocide and America,” Samantha Power writes that:

People victimized by genocide or abandoned by the international community do not make good neighbors, as their thirst for vengeance, their irredentism, and their acceptance of violence as a means of gen-



erating change can turn them into future threats. In Bosnia, where the United States and Europe maintained an arms embargo against the Muslims, extremist Islamic fighters and proselytizers eventually turned up to offer support. Some secular Muslim citizens became radicalized by the partnership, and the failed state of Bosnia became a haven for Islamic terrorists shunned elsewhere in the world. It appears that one of the organizations that infiltrated Bosnia and used it as a training base was Osama bin Laden's al-Qaeda.

I have long argued in my own work that moral imperatives are not so many nice-sounding nostrums that we can simply ignore in favor of hardheaded national interest. Ethical considerations must be a constitutive feature of American foreign policy; it is in our long-term national interest to foster and sustain an international society of equal regard. An equal regard standard is central to a well functioning international system composed of decent, if not perfect, states that may or may not be democratic, although constitutional regimes remain the ideal.

And it is not only the United States that should be bound by such moral imperatives. Many states are capable of responding to regional catastrophes, even if that means sending their soldiers into a neighboring country. When a minority population within a country is being destroyed, or threatened with destruction, neighboring countries are obligated to take action under the equal regard rule. When, say, the unarmed missionaries of a particular religion are being executed systematically by a state, neighboring countries are also accountable and, if they have the means, should exert pressure to stop the slaughter. Faithfulness to the alliance of equal regard with universal human rights means obligations are not limited to one's own nationals, or

tribe, or co-religionists. In this latter instance, it is not incumbent upon the neighboring country to make the case, but rather to respond, once the case has been made, with whatever means are at its disposal.

Finally, who is the 'we' that can be called upon to protect the innocent from harm, the 'we' to whom a country without the means to intervene must make its case? The United Nations cannot be ignored, of course, but nor has it proved effective in this regard. *Once* a measure of order is restored, UN peacekeepers may indeed be the best body to enforce a fragile peace, at least in some situations. But the United Nations habitually temporizes, sends radically mixed signals, and takes so long to gear itself up and put peacekeepers on the ground that its unreliability in this regard needn't be argued at length. All one need do is look at its reluctance to enforce its own resolutions for inspections in Iraq.

Presently, the likeliest 'we,' with both the means to enforce international justice as an equal regard norm and a strong motive to do so, is the United States. The United States is capable of projecting its power as no other state can. And the United States is itself premised on a set of universal propositions concerning human dignity and equality. There is no conflict *in principle* between our national identity and universal claims and commitments.

The conflict lies elsewhere – between what we affirm and aspire to, what we can effectively do, and what we can responsibly do. Here fundamental human moral intuitions will inevitably come into play. I described these as a powerfully felt human urgency to protect, to care for, and to seek justice on behalf of those nearest and dearest to us.

*If* the case can be made – and it isn't

just an exculpatory strategy to avoid acting under the equal regard principle – that those nearest and dearest will be directly imperiled if one acts, the obligation to act under equal regard may be affirmed even as exigent prudential reasons for why one cannot act in this case are proffered. One arrives at a position of moral regret because a legitimate claim cannot be honored. A reasonable and justifiable departure from the equal regard norm, e.g., a claim that substantial harm will come to one's fellow citizens if one acts – not as a remote possibility but as a high-certain probability – does not apply to the anticipated harm to military men and women attendant upon any commitment to coercive force: it is their job to go into harm's way. It is also their honor to fight as just warriors rather than as wanton murder-

ers, like those unleashed by the Athenians at Melos.

It is extraordinarily difficult to articulate a strong universal justice claim and to assign a particular state and its people a disproportionate burden to enforce that claim. But international justice as coercive force on behalf of equal regard does precisely this. At this critical juncture in human history, the United States is a polity that acknowledges universal premises and is sufficiently powerful to act, or to put pressure on others to act, when and where no other state can.

If the United States were to act justly, in short, the brutal Melian maxim would be mercifully reversed:

The strong do what they must, in order that the weak not suffer what they too often will.

Gary J. Bass

## *Atrocity & legalism*

George Orwell ended his *Homage to Catalonia* with a lulling account of his return to the calm of London from the chaos of the Spanish Civil War: “the huge peaceful wilderness of outer London, the barges on the miry river, the familiar streets, the posters telling of cricket matches and Royal weddings, the men in bowler hats, the pigeons in Trafalgar Square, the red buses, the blue policemen – all sleeping the deep, deep sleep of England, from which I sometimes fear that we shall never wake till we are jerked out of it by the roar of bombs.”<sup>1</sup>

For America, the bombs came on September 11, 2001. After years of fitful attention to the rest of the world, we Americans suddenly found ourselves with no choice but to attend to international affairs. We had to face up to being the target of a deliberate attack that killed thousands of civilians. And despite the swift military and political tri-

umph of America’s war against Al Qaeda and the Taliban in Afghanistan, and the prospect of a broader international campaign against terrorism and weapons of mass destruction, the nation’s new mood of anxiety is unlikely to abate any time soon. Unfamiliar though this new mood has been, it has charged some of the most important debates that have broken out since September 11.

As the Bush White House tries to figure out what to do with the war criminals of Al Qaeda, it is grappling with a series of dilemmas that preoccupied the governments of Castlereagh, David Lloyd George, Georges Clemenceau, Woodrow Wilson, Franklin Delano Roosevelt, George H. W. Bush, and Bill Clinton. Their experiences may help us understand more clearly how best to prosecute crimes against humanity as grave as those committed against the United States on September 11.

More specifically, I will argue that the modern experience shows that:

- The language of national and international law concerning war crimes is the right language for condemning terrorism;

1 George Orwell, *Homage to Catalonia* (1938; reprint, New York: Harcourt Brace Jovanovich, 1980), 231 – 232.

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- The exercise of military might is often a crucial precondition for achieving international justice;
- A liberal country victimized by criminal acts of war will struggle to balance the need for self-protection and retribution against the requirements of national and international law;
- Decisions about how to prosecute terrorists – whether in national or international courts – should be made with an eye to satisfying their victims, while convincing world public opinion of the horror of such indiscriminate violence against civilians.

Despite the current administration's skittishness about using it, the idiom of war crimes law is, morally at least, perfectly suited to the prosecution of terrorism. War crimes law is a way of drawing the kind of moral distinctions that are most crucial in making America's case to the world, because this body of law draws lines between legitimate and illegitimate uses of violence. In the same way that war crimes law and idiom delegitimized the Serb campaign against Bosnia, so too can it delegitimize Al Qaeda's campaign against America.

'Terrorism' is not – as the Reuters news service implies by its refusal to use the word – a subjective term of opprobrium. One man's terrorist is not another man's freedom fighter. The term has a distinct and precise meaning in just war theory – the same theory that underlies our understanding of criminality in warfare.

In his classic *Just and Unjust Wars*, Michael Walzer put it clearly: The purpose of terrorism "is to destroy the morale of a nation or a class, to undercut its solidarity; its method is the random murder of innocent people." In Walzer's formulation, terrorism is the strategy of "aiming at whole groups of people, indis-

criminately, because of who they are." Unlike an armed struggle against a particular policy, terrorism "reaches beyond all limits; it is infinitely threatening to whole people, whose individual members are systematically exposed to violent death at any and every moment in the course of their (largely innocuous) lives. A bomb planted on a streetcorner, hidden in a bus station, thrown into a cafe or pub – this is aimless killing, except that the victims are likely to share what they cannot avoid, a collective identity." According to Walzer, "in practice, terrorism, because it is directed against entire peoples or classes, tends to communicate the most extreme and brutal intentions – above all, the tyrannical repression, removal, or mass murder of the population under attack."<sup>2</sup>

The echoes of Bosnia and Rwanda are clear enough, despite the difference in scale between those slaughters and the World Trade Center attacks. In its deliberate attempt to kill massive numbers of civilians, the World Trade Center massacre was, among other things, a crime against humanity.

The particular horror of targeting civilians has been understood by the Bush administration. In his speech to a joint session of Congress days after the World Trade Center massacre, President George W. Bush might as well have been reading from Walzer's just war analysis of terrorism: "The terrorists' directive commands them to kill Christians and Jews, to kill all Americans and make no distinctions among military and civilians, including women and children."

In his condemnation of bin Laden, Bush was echoing a basic point of just war theory: political campaigns that pursue the mass murder of innocents are

2 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 197, 200, 203.

illegitimate. And Bush did not limit his case against Al Qaeda to American suffering; he took pains to point out that a great number of World Trade Center victims were nationals of other countries, including Pakistan and other Muslim states. Then Bush explicitly drew the link between Islamist terrorism and other totalitarian movements: “They are the heirs of all the murderous ideologies of the twentieth century. By sacrificing human life to serve their radical visions, by abandoning every value except the will to power, they follow in the path of fascism, Nazism, and totalitarianism.”

But if we are now up against the heirs of Nazism – an “axis of evil,” as Bush described terrorists and terrorist nations in his 2002 State of the Union address – then something like the Nuremberg trials must be part of the process. The war against terrorism should be waged with all the tools at the civilized world’s disposal: military, diplomatic, political, financial, and legal.

From the president on down, the goal of having justice done has been clear from the start – although the specifics have been vague, sometimes ominously so. On September 17, 2001, for example, Bush said, “All I want, and America wants him [bin Laden] brought to justice.” In his address to a joint session of Congress three days later, Bush declared, “Whether we bring our enemies to justice or bring justice to our enemies, justice will be done.”

His administration’s rhetoric has been similarly ambiguous. “It would be nice to see him [bin Laden] brought to justice, but that won’t end it,” said Secretary of State Colin Powell on NBC’s *Meet the Press* on September 23. “It’s the whole network that has to be ripped up and brought to justice.” On September 19, surveying the damage at the Pentagon, Attorney General John Ashcroft vowed

“the network of individuals responsible for this would be brought to justice and would pay the price.”<sup>3</sup> Before the war in Afghanistan, the State Department demanded that the Taliban “immediately remand Osama bin Laden to the appropriate authorities so that he may be arrested and brought to justice.”<sup>4</sup>

In short, the attacks on America do not have to be defined as either a war or a crime. They were both: a criminal act of war that deserves to be treated as such, on various battlefields – and in relevant courts of law.

Throughout the course of the past century, military victory has almost invariably preceded any kind of effort at legal justice. As the political theorist Judith Shklar once put it, “Law does not by itself generate institutions, cause wars to end, or states to behave as they should.”<sup>5</sup>

This lesson was evidently lost on those American and European leftists who advocated holding a war crimes tribunal as a substitute for military retaliation. Opposing the war in Afghanistan, Mary Ellen McNish, general secretary of the American Friends Service Committee, a pacifist Quaker group, said, “We believe the perpetrators should be brought to justice, but under the rule of law.”<sup>6</sup> Greg Hansen of the University of Victoria made the same case in *The Christian Sci-*

3 Steve Vogel, “12 Remains From Pentagon Are Identified,” *The Washington Post*, 20 September 2001, A22.

4 Robin Wright, “Islamic Nations Isolate Taliban,” *The Los Angeles Times*, 23 September 2001, A1.

5 Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, Mass.: Harvard University Press, 1986), 131.

6 Gustav Niebuhr, “Groups Plan Vigils and Rallies to Urge Alternatives to War,” *The New York Times*, 4 October 2001, B6.

ence Monitor.<sup>7</sup> Such arguments are deeply ahistorical, and quite at odds with what has actually happened in the most successful moments in the history of international justice.

Any successful war crimes prosecution has always relied, in some measure, on brute force. There is no getting around this fact, any more than one can imagine a domestic criminal justice system without police and jails.

The initial success of British efforts after World War I to prosecute Ottoman Turkish leaders for the Armenian genocide was a direct product of the Allied defeat of the Ottoman Empire. As Britain slowly withdrew from the Ottoman Empire, its ability to enforce punishment of Ottoman war criminals, many of whom were popular among Turkish nationalists, correspondingly evaporated. Similarly, Allied proposals for a trial of former Kaiser Wilhelm II and other German leaders and senior military officers relied on Allied and American victory in World War I. Nuremberg and Tokyo were only possible because they were victor's justice.<sup>8</sup> War and justice were not two separate choices; they were common parts of the fight against Nazism.

The idea of a war crimes trial without a war smacks of the Clinton administration's approach until 1995 to the slaughter in Bosnia. There, America stood for legal machinery but without putting serious force – in the form of NATO troops on the ground in Bosnia – behind it. The result was a kind of token tribunal in

The Hague, which offered the form of punishment without the substance. This tribunal was so desperate for actual suspects in custody that its first trial was of a strategically insignificant Bosnian Serb sadist.

Without victory in Afghanistan, how exactly might Osama bin Laden and Al Qaeda's leadership ever be put on trial? The Taliban, dependent on Al Qaeda muscle to maintain what proved to be a gossamer grip on power, was about as likely to turn over bin Laden as Slobodan Milosevic was to turn over Ratko Mladic, the Bosnian Serb military leader who has found safe harbor in Belgrade. So war has to come before legal justice.<sup>9</sup>

This point becomes particularly apparent from how the Bush administration actually came up with its legal plans. As in both world wars, it was the imminent prospect of military victory that forced the White House to focus on the problem of punishing war criminals. During World War I, Allied and American planning on war crimes trials was shelved until after the final desperate German thrust on the Western front failed in August of 1918. And, in the next war, it was not until August of 1944 – after D-Day, with the war clearly won and the race to Berlin underway – that Franklin Delano Roosevelt's administration began to draw up a policy on Nazi war criminals. As Roosevelt's treasury secretary, Henry Morgenthau Jr., grumbled in September of 1944, "I am amazed how little hard thinking has been done on this thing. Everybody is toying with the thing, and

7 Greg Hansen, "War Could Make the Terrorist Threat Worse," *The Christian Science Monitor*, 24 September 2001, 9.

8 Even critics of the trials recognized this. See Radhabinod Pal, *International Military Tribunal for the Far East: Dissident Judgment* (Calcutta: Sanyal & Co., 1953), 10, 14, 17, 31.

9 Nor would turning over bin Laden alone have satisfied the White House; to prevent another attack on American civilians, Al Qaeda needed to be uprooted. Bob Woodward and Dan Balz, "A Monumental Struggle Between Good and Evil," *The Washington Post*, 28 January 2002, A10.

here we are with one toe in Germany and just starting on it.”<sup>10</sup>

Similarly, in the first weeks after September 11, the Bush administration made only vague statements about punishing terrorists. The first specific proposal for military tribunals came after the fall of Mazar-e-Sharif, when it became increasingly clear that the war against the Taliban would not just be won, but won with shocking swiftness. We had, in other words, one toe in Kabul. The anti-terror coalition was obviously about to capture Taliban and Al Qaeda prisoners in substantial numbers; it was time to make decisions about what to do with them.

Even when a military victory has laid the basis for legal justice, it is always excruciating to try to apply the law. Once the war in Afghanistan was won, Washington turned belatedly to the precise matter of how to punish Al Qaeda and Taliban captives. So far, this process has been a mess, but the fact that it has been rocky and contentious is more or less typical of other historical cases – a product of an inevitable, and to some degree even laudable, clash between contradictory commitments.

On the one hand, the White House and Congress are acting starkly as the Hobbesian state: committed above all to securing the safety of its citizens, and struggling above all else to prevent another attack on American civilians. With the global spread of weapons of mass destruction, the threat is potentially catastrophic. On the other hand, the American government comes to this task with

extensive liberal commitments, including a commitment to the rule of law.<sup>11</sup>

It has always been terribly difficult to apply legal standards to the worst atrocities. The British were frustrated at how hard it was to convict Ottoman Turks for the 1915 Armenian genocide; many Americans and Britons were stunned that Nuremberg acquitted some Nazi leaders.

More recently, legal standards have made a crucial difference in the struggle against terrorism – but not in a helpful way. In the spring of 1996, the Sudanese government offered to turn over bin Laden, then based in Sudan, to America or Saudi Arabia. But since the FBI felt it did not have enough legal evidence to indict the terrorist leader, the Clinton administration did not want to put him into the American courts. Saudi Arabia also refused (not wanting to anger Islamists there), so bin Laden was free to go – and wound up in Afghanistan.<sup>12</sup>

The different branches of the American government have duly played their roles. Secretary of Defense Donald Rumsfeld has pushed for self-defense, without much regard for due process and international legal standards. There was a firestorm of public criticism of the White House’s plan for military tribunals for terrorists, resulting in a modified plan that now includes provisions like the presumption of innocence. And the Bush administration is now facing

11 For another look at this tension, see Ruth Wedgwood, “The Rules of War Can’t Protect Al Qaeda,” *The New York Times*, 31 December 2001, A11. For a viewpoint less sympathetic to the White House, see Aryeh Neier, “The Military Tribunals on Trial,” *The New York Review of Books*, 14 February 2002, 11 – 15.

12 Barton Gellman, “U.S. Was Foiled Multiple Times in Efforts To Capture Bin Laden or Have Him Killed,” *The Washington Post*, 3 October 2001, A1.

10 Henry Morgenthau Jr., *Morgenthau Diary – Germany* (Washington, D.C.: U.S. Government Printing Office, 1967), vol. I, 490. See also *ibid.*, 426 – 428.

another round of controversy for putting Yaser Esam Hamdi (a Saudi-raised, American-born Taliban fighter who was caught in Afghanistan) and José Padilla (an American, thought to have been planning a radiological bomb attack) in two military brigades without any charges or a trial on the horizon.

Epitomizing the dilemma is Camp X-Ray at Guantánamo Bay, Cuba, where 158 Taliban and Al Qaeda captives were stuck in a legal limbo, outside of American soil and the reach of American courts, written out of the category of prisoners of war and thus beyond the provisions of the Geneva Conventions. Colin Powell stuck his neck out to resist this – even after Bush himself had made an initial decision on it – arguing that ‘L,’ the State Department’s legal division, had concluded that the Guantánamo captives are in fact prisoners of war. Even Rumsfeld grudgingly said, “we do plan, for the most part, to treat them in a manner that is reasonably consistent with the Geneva Conventions.” Bush then backtracked, declaring on February 7, 2002 that the Taliban prisoners were in fact prisoners of war, while the Qaeda ones weren’t. His decision was partially respectful of international law, but also driven by concern that ignoring the Geneva Conventions might endanger American prisoners of war.<sup>13</sup>

This disagreement in the Bush administration tracks the aftermaths of both world wars. In November of 1918, at the first meeting of the Imperial War Cabinet at 10 Downing Street to determine the fate of Wilhelm II and other accused German war criminals, the skeptics prevailed. The political and legal headaches of a trial – the role of Russia in the July

13 See Thom Shanker and Katharine Q. Seelye, “Behind-the-Scenes Clash Led Bush to Reverse Himself on Applying Geneva Conventions,” *The New York Times*, 22 February 2002, A12.

crisis of 1914, the possibility of acquittals – seemed insuperable, and Prime Minister David Lloyd George, deeply committed to a trial, had to back off. He reconvened the Cabinet a few days later, this time bringing his attorney general. After forty-five minutes of stirring off-the-cuff legal rhetoric from the attorney general, who referred repeatedly to a special legal commission formed to look into the issue of German war criminals, the Cabinet unanimously chose to pursue war crimes trials.

The end of World War II also saw dueling cabinet officers. Henry Morgenthau Jr., the only person in FDR’s cabinet who had pressed to save the European Jews, wanted the leading Nazi war criminals shot. FDR’s secretary of war, Henry Stimson, meanwhile insisted on trials, relying on his own legal training, the authority of the War Department’s judge advocate general, and the moral support of Justice Felix Frankfurter. It was only after a bruising cabinet fight, and a timely leak that undermined Morgenthau (not unlike the sudden appearance of Powell’s Guantánamo qualms in *The Washington Times*), that the Roosevelt administration chose a legalistic policy that led to the great trials at Nuremberg. And even in 1944, the Geneva Conventions were a headache. Stimson worried about what America could do under the international law regarding occupation: “How far can we go under the Geneva Convention in educating war prisoners against Nazism?”<sup>14</sup>

The analogy is not precise. The need to provide national security sets a sharp

14 “Report by the Assistant Secretary of War (McCloy) of a Telephone Conversation with Secretary of War Stimson,” 28 August 1944, in Bradley F. Smith, ed., *The American Road to Nuremberg: The Documentary Record, 1944 – 1945* (Stanford, Calif.: Hoover Institution Press, 1982), 23.



limit on legalistic impulses in American policy. After all, unlike Lloyd George and Roosevelt's cabinets, the current Bush cabinet has won only part of its war. Victory in Afghanistan is not the same as victory over all the major sponsors of catastrophic terrorism against Americans, or as the elimination of the menace of nuclear, biological, and chemical weapons. So the Hobbesian demands on the White House will be that much harder to resist.

Time and time again throughout the twentieth century, when British, French, or American leaders had to choose between legalistic steps and protecting their own soldiers, they chose the latter. In 1815, the British squadron that caught Napoleon was given orders that the king of England valued the life of a single British sailor just as much as Napoleon's. In 1916, France made a secret agreement with Germany to drop discussions of war crimes trials, in order to protect French prisoners of war from German reprisal. In 1921, Britain freed fifty-nine Ottoman Turks, many high-ranking and suspected of involvement in the Armenian genocide, in exchange for a handful of British prisoners held by Turkish nationalist forces. The Japanese did implicitly get to impose one term – that Emperor Hirohito would not be prosecuted – in an otherwise unconditional surrender in World War II because the Americans feared that if they insisted on it, Japan would fight on. And in Bosnia, NATO has been deeply reluctant to risk casualties in the course of arresting war crimes suspects.

The pressure to look after one's own citizens will be even stronger when it is civilian lives that are on the line. As Quincy Wright argued in 1947, "Every state does . . . have authority to set up special courts to try any person within its custody who commits war crimes, at

least if such offenses threaten its security."<sup>15</sup> If the price of legalism seems to be measured in American lives, then it is unlikely that an American government – or any liberal government – will accept it.

Still, the case for legalism can perhaps be strengthened by the threat of catastrophic terrorism. When one is trying to make the case to politicians that they should choose war crimes trials, one has to make the case that such trials will carry a benefit for their populations. If Bush administration officials are to back trials for Al Qaeda, they are most likely to do so because they have been convinced that it will be good for America.

Before September 11, the Bush administration, like the Clinton administration before it, had to face the issue of war crimes from only one of two perspectives: first, foreigners were the victims of war crimes, as in discussions of the former Yugoslavia and Rwanda tribunals, and in the jockeying about setting up tribunals for Sierra Leone and Cambodia; or, second, Americans might be accused of being the perpetrators of war crimes, as Bush and Rumsfeld have claimed to explain their increasingly fervent opposition to the permanent International Criminal Court.<sup>16</sup>

After September 11, the administration, like Americans generally, had to view the issue of war crimes from an en-

15 In Radhabinod Pal, "Law of Nurnberg Trial," *American Journal of International Law* (January 1947): 25; italics added. Regardless of what one thought of George H. W. Bush and Clinton's near-zero tolerance for American military casualties, there seems to be broad consensus on having no tolerance for American civilian casualties.

16 For a sober analysis of the question of American complicity in war crimes, see Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (Chicago, Ill.: Quadrangle, 1970).

tirely new perspective: instead of being bystanders or potential suspects, Americans were now in the unaccustomed role of themselves being *victims*. It used to be that the only Americans who seemed to be at risk of suffering war crimes were soldiers and diplomats posted overseas, and the relatively small group of expatriates – in NGOs or business – who spent time abroad. No more: since September 11, anybody living in major American cities has reason to worry.

With this dramatic shift in perspective has come an opportunity to rethink America's attitude toward war crimes and courts to judge them. The aftermath of September 11 is, perhaps, a moment for empathy – for the world to feel pity for America's losses, and for Americans to understand more viscerally what political violence so often means in other countries.

It is no surprise that America has taken the lead in seeking justice for atrocities committed against Americans. Countries typically worry more about war crimes when their own citizens are the victims. It's fair to call this unilateralism – but it's a kind of unilateralism that is hardly unique to the Bush administration. After World War I, France and Belgium pressed hardest for prosecution of German war crimes, precisely because they had taken the brunt of the war. Britain was somewhat less concerned, but took a particular interest in German U-boat warfare – the war crime that most directly affected British sailors. And America, even under the moralistic Woodrow Wilson, was the least enthusiastic of all, having suffered the least. The one point that engaged American interest was the prosecution of U-boat warfare – the issue that had finally dragged an isolationist America into the war in 1917.

After World War II, the same pattern of concern emerged. It was the Soviets

who were the most furious, having lost some twenty million people in the war. Under Winston Churchill – who had been embarrassed by the failure of war crimes prosecutions during and after World War I – the British were also punitive, initially preferring simply to shoot perhaps a hundred top Axis war criminals, without trial. In 1943, the Allies, mindful of the suffering of Poles and Czechs, issued a declaration that Nazi war criminals “will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries.” Only those war criminals “whose offences have no particular geographical localisation” would be punished jointly by the Allies.<sup>17</sup>

Still, the American drive for Nuremberg was motivated largely by the Nazi war crime that most strongly shocked Nuremberg's planners at the War Department: German aggression. As a partial result of the Holocaust being given relatively short shrift at Nuremberg, Israel would later claim jurisdiction over Adolf Eichmann. Likewise, it is no surprise to see America in the lead seeking justice for those who have massacred innocents in New York and Washington.

In the aftermath of September 11, there have been a number of important voices suggesting international trials. UN Secretary-General Kofi Annan has already called for such an effort. “The attack of September 11 was an attack on the rule of law,” Annan told the UN General Assembly on September 24, 2001. “So let us respond by reaffirming the rule of law, on the international as well as the national level. No effort should be spared in bringing the perpetrators to justice, in a

<sup>17</sup> Smith, ed., *American Road to Nuremberg*, 13–14.

clear and transparent process that all can understand and accept.” Wolfgang Ischinger, the German ambassador to the United States, has also asked, “Wouldn’t it make sense if terrorists and their sponsors could be brought to justice before an internationally recognized criminal court?”

Among scholars, Anne-Marie Slaughter of Princeton has proposed a variation of the argument for an international tribunal. Slaughter advocates the creation of a new ad hoc international tribunal for terrorism, including judges from high courts in many countries, led by a U.S. Supreme Court Justice and a top-rank Muslim jurist. Such a tribunal, Slaughter argues, “would be more legitimate than a U.S. national court.”<sup>18</sup>

Others have suggested that the creation of a new international court isn’t necessary. The Rome Statute for the International Criminal Court (ICC), in its prohibition against crimes against humanity, has jurisdiction over “a widespread or systematic attack directed against any civilian population” – which is exactly what happened on September 11.

Still, other experts argue that international war crimes tribunals ought to be the courts of last resort. There are undoubtedly cases where national courts cannot do the job – for example, in post-war Rwanda, where the judiciary was decimated by the 1994 genocide; and in Vojislav Kostunica’s Yugoslavia, where nationalists were unlikely to permit a real war crimes trial of Milosevic, who was at first charged only with corruption. But when national courts are willing and capable, as in West Germany after Nuremberg, they can be a powerful venue for war crimes trials. In Bosnia and Rwanda, the prosecution of war

18 Anne-Marie Slaughter, “Terrorism and Justice,” *Financial Times*, 11 October 2001, 23.

criminals has been most effective when the international war crimes tribunals work in tandem with national courts. Even the ICC prefers national jurisdiction to an international trial, if the local courts are up to the task. There is no doubt that America’s courts are – and there is no doubt about the geographical localization of the murders of September 11.

Harold Koh of Yale Law School believes that the U.S. federal courts are the best forum for trying Al Qaeda terrorists.<sup>19</sup> The Bush administration’s controversial edict on military commissions makes these tribunals an option, but the first terrorism trial, of Zacarias Mousaoui, accused of being a thwarted September 11 hijacker, will be held in federal court. This use of national courts may seem somewhat self-centered, but it also provides a way of getting reluctant states – a category into which America definitely falls – to engage seriously with the prosecution of war crimes.

Since war crimes trials are inevitably political spectacles, decisions about how to set them up should take into consideration how they will impact both perpetrators and victims. A crucial question about choosing the venue of trials must be: What will most help the victims?

The primary advantage of Slaughter’s proposal is that it aims at drying up support for Al Qaeda and at targeting Muslim public opinion worldwide, which appears distressingly anti-American.<sup>20</sup> The trials would, if they go as advertised, help convince Muslims that Al Qaeda is

19 Harold Hongju Koh, “We have the Right Courts for Bin Laden,” *The New York Times*, 23 November 2001, A39.

20 See the Gallup findings summarized in two articles by Andrea Stone in *USA Today*, 27 February 2002: “In poll, Islamic world says Arabs not involved in 9/11,” 1A, and “Kuwaitis share distrust toward USA, poll indicates,” 7A. Just

a bloodthirsty criminal gang to be feared rather than admired; and the demonstration of American restraint might win international respect. If the choice between national or international trials is made by a decision about whether it is most important to aim at American victims or at Muslim public opinion, then trials can help the effort against terrorism. In this light, another good argument for an international tribunal would be that it would recognize that the September 11 victims, while mostly Americans, were also from dozens of other countries. But regardless of exactly what venue and modalities are chosen, the focus must be on discrediting Al Qaeda's crimes against humanity. As Judith

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over a decade after the American-led liberation of Kuwait, Gallup found that 36 percent of Kuwaitis think that the attacks on the World Trade Center were justifiable, and 89 percent believed that Arabs were not involved in the attacks. 62 percent of Jordanians, 64 percent of Saudis, 68 percent of Pakistanis, and 41 percent of Moroccans said they had an unfavorable image of the United States.

Shklar wrote of Nuremberg, "the entire Trial can only be justified by what it revealed and said about the crimes against humanity. For it was this alone that did, and could, help Germany to a more decent political future."<sup>21</sup>

In international politics, justice will always be bound up with force. And politicians will choose justice not just for its own sake, but also for more pragmatic reasons. As Shklar put it, "Ultimately it is the political results that count."<sup>22</sup>

In May of 1945, in a memorandum for Harry Truman that he never sent, Henry Morgenthau Jr. put it this way: "The respect which the people of the world have for international law is in direct proportion to its ability to meet their needs."<sup>23</sup>

21 Shklar, *Legalism*, 165.

22 *Ibid.*, 51.

23 "Memorandum for the President – Re: Punishment of War Criminals," 29 May 1945, in *Morgenthau Diary*, vol. II, 1544 – 1545.

# Anne-Marie Slaughter

## *Everyday global governance*

With the creation of a new International Criminal Court and the sudden proliferation of international, regional, and hybrid criminal tribunals for Rwanda, the former Yugoslavia, Kosovo, East Timor, and – potentially – Cambodia and Sierra Leone, it is possible to discern the outlines of a new global system of criminal justice. However flawed, these are real achievements – almost unimaginable even a decade ago. But the tribunals and courts are only a part – and arguably only a small part – of the institutions of global governance that already exist, laying an inconspicuous foundation for future progress and reform.

I define global governance here as the collective capacity to identify and solve

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problems on a global scale. We must develop this capacity without risking what Immanuel Kant called the “soulless despotism” of world government. And we must develop it in a way that is genuinely global. That does not necessarily mean including all states in the world, but rather all the government institutions that regulate the lives of the world’s peoples.

In this essay I will describe the quiet emergence of an informal global system of governance comprising networks of regulators around the world – regulators responsible for everything from environmental protection to competition policy to securities regulation. Similar networks are beginning to link judges and even legislators in different countries.

Transgovernmental networks are not one-shot deals. While the activities of a given network may focus on a particular issue, such as environmental enforcement, they occur within a broader framework of sometimes formal, sometimes informal, interaction. And as they come together over time, the parties develop relationships that allow them in turn to understand the context in which their counterparts operate.

It is hardly surprising that such relationships help defuse major conflicts. They enable regulators to keep an issue

from becoming the source of conflict in another issue-area. Indeed, cooperation on one issue can be a means of keeping the lines of communication open when states are unable to agree on anything else, as with China and the United States's cooperation on environmental protection. Equally important is the transgovernmental network's role as a transmitter or 'bearer' of reputation – as a forum in which behavior has consequences, for good or ill. In other words, members of a government network are likely to try to meet agreed standards of professional behavior and substantive commitments to one another because they know everyone else is watching.

In the context of the larger drama of global justice – capturing terrorists, trying war criminals, creating new international courts – the activities I will describe may seem humdrum indeed. But justice requires order, and order requires at least a measure of regulation – or, in the global sphere, some form of governance, short of the Leviathan that Kant feared creating. The emergent global system of government networks performs precisely this function. Within this system, national and supranational officials must cooperate, coordinate, and regulate, but without coercive power.

Each member of a transgovernmental network – a national securities regulator, say, or a utilities commissioner – may exercise a measure of coercive power at home. But within the network, regulators cannot compel one another to take certain measures, either by vote or the binding force of international law. They do not have the power to conclude treaties or to establish by themselves new international rules. In effect, the new transgovernmental networks exercise a kind of "soft power" (as Joseph Nye calls it); what power they have flows from an ability to convince others that they want

what you want, rather than from an ability to compel them to forego what they want by using threats or rewards.<sup>1</sup>

The new networks thus coexist alongside a much more traditional world order, structured by both the threat and use of 'hard' power. In that old world order, states still jealously guard their sovereignty and undertake commitments to one another with considerable caution. Still, it is possible to glimpse the outlines of a very different kind of world order in the growing system of government networks. In this system, political power will remain primarily in the hands of national government officials, but will be supplemented by a select group of supranational institutions far more effective than those we know today. And in it, global justice could become more than a dream.

The logs of embassies around the world are perhaps the best evidence for the growing importance of the networks of national regulators. U.S. embassies, for instance, host far more officials from various regulatory agencies than from the State Department, and foreign affairs budgets for regulatory agencies across the board have increased dramatically, even as the State Department's budget has shrunk. Regulators, at both the ministerial and bureaucratic level, are becoming a new generation of diplomats.

Where are these networks of national regulators? In some familiar places, and in some surprising ones. Briefly I will outline the genesis of several such networks.

Transgovernmental regulatory networks have long existed within the tradi-

1 Robert O. Keohane and Joseph S. Nye, Jr., "Power and Interdependence in the Information Age," *Foreign Affairs* 77 (5) (September/October 1998): 81, 86.

tional framework of international organizations. Robert Keohane and Joseph Nye have described these networks of government ministers as emblematic of the “‘club model’ of international institutions. [C]abinet ministers or the equivalent, working in the same issue-area, initially from a relatively small number of relatively rich countries, got together to make rules. Trade ministers dominated GATT; finance ministers ran the IMF; defense and foreign ministers met at NATO; central bankers at the Bank for International Settlements (BIS).”<sup>2</sup>

More recently, transgovernmental networks have arisen through executive agreement. Between 1990 and 2000, the U.S. president and the president of the European Union (EU) Commission concluded a series of agreements to foster increased cooperation, including the Transatlantic Declaration of 1990, the New Transatlantic Agenda of 1995 (with a joint U.S.-EU action plan attached), and the Transatlantic Economic Partnership agreement of 1998. Each of these agreements spurred ad hoc meetings between lower-level officials, as well as among business enterprises and environmental and consumer activist groups, on issues of common concern. Many of these networks of lower-level officials were emerging anyway, for functional reasons, but they undoubtedly received a boost from agreements at the top.

Or consider the web of transgovernmental networks among financial offi-

cial that has emerged as the pragmatic answer to calls for a new financial architecture for the twenty-first century in the wake of the Russian and East Asian financial crises of 1997 and 1998. Notwithstanding a wide range of proposals from academics and policymakers – including one for a global central bank – what actually emerged was a set of financial reform proposals from the G-22 that were subsequently endorsed by the G-7 (now the G-8). The United States pushed for the formation of the G-22 in 1997 to create a transgovernmental network of officials from both developed and developing countries, largely to counter the Eurocentric bias of the G-7, the Basle Committee, and the IMF’s Interim Committee, which is itself a group of finance ministers.

Even more striking are the transgovernmental networks that have emerged more or less spontaneously. These have been formed in two main ways. Some networks have institutionalized themselves as transgovernmental regulatory organizations. The Basle Committee on Banking Supervision was created in 1974 and is now composed of the representatives of thirteen central banks that regulate the world’s largest banking markets. The International Organization of Securities Commissioners (IOSCO) emerged in 1984, followed in the 1990s by the creation of the International Association of Insurance Supervisors and of a network of all three of these organizations and other national and international officials responsible for financial stability around the world called the Financial Stability Forum. These networks do not fit the model of an organization held either by international lawyers or political scientists – they are not composed of states and constituted by treaty; they do not have a legal personality; they have no headquarters or stationery.

2 Robert O. Keohane and Joseph S. Nye, Jr., “The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy,” paper prepared for the American Political Science Convention, Washington, D.C., 31 August – 3 September 2000, available at <<http://www.ksg.harvard.edu/cbg/trade/keohane.htm>> (last visited 28 March 2000), p. 3.

The second category of spontaneous transgovernmental networks has grown out of agreements between the domestic regulatory agencies of different nations. The last few decades have witnessed the emergence of a vast network of such agreements effectively institutionalizing channels of regulatory cooperation between specific countries. These agreements embrace principles that can be implemented by the regulators themselves; they do not need further approval from national legislators. Widespread use of Memoranda of Understanding and of even less formal initiatives has sped the growth of transgovernmental interaction exponentially, in contrast to the lethargic pace at which traditional treaty negotiations proceed.

The most highly developed and innovative transgovernmental regulatory system is of course the EU. Legal scholar Renaud Dehousse describes a basic paradox in EU governance: “increased uniformity is certainly needed; [but] greater centralization is politically inconceivable, and probably undesirable.”<sup>3</sup> The response is “regulation by networks” – networks of national officials.<sup>4</sup> The question now confronting a growing number of legal scholars and political theorists is how decision-making by these networks fits with varying national models of European democracy.

The EU itself sits within a broader network of regulatory networks among Organization for Economic Cooperation and Development (OECD) countries. The primary function of the OECD has been to convene government officials in specific issue-areas for the purpose of addressing a common problem and making

3 Renaud Dehousse, “Regulation by networks in the European Community: The role of European agencies,” *Journal of European Public Policy* 4 (2) (June 1997): 259.

4 Ibid.

recommendations or promulgating a model code for its solution. But more broadly, OECD officials see all OECD member states – including all EU members, the United States, Japan, South Korea, and Mexico – as participating in a “multilayered regulatory system”<sup>5</sup> whose infrastructure is government networks.

It is worth bearing in mind that the governing committees of the ‘global’ organizations I have just described are mainly comprised of ministers from the most powerful economies. The Basle Committee, for example, is explicitly limited to the central bankers of the world’s most powerful economies, although it has outreach efforts to the bankers of many developing countries. The all-important Technical Committee of IOSCO looks much more like the OECD than the world. And the G-7 remains more powerful than the G-22.

I have just described a world of concentric circles of government networks, most dense among the world’s most highly developed countries. The relative density of these circles reflects the relative willingness of national governments to delegate government functions beyond their borders to networks of national officials rather than to a supranational bureaucracy. Thus the EU is pioneering a way for states to govern themselves collectively without giving up their identity as separate and still largely sovereign states. The challenge, however, is to make such networks truly global.

So what exactly do the new transgovernmental networks do?

Above all, their members talk a lot. So much, in fact, that it is easy and com-

5 Scott H. Jacobs, “Regulatory Co-Operation for an Interdependent World: Issues for Government,” in *Organisation for Economic Co-operation and Development, Regulatory Co-operation for an Interdependent World* (Paris: OECD, 1994), 18.



mon to write them off as mere talking shops. But talk is the first prerequisite of information exchange; in the process, trust is fostered, along with an awareness of a common enterprise. This experience reinforces norms of professionalism that in turn strengthen the socializing functions of these networks, through which regulatory agencies reproduce themselves in other countries.

Indeed, what sometimes starts as haphazard communication may lead officials to recognize the need and opportunity for coordination, across the range of domestic governmental concerns – from enforcement efforts to codes of best practices. For example, U.S., Canadian, and Mexican environmental officials now coordinate the release of information to the public as one means of enhancing effective environmental enforcement. Similarly, U.S. and Mexican environmental officials now coordinate training sessions for the private sector.

As transnational corporations have become genuinely global in scope, international cooperation has become crucial for the effective enforcement of domestic laws. In the case of drug enforcement efforts at the U.S.-Mexican border, cooperation allows the U.S. Drug Enforcement Agency, with its large budget, many agents, sophisticated equipment, and extensive files, to compensate for Mexico's limited resources to battle drug production and trafficking. Such cooperation involves more than coordination, but something less than policy harmonization. Cooperation to combat international crime takes place both through formal organized bodies, such as Interpol (International Criminal Police Organization) and Europol, and on a more regional and bilateral level through national agencies. For instance, Interpol has a general secretariat that provides in-

formation exchange through an automated search facility operating twenty-four hours a day in four languages; issues international wanted notices; distributes international publications and updates; convenes international conferences and symposia on policing matters; offers forensic services; and makes specialists available for support of local police efforts. With a membership of 179 police agencies from different countries, making it the second largest international organization after the UN, it is striking that Interpol was not founded by a treaty and does not belong within any other international political body.

Other agencies around the world cooperate on enforcement activities within the framework both of informal understandings and more formal mutual recognition agreements, such as that concluded between the United States and Europe specifically concerning enforcement cooperation in a wide range of subject areas in 1998. Regardless of the surrounding framework, participants in enforcement networks call on the following tools: strategic priority-setting and -targeting, cooperative compliance promotion, cooperative compliance monitoring, cooperation on specific enforcement cases, sharing experiences to build enforcement capacity, including consultation on laws and policies, and training and technical assistance.

Groups of ministers and regulators are increasingly involved in the collection of information about regulatory activities from countries around the world. They process and distill this information, frequently in the form of codes of best practices. The Basle Committee of Central Bankers, the International Organization of Securities Commissioners, and financial regulators around the world have all issued codes of best practices, on everything from how to regulate the securities market to how to prevent

money laundering. The impact of these codes points to a complex interaction between the private and public sectors.

For lack of other criteria by which to judge a country's economic or regulatory performance, private-sector investors may increasingly rely on codes of best practices developed by public-sector officials. Regulators of states are generally the initial source of such codes, processed through officials meeting within networks and then disseminated to become the standard by which national regulators will judge domestic and transnational activities within their competence.

Best practices can also be disseminated in a less formal manner. Since 1997, the Public Utility Research Center at the University of Florida has hosted eleven International Training Programs on Utility Regulation and Strategy in cooperation with the World Bank. The program brings together senior public utility regulators to address the "principal areas of concern" faced by utility regulators worldwide. Reports from the organizers, such as from British water regulators and Russian electricity regulators, attest to the nature of the international best practice transfer that prevails.

Information exchange, as discussed above, may be an end in itself or a means to future cooperation. And – whether an ulterior motive or an unintended effect – the replication of a particular form of regulation, or of a particular type of regulatory institution, might accompany it. The U.S. Securities and Exchange Commission, for instance, enters into bilateral agreements with securities regulators all over the world with the explicit aim of replicating itself and its relationship with Congress.

Treatises on globalization speak glibly of 'convergence,' as if impersonal forces were at work homogenizing national cultures and institutions. A closer exam-

ination of the world of transgovernmental cooperation reveals a much more deliberate and checkered pattern of replication and resistance. To understand replication fully we must delve further into the motives driving it. Often a domestic agency seeking to replicate its style or structure is trying to strengthen its autonomy on its home turf, or to enhance the effectiveness of its regulatory activity by creating a more uniform transgovernmental system. But as legal scholar and political scientist Kal Raustiala documents, replication, regardless of motives, is a clear and measurable effect of transgovernmental interaction.<sup>6</sup>

In addition to providing part of the critical infrastructure for any hope of global justice, transgovernmental networks teach us several lessons that are vital for future efforts to achieve anything on a global scale.

First is the value of soft power, not as a substitute but as a complement, for hard power. Second is the value and strength of pluralism, based on a concept of legitimate difference. Third is the need for active cooperation and collaboration, an ethos of positive engagement rather than of respectful noninterference. Finally, governance networks are a direct outgrowth of the disaggregation of the state – that is, of the ability of different political institutions to interact with their national and supranational counterparts on a quasi-autonomous basis. That disaggregation permits the creation of a wide range of new forms of governance, including relationships between national and international courts, that will be the backbone of a genuinely global justice system.

6 Kal Raustiala, "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law," *Virginia Journal of International Law* 43 (2002).

Overall, the most important lesson that transgovernmental networks can teach is the appreciation of the simple fact of their existence and the preconditions for it. Networks of national regulators can only exist as a form of global governance if the purported architects of world order – whether scholars, policymakers, pundits, or the members of innumerable task forces and commissions – think of the state not as a unitary entity but as an aggregate of its component official parts.

Individuals in domestic and transnational society do not interact with states; they interact with specific branches of government. Thus, in imagining the projection of domestic institutions onto a global screen, we should be thinking less of replicating domestic institutions – courts, regulatory agencies, even legislatures – at the global level, than of connecting the national institutions we already have in global networks. These government institutions exercise an indispensable measure of coercive power, combined with an as yet unmatched measure of public legitimacy.

Further, once we have got used to thinking about domestic government institutions linking up with their foreign counterparts, it is also easier to start thinking about how they might link up with supranational equivalents.

Here the judicial possibilities are by far the richest. As has been demonstrated in the EU, it is possible for a supranational court such as the European Court of Justice to forge a dynamic and highly effective relationship with different national courts for the interpretation and application of EU law. The International Criminal Tribunals for Rwanda and the former Yugoslavia also have structured relationships with national courts built into their charters; they can ask a national court to cede jurisdiction over a

particular defendant. In the International Criminal Court (ICC) the relationship will work the other way: national courts will be primarily responsible for trying perpetrators of war crimes, genocide, and crimes against humanity, while the ICC will serve as a backup if a national court proved unable or unwilling to do the job.

At the same time, national courts are networking with one another in a variety of interesting ways. National constitutional judges are exchanging ideas and decisions on thorny issues that they all must face, such as the constitutionality of the death penalty, the balance between privacy and liberty, the limits of free speech, and the enforceability and scope of economic, social, and cultural rights. Ordinary courts involved in transnational litigation are openly communicating with one another to try to figure out where and how a particular case should be tried. And bankruptcy judges are negotiating mini-treaties to ensure the orderly management of defunct multinational corporations' finances. All of these developments open new institutional horizons for the possibility of global justice.

The new world order has thus far promoted a healthy amount of transgovernmental comity. “Neither a matter of obligation on the one hand, nor of mere courtesy and good will on the other . . . comity,” in the words of the U.S. Supreme Court in 1895, “is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation . . .”<sup>7</sup> ‘Recognition’ is generally a passive affair, signaling deference to another nation’s action, as regulators participating in government networks must often choose

<sup>7</sup> *Hilton v Guyot*, 159 US 113, 163 – 164 (1895).

between passive recognition and active application of their national law extra-territorially.

The EU competition authorities and the U.S. antitrust regulators, however, have developed a more robust notion of 'positive comity,' a principle of affirmative cooperation between government agencies of different nations. As a principle of governance for transgovernmental regulatory cooperation, positive comity requires regulatory agencies to substitute consultation and active assistance for the seesaw of noninterference and unilateral action. More generally, as a principle of global governance, positive comity mandates a move from deference to dialogue, from 'I-thinking' to 'we-thinking.'

This shift hardly means the end of conflict – far from it. Regulators in regu-

lar interaction with each other will bump heads just as they would in a domestic system, as demonstrated by the regulators of the different states of the United States. And just because action is requested does not mean it is achieved. But the point of departure in a world of positive comity is a presumption of assistance rather than distance, of transgovernmental cooperation based on coordinated national action. In a world in which crime depends on global networks as much as corporations do, that is a positive step. Global justice is a noble but sadly distant ideal. Global disorder is more evident than order. But in the everyday rhythms of regulators around the world, new forms of global governance are being born.

# Carl Kaysen & George Rathjens

## *The case for a volunteer UN military force*

Since the end of the Cold War, the world has been awash in hot wars. Most have been waged within, rather than between, states.<sup>1</sup> The *Yearbook* of the Swe-

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dish International Peace Research Institute (SIPRI) annually tabulates what it terms “major armed conflicts” – those resulting in more than one thousand battle deaths per year. Over the eleven years from 1990 to 2000 there were fifty-six such conflicts; only three were interstate (Iraq-Kuwait, India-Pakistan, and Ethiopia-Eritrea). The average number of conflicts in any one year was about twenty-eight; the average conflict lasted two years.<sup>2</sup>

Typically, these civil wars have killed many more civilians than armed combatants; in addition, they have created even larger numbers of refugees. In an effort to extend humanitarian help, outsiders in recent years have attempted to intervene – in Yugoslavia, in Somalia, in Cambodia, and in Rwanda.

1 This is a revised and condensed version of an earlier work by the authors entitled “Send in the Troops: A UN Foreign Legion,” *Washington Quarterly* 20 (1) (Winter 1997). That piece in turn was drawn from a longer study by the same authors entitled *Peace Operations by the United Nations: The Case for a Volunteer Force*, published by the Committee on International Security Studies of the American Academy of Arts and Sciences.

2 *SIPRI Yearbook, 2001: Armaments, Disarmament, and International Security* (Oxford: Oxford University Press, 2001), Table 1a.1, p. 54; text, p. 52 – 55.

Unfortunately, the results have been mixed. In cases where no vital strategic interests are at stake, many nations, including the United States, have been slow to act and reluctant to expose their military personnel to the risk of casualties. Even when troops have been deployed, the duration of their deployment has often been limited by 'exit strategies' and a stipulation that they will remain under *national* control. In order to keep outside ground troops out of harm's way, these outside forces are often, in effect, disarmed and ordered to use their weapons only in self-defense. The desire to avoid casualties in any case leads to a strong preference for employing air and naval power.

We believe that the most realistic, effective, and politically feasible alternative to this unsatisfactory state of affairs would be to create a modest standing UN military force. As we envision it, this force would be composed entirely of volunteers from member states – a sort of 'UN Foreign Legion.'

Such a force, numbering roughly fifteen thousand and backed up by larger forces remaining under national control, would dramatically improve the world community's rapid response capability when faced with humanitarian crises or civil unrest. Encouraging its creation would constitute an important expression of U.S. global leadership at a critical moment in the development of multilateral institutions.

A half century ago, the establishment of the United Nations raised hopes that it might constitute an effective instrument for meeting the kinds of challenges we have just described. A Military Staff Committee, with representatives from the five permanent members of the Security Council (P-5), was organized and charged with creating a plan for a UN

military force that might "take such action by air, sea, or land . . . as may be necessary to maintain or restore international peace and security."<sup>3</sup> Planning began, but the committee was unable to agree on force levels or composition. As the Cold War developed, the UN effort was aborted. Since then, UN military efforts have been limited almost exclusively to peacekeeping – and then only when both the contesting parties and the P-5 members have been able to reach an agreement on UN intervention.

With the end of the Cold War, the likelihood of agreement among the P-5 has dramatically improved. Russia, for example, acquiesced in the U.S.-led Desert Storm effort against Iraq and, more recently, in the U.S. intervention in Afghanistan. There has been a revival of interest in increasing the UN's intervention capabilities, particularly in conflicts where enforcement may be an issue. Some proposals simply earmark selected national military units for UN service; others create a standing UN force, based either on the rotating commitment of national units to a UN command, or on individuals volunteering for service (as they do for the French Foreign Legion).

In our view, the last option – an all-volunteer foreign-legion type force under UN control – would likely offer the best hope for responding effectively to humanitarian crises. To test this hypothesis, we will consider whether the availability of such a force might have made significant differences in the nature and effectiveness of some past UN interventionary efforts, specifically in four cases of intrastate conflict – those in Yugoslavia, Somalia, Cambodia, and Rwanda.

Earlier discussions have generally focused on quick reaction capability as the

<sup>3</sup> *Charter of the United Nations* (San Francisco: The United Nations, 26 June 1945), art. 42.

principal rationale for the development and maintenance of an all-volunteer force under UN control. At present, however, months usually pass between the Security Council's vote and the assembly and organization of the contingents for an appropriate force. This also means that Security Council members – especially the United States because of its special role in providing logistic capacity for long-range deployments – in effect vote twice: once in the formal resolution and then, in practice, in their willingness to contribute troops, matériel, civilian personnel, and financial support.

Certainly, the ready availability of armed forces – whether volunteers or troops provided by member states – is essential to the UN's ability to act decisively. But equally vital is the ability of the UN to make a quick decision – and that, of course, is determined by the political calculations of the member nations, particularly the Security Council's P-5 members.

This brings us to the single greatest comparative advantage that a *volunteer* force would have over reliance on *national* forces earmarked for UN service (or 'seconded' to it). The advantage lies in the fact that member nations would be more likely to deploy a volunteer force in actions involving a significant risk of casualties. When public sensitivity to casualties runs high – as it does in many modern democracies, including the United States – national leaders often feel compelled to follow public opinion. They then decide against intervention of any kind, or severely limit the scope of intervention, or authorize intervention only after a drawn-out debate whose duration is liable to cost lives in the affected region.

In at least two other important respects, an all-volunteer force would be preferable to relying on seconded na-

tional forces. First is the issue of command and control. When nations commit their forces to UN or other multinational operations, they insist – none more so than the United States – on retaining ultimate authority over those forces, including the right to withdraw them peremptorily, or to exercise a veto over particular operations if they judge troop employment unwise or inconsistent with national interests. This problem would not arise with a volunteer UN force, except to the extent that the physical deployment of the volunteer force might depend on national forces such as logistical and air support.

A second reason to prefer a volunteer UN force is the question of capability in terms of equipment and, especially, training. The ad hoc assembly of national units is a poor basis on which to build a capable military force. Developing nations, often eager to supply troops as a way of financing their own armies, present a particular problem in this respect. Yet the UN system often must use these troops, even if the more militarily competent nations were willing to offer all the forces needed – which they rarely are.

In many situations of intervention, a long-term presence of some force will be needed to help maintain peace during a process of social and political reconstruction. The scale of the proposed UN volunteer force discussed below, however, is far too small to allow it alone to provide long-term deployments. Thus the likely need for the long-term presence of peacekeeping forces would persist.

In what follows, we will briefly review the history of four UN peacekeeping operations – in Yugoslavia, Somalia, Cambodia, and Rwanda – and attempt in general terms to assess the differences that a

standing UN force might have made on the outcomes.<sup>4</sup>

The conflict in *Yugoslavia*, and especially in Bosnia, is probably the richest mine we have for a counterfactual analysis of the utility – and limitations – of a standing UN volunteer force. From the beginning, serious problems hampered the efforts of the international community to mitigate conflict in Yugoslavia and prevent escalation.

Germany and Austria were particularly sympathetic to Croatian and Slovenian aspirations for early independence within the boundaries they had as republics in the Yugoslav federation. Most of the rest of the world community believed, in contrast, that the maintenance of some kind of Yugoslav federation, or at least confederation, offered the best hope for peace and stability in the re-

4 The descriptions that follow are drawn from a variety of sources: a) Susan Woodward offers a comprehensive review of the background of the conflict in Yugoslavia and operations through 1994 in *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, D.C.: The Brookings Institution, 1996). Other particularly useful background papers are John Zambetica's *The Yugoslav Conflict*, Adelphi Paper 270 (London: The International Institute for Strategic Studies, 1992), and James Steinberg's "International Involvement in the Yugoslavia Conflict," in Lori Fisler Damrosch, ed., *Enforcing Restraint: Collective Intervention in Internal Conflicts* (New York: Council on Foreign Relations Press, 1993). For recent events in Kosovo, see *SIPRI Yearbook*, 2000, 28–33; b) The background and story of the 1991–1994 intervention in Somalia can be found in Terrance Lyons and Ahmed I. Samatar, *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction* (Washington, D.C.: The Brookings Institution, 1995); Jeffrey Clark, "Debate in Somalia: Failure of the Collective Response," in Damrosch, ed., *Enforcing Restraint*; Chester Crocker, "The Lessons of Somalia," *Foreign Affairs* 74 (3) (May/June 1995); and John L. Hirsch and Robert B. Oakley, *Somalia and Operation Restore Hope* (Washington, D.C.: U.S. Institute of Peace, 1995); c) For reviews of the UN interven-

tion. Russia, not surprisingly, was much less critical of the Serbs than were the other major powers, and the United States was much more so.

Debates persisted about whether the lead agency for international intervention should be the United Nations, the European Community/Union (EC/EU), or NATO – or even, possibly, the Western European Union (WEU) or the Organization for Security and Cooperation in Europe (OSCE). There were also differences about how to organize the international effort. Britain espoused a sharper demarcation than did the United States in force requirements and training for peacekeeping, on the one hand, and for peace enforcement on the other. Given these differences – and, in the later stages of the war, differences between the government of Serbia and the local Serbs in Croatia and Bosnia, not to mention ever-increasing animosities whipped to a frenzy by the nationalist leaders of the contesting factions – cease-fire and

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tion in Cambodia see Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC* (Oxford: Oxford University Press, 1995); James A. Shear, "The Case of Cambodia," in D. Daniel and B. Hayes, eds., *Beyond Traditional Peacekeeping* (London: Macmillan, 1995); Steven R. Ratner, "The United Nations in Cambodia: A Model for Resolution of Internal Conflicts?" in Damrosch, ed., *Enforcing Restraint*; William Shawcross, *Cambodia's New Deal* (Washington, D.C.: Carnegie Endowment for International Peace, 1994); and Sheri Prasso, "Cambodia: A \$3 Billion Boondoggle," *Bulletin of the Atomic Scientists* (March/April 1995). See also UN Security Council Resolution 880, UN Document S/RES/880, 4 November 1993; d) The conflict in Rwanda is reviewed in Tayler B. Seybolt, "Whither Humanitarian Intervention? Indications from Rwanda," *Breakthroughs* 5 (1) (Spring 1996). The best overall account of events and their antecedents can be found in Gerald Prunier, *The Rwanda Crisis: History of a Genocide* (New York: Columbia University Press, 1995); e) For the East Timor conflict, see *SIPRI Yearbook*, 2000, 26–28.



mediation efforts by the intervening powers proved fitful at best.

With memories still fresh of the Vietnam War and World War II, when Yugoslav partisans tied down some twenty German and Allied divisions for many months, outside powers were not eager to risk significant casualties in an effort to try to *enforce* a solution to the conflict. Britain and France accordingly introduced peacekeeping forces only after the Serbs and Croats had agreed to a cease-fire, by which time most of the Krajina had fallen to the Serbs.

Much later, in 1999, the fighting moved on to the Albanian-majority province of Kosovo. Serbia resisted the efforts of the Kosovo liberation movement, one part of which sought the renewal of the autonomy the province had formerly enjoyed, another part of which wanted the Kosovo Liberation Army to lead an armed campaign for independence, or possibly to join Albania in creating a Greater Albania. After negotiations between Serbia and the 'Contact Group' – France, Germany, Italy, Russia, the United Kingdom, and the United States – failed, NATO, without UN authorization and against the objections of Russia, initiated a bombing campaign against a variety of economic and military targets in Serbia and against Serbian military forces in Kosovo.

Nearly three months later, partly because of the bombing, partly because Serbia lost Russia's support, Serbia agreed to withdraw its large forces – about forty thousand military, paramilitary, and police – from Kosovo. The Security Council then authorized a NATO-led force of some fifty thousand. After the Serbs had withdrawn and the NATO force had started its deployment, the great majority of the eight hundred thousand refugees who had fled during the Serbian repression and the bombing returned.

Had a UN volunteer force been available early on, at the very beginning of the Serbian attacks on Croatia and Bosnia, there would likely have been less sensitivity about casualties. As a result, it might have been possible to introduce the force earlier with salutary effects, particularly if it had had a mandate to engage in some enforcement actions. Such a force would have strengthened the hands of Lord Carrington, acting for the EC/EU, and of Cyrus Vance, acting for the UN, and a peaceful resolution of the conflict might have resulted. Or, had the need arisen, the UN force might have taken effective enforcement actions against Serb forces in Croatia or later in Bosnia when all sides, but particularly the Bosnian Serbs, repeatedly flouted UN injunctions proscribing attacks against 'safe areas' and interference with the delivery of humanitarian relief.

The war in *Somalia* had its genesis in the chaotic struggle for power between clan leaders that erupted after the fall of the Siad Barre government in January of 1991. In response to looting by gangs and the prospect of famine unless order was restored, the UN became engaged early in 1992. In March of that year, it succeeded in brokering a cease-fire between the principal clan leaders in Mogadishu. It dispatched fifty unarmed peacekeepers to monitor compliance with the cease-fire and authorized the formation and deployment in April of a five-hundred-troop Pakistani battalion to protect the delivery of humanitarian relief supplies.

Unfortunately, key governments, notably the United States, showed a general lack of support for the operation. Logistical and financial problems, as well as negotiations toward an agreement with Somali clan leaders for the introduction of the force, also posed difficulties. By September of 1991, when the UN force was fully deployed, the situation in

Mogadishu had so degenerated that UN troops could not safeguard the delivery of food and other relief supplies. With impunity, Somali clan leaders were able to frustrate the conciliation efforts of the UN secretary-general's special representative in the field. In short, the first phase of operations in Somalia was a story of too little too late.

As the horrors of starvation and the breakdown of public order in Somalia became apparent on the nightly news, President George H. W. Bush, responding to public pressure, authorized the Marine Corps to lead a thirty-eight-thousand-troop intervention in December of 1992, with the limited objective of facilitating humanitarian relief efforts. As intended, this phase of operations lasted only a few months, but succeeded in saving many lives.

Although some U.S. forces remained in Somalia, the UN took over the major interventionary responsibility in May of 1993 with a weaker force charged with a broader 'nation-building' mandate. Unfortunately, the expanded mandate was clearly beyond UN capabilities. When eighteen Americans and a number of Pakistani troops were killed later in the year, U.S. public opinion turned strongly against continued involvement, and President Bill Clinton announced that U.S. forces would be withdrawn by the end of March of 1994. This third phase ended a year later, without accomplishing any of its objectives. There were further difficulties in Somalia with unity of command; national forces failed to respond to orders from field commanders because of conflicting instructions from their capitals. Such problems would not have arisen with an all-volunteer UN force.

Had a force of several thousand well-trained UN volunteers been available for deployment in early 1992, the humani-

tarian relief mission could quite plausibly have been accomplished in less than a year without the Marine Corps intervention. Achieving the expanded objectives that the UN favored but the United States resisted, however, would have required a much larger force for a *much* longer period of time – and substantial commitment by the world community for nonmilitary support, also for many years. As it is, Somalia remains a failed state – a case for UN trusteeship.

The UN intervention in *Cambodia* grew out of the 1991 Paris Peace Agreement, which was meant to end two decades of terrorism and civil war by producing a unified – and freely elected – Cambodian government. The Security Council has characterized the operation as “a major achievement of the United Nations.” UN troops repatriated three hundred sixty thousand refugees and displaced persons from Thai border regions. In addition, a technically free and fair election was held with an extraordinarily high level of participation.

But, in fact, the UN's Cambodia mission must be judged a failure. Despite the high voter turnout, the UN was unable to protect opposition parties from a centrally directed government campaign of terror and intimidation. At best, 10 percent of the nation's roughly three hundred fifty thousand armed combatants were demobilized. Most significantly, the Khmer Rouge was able to sabotage the goal of national unification: although it had been a party to the Paris Peace Agreement – and a major cause of the ruthlessness of the nation's long civil war – it refused to participate in the election and to permit UN access to the parts of the country it controlled.

Might things have gone better if the UN had had an all-volunteer military force at its disposal instead of having to

rely on seconded troops? Many of the sixteen thousand troops that were actually deployed were ill-equipped and ill-disciplined – problems that would not have plagued a well-trained volunteer force. Also, the force could probably have been deployed soon after the Paris accords – not eight months later, as was the case. Such earlier deployment would have made it possible to make considerably more progress in the disarmament mission. According to observers in the field, rapid deployment might also have helped to deter disorder.

Perhaps the most interesting question is whether, with a volunteer force, the UN would have been able to compel the Khmer Rouge to comply with the Paris Peace Agreement. Perhaps doing so would have been unwise, given the Khmer Rouge's military capabilities and ideological fanaticism, and given the possibility of negative reactions from China and other Southeast Asian states. Perhaps the Paris consensus might not have survived, and perhaps one or more outside parties would have resumed their support of the Khmer Rouge.

At least one moral of the story is clear: If the broader nation-building objectives of the UN intervention were to be realized – particularly in the absence of a resolution of the Khmer Rouge problem – the UN would doubtless have had to maintain a substantial military presence in Cambodia for a number of years, as well as provide resources for the civil components of the UN mission. The Cambodian mission, then, highlights the reasons why the international community must take seriously the need not only for an enhanced volunteer UN military force, but also for a well-qualified UN 'peace corps' able to help reconstruct war-ravaged societies.

From the perspective of the international community, which had recently

been stung by the failure of humanitarian intervention in Somalia, the genocidal war between Hutus and Tutsis in Rwanda could not have come at a worse time or place: Africa, in April of 1994. At the time, a UN Assistance Mission (UNAMIR I) with a force of twenty-five hundred troops was already in Rwanda. Yet the immediate Security Council reaction was not to increase its strength, but to reduce it – to a mere three hundred troops. Moreover, the Security Council, ignoring the secretary-general's call for strengthening the force and increasing active intervention, limited UNAMIR I's mandate to brokering a cease-fire and assisting in relief efforts.

A month later, the UN belatedly authorized a fresh deployment of fifty-five hundred troops for UNAMIR II, again with a limited mandate. But as late as August, the UN force had not yet reached its authorized strength. After the fiasco in Somalia, there was little disposition in the world community to incur the costs of trying to stop the genocide. France was the exception; it deployed a force in Rwanda during the period of June 22 to August 22, which had some success in protecting the southwestern part of the country. (More than any other advanced industrial state, France has been willing to engage in peace enforcement operations. Relying largely on its Foreign Legion, French political leaders may not have been as sensitive as others to the risk of casualties.)

Of the cases we have considered, Rwanda provides the best example of the likely utility of a standing UN *quick reaction* force. Had such a force been available when the secretary-general proposed the strengthening of field capability in late April, the Security Council may well have authorized its deployment instead of voting to reduce the UNAMIR I force. Assuming U.S. logistic support – not an unreasonable assump-

tion – the larger force could have been deployed in sufficient time to save hundreds of thousands of lives. And, considering the experience of the French, such a UN force would most likely have experienced few casualties. As it was, over a period of four and a half months, and out of a population of about eight million Rwandans, eight hundred thousand died, two million became refugees, and two million became internally displaced persons.

This review suggests that the world community could have, and in some instances likely would have, responded to each of these four crises with greater effectiveness had a well-trained and equipped all-volunteer UN force been available. Of course, the fact that interventionary forces were deployed in most of these cases for protracted periods of time – in Yugoslavia, the clock is still running – raises serious questions about the necessary size and mission of an effective UN military force.

Would a relatively small rapid deployment force be sufficient to realize UN objectives? Might a volunteer UN force be effectively supplemented by seconded national units, so that the UN force could be relieved soon enough to respond to other crises? We believe the answer to both questions is a qualified “yes.”

The situations we have examined fall somewhere on the force spectrum between ‘classic peacekeeping’ and enforcing the UN Charter’s Chapter VII prohibition of aggression. Monitoring a truce line in situations where conflict has ceased and the parties have agreed to accept the intervening force usually requires a thousand troops. But stopping aggression – as the UN tried to do in Korea and Iraq – is an altogether more daunting task, requiring several hundred thousand troops.

In the intermediate situations that we have been reviewing, an intervening force will typically have a shifting variety of tasks, including:

- Preventive deployments to forestall violence between communities or states;
- Monitoring or supervising a tense situation, stalemate, cease-fire, or settlement;
- Establishing, monitoring, or supervising cantonment areas, demilitarized zones, and buffer zones between warring parties, which may involve interposition by the field force;
- Support, supervision, and implementation of a process of disarming and demobilizing the warring factions;
- Protection and support of humanitarian assistance efforts;
- Noncombatant evacuation under threat;
- Establishing protective zones;
- Protection and support of national reconstruction and reconciliation efforts, including the conduct of elections;
- Helping to restore and maintain general civil order; and
- Enforcing sanctions.

All of these tasks would have to be performed in situations where the threat of armed resistance is real and present. If it is to help achieve a political resolution of the underlying conflict, a UN military force will need to be capable of fulfilling all three of the ultimate political functions of armed force – compulsion, deterrence, and reassurance. The force must be sufficient to compel each side to stop the violence, to deter those who might resort to violence, and to reassure the general public that it need neither fight nor flee.

The most detailed and persuasive analysis of what a UN rapid reaction force should be is that of Carl Conetta and Charles Knight.<sup>5</sup> Examining the troop requests submitted by the commanders of the UN operations in Yugoslavia, Cambodia, Somalia, Mozambique, Haiti, and Rwanda between 1992 and 1994, Conetta and Knight concluded that meeting those requests would have required a force capable of continuous deployment of fifteen thousand troops in the field. This level of deployment would in turn have required a total force of 43,750 personnel, whose operating costs would have been about \$3.5 billion per year.

We believe that the size and cost of such a force are much too large to propose to the international community. In our judgment, the size of the recommended force must fall somewhere between the smallest force that could reasonably perform the required tasks and

the largest and most expensive force that member states, particularly the major powers, would allow the UN to command. We believe a force of fifteen thousand, of which eleven thousand would be deployable – half of that for long periods – meets these criteria. The organization and personnel of this force are shown in the two tables that follow.

A rough estimate of the annual cost of operating the force described is \$1.25 billion to \$1.5 billion per year. About 25 percent of this is the annual cost of equipment and facilities. These figures should be compared with UN peacekeeping expenditures of \$2.5 billion in 2000. Much of the expenditure for a new voluntary force would be a substitute for, not a net addition to, current peacekeeping costs.

In addition to marshalling the force itself, the UN would need to maintain a substantial military base where the force would train and be stationed when not deployed. The base should be large enough to accommodate visits from detachments of national units from various countries for joint training with this UN force. Preparing and maintaining a base would add another substantial element of cost. But with the downsizing of military forces in many countries, facilities should be available, and at costs far lower than those of creating a new base.

Wherever the force were based, it would have to be moved to the site of its operation for any intervention. Providing it with an organic logistic capacity to make this possible would be prohibitively expensive; it would have to rely on national capabilities to provide logistic capacity. In effect, this means relying on the United States, which has provided most of the logistic support for the forces that have been seconded to the UN by member states.<sup>6</sup>

6 This is an important constraint. Any air force supply operation involves the risk of accident. If

5 Carl Conetta and Charles Knight, *Vital Force: A Proposal for the Overhaul of the UN Peace Operations System and for the Creation of a UN Legion* (Cambridge, Mass.: Commonwealth Institute, October 1995). Other discussions of a UN force include: a) Brian Urquhart, "For a UN Volunteer Force," *New York Review of Books* 40 (11) (10 June 1993); b) Timothy Stanley, John M. Lee, and Robert von Pagenhardt, *To Unite Our Strength: Enhancing the United Nations Peace and Security System* (Lanham, Md.: University Press of America, 1992), chap. 2; c) *Partners for Peace: Strengthening Collective Security for the 21st Century* (New York: United Nations Association of the United States, 1992), see especially chap. 3 and recommendations, p. 42; d) Capt. Edward J. Dennehy (USCG) et al., *A Blue Helmet Combat Force*, Policy Analysis Paper 93–101, National Security Program, John F. Kennedy School of Government (Cambridge, Mass.: Harvard University, 1993); e) Lukas Haynes and Timothy W. Stanley, "To Create a United Nations Fire Brigade," *Comparative Strategy* 14 (January–March 1995): 7–21; f) *Towards a Rapid Reaction Capability for the United Nations* (Ottawa: Canadian Department of Foreign Affairs and International Trade, September 1995).

Table 1  
Tactical and Support Units for a Volunteer UN  
Military Force

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- 2 brigade HQs  
(340 staff and support personnel each)
  - 2 motorized infantry battalions
  - 2 light mechanized infantry battalions
  - 1 cavalry squadron
  - 1 light armored cavalry squadron  
(37 light tanks)
  - 2 armored scout helicopter companies  
(18 aircraft each)
  - 4 field artillery batteries (8 guns each)
  - 2 air defense companies  
(12 mounted air defense systems each)
  - 2 combat engineer companies
  - 2 signal companies
  - 2 field intelligence companies
  - 2 MP companies
  - 2 civil affairs companies
  - 2 field logistics bases
- 

Source: *Peace Operations by the United Nations: the Case for a Volunteer UN Military Force*, a report of the Committee on International Security Studies of the American Academy of Arts and Sciences, Cambridge, Mass., 1995.

The number and scale of UN interventions in recent years makes plain that the standing force we envisage could not meet all UN objectives on its own. It would require backup forces of some kind. This UN standing force might be capable of two simultaneous missions, but no more, and its operational concept should require an assessment of the success of an operation after no more than six months from initial deployment. If the intervention succeeds in damping

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the operation is over an area in which fighting is taking place, even further risks arise. Yet the United States has established a pattern of providing logistical support for UN operations, and would likely do so in many instances if such logistical support constituted its only exposure to risk.

violence and moving the conflict to the political arena, then a smaller peace-keeping force drawn from member states could replace the standing force. If not, the Security Council would be faced with the decision to either replace the standing force units with larger and perhaps more heavily armed national units or withdraw from the conflict altogether. Our plan would thus be incomplete without a provision for backup forces, included in most proposals for a rapid reaction force. These consist of national units designated for UN service in both peacekeeping and combat modes, trained and exercised to a common standard and doctrine.

For both political and operational reasons, these backup forces should be organized and deployed regionally and should consist of units designated from the national forces of cooperative states in the region. These forces would train and exercise together on a regular basis, and the UN standing force HQ would play an advisory and standard-setting role in this training process. The contributing states would benefit from the upgrading of the capabilities of their armed forces. Meanwhile, they would have to be persuaded that doing so is politically worthwhile – that an investment in cooperative rather than competitive security is desirable.

But would the advantages of the regional forces' proximity in terms of operational ease outweigh the potential disadvantage of their having a direct interest in the conflict and its outcome? This difficult question goes to the heart of how best to balance the cooperative and competitive paths to peace and security. How one answers this question will determine, in part, how one thinks about not only the creation of regional forces, but also the very idea of a UN military force.

Schematically, appropriate coverage and operational considerations would suggest the creation of at least six such regional forces: one each for Africa, Latin America (including the Caribbean), West Asia, South Asia, East Asia, and Europe. The scale of national forces varies widely in the different regions, both in relation to each other and to the proposed UN standing force, so that the appropriate size for a regional force would also vary. Neither the UN standing force nor the national regional forces could, or should, be used to engage the national armies of states with substantial military power. The political feasibility of establishing such a regional force also varies greatly among the different regions. In both West and South Asia, for instance, major countries are in a state of ongoing hostility that would make a regional force hard to create. Perhaps the region in which such a force is most needed and might do the most immediate good is Africa; yet the possibility of creating a competent force there in the near future is not bright.

If we think of a battalion with a strength of some seven hundred fifty or one thousand as the smallest combat unit that can be effectively deployed as a constituent of a larger multinational force, then an ideal regional force might have up to twenty-five combat battalions plus independent supporting units of transport, supply, engineering, military police, medical, and sanitation troops. These would form the pool from which a force could be drawn when needed.

Withdrawing the standing force and replacing it with elements drawn from the committed backup forces would make it possible for the former to continue to serve its deterrent function in other potential conflicts. In such a replacement, the HQ element of the standing force could remain for some time to

*Table 2*  
Personnel Required for a Volunteer UN  
Military Force

Field Units	
Unit-assigned command-and-combat personnel	6,700
Support personnel organic to tactical units	1,400
Field logistics base	2,000
Replacements	500
<i>Total deployable</i>	<i>10,600</i>
Nondeployable Personnel	
Central staff	800
Base support and central logistics	1,400
Trainers	1,400
Trainees	1,800
<i>Total Nondeployable</i>	<i>4,400</i>
Total	15,000

Source: *Peace Operations by the United Nations*.

act as the memory store for the incoming forces, ensuring continuity of action.

The creation of a UN standing force would require further upgrading of the UN's Department of Peacekeeping Operations (DPKO). The capabilities and organization of the department have been substantially improved in the last several years, but much more needs to be done. Further changes should involve two levels of the UN: the Security Council and secretary-general, and the DPKO in relation to other parts of the organization. At the higher level, the Military Staff Committee or its functional equivalent must be reactivated, enlarged to include representatives from member states that are substantial contributors to ongoing field operations, and capable of functioning full-time whenever an operation is in progress. The DPKO in turn would need to add the administrative capacities required to maintain its military force, including recruitment,

training, procurement, and logistics. The current UN system, whereby procurement depends on the approval of the undersecretary of the Department of Administration and Budget – an entirely separate UN department – is unworkable. The budget function must become an integral part of the DPKO's operations.<sup>7</sup>

Creating the capabilities described above would in many instances make it possible for the international community to respond to crises and undertake peacemaking and enforcement operations more quickly. This could be expected to increase the likelihood of realizing several of the potential objectives of such interventions: saving lives and reducing human suffering, facilitating political settlements between contestants, and perhaps undertaking nation-building activities. It would also have a broader deterrent effect, which in some cases would make diplomatic intervention alone effective in preventing armed conflict. And it would provide a strength to Security Council resolutions that is now lacking.

The advantages of early deployment should not, however, be exaggerated. In few, if any, of the above instances would the existence of such a force *on its own* have made much of a difference. (Rwanda may be an exception.) Fully capitalizing on a UN standing force's advantages will depend on various additional reforms the UN would have to undertake. Such reforms include improving staff work, quickening force deployment decision-making processes, more clearly defining mission mandates, and improving command-and-control procedures,

including arrangements for civil-military coordination.

The UN cannot maintain a standing force on the basis of current financing arrangements, which are a mixture of voluntary contributions and special assessments for each operation. Instead, the support of both the standing force and traditional peacekeeping operations should be made part of the regular budget. Some larger operations – in particular, any relatively large-scale Chapter VII activities – might be best handled by special assessments. Together with the necessary strengthening of the DPKO, the creation of a standing force might result in an annual cost for peacekeeping operations (excluding large-scale Chapter VII activities) of \$5 – \$6 billion, about twice their current level.

To put this number in some context, it is worth noting that world military expenditures in 2001 were about \$835 billion. Of this, the U.S. share was about 39 percent. The other big spenders – thirteen countries with military budgets of \$10 – \$60 plus billion – had a 41 percent share; the share of the other 157 countries amounted to only 20 percent.<sup>8</sup>

The creation of a volunteer UN force would require a mobilization of political will at a time when many members of the UN, including the Security Council P-5, view the organization with a mixture of skepticism and hostility. This attitude is strongest in the United States, but it is widely shared. After all, the majority of UN member states are developing countries that are among the more likely targets of outside intervention.

The most widespread objection to an all-volunteer UN force – aside from the

7 See *Partners for Peace*, published by the United Nations Association of the United States, for a fuller discussion.

8 International Institute of Strategic Studies, *The Military Balance 2002 – 3*, Table 26, p. 332 ff.



economic costs – has been the lack of confidence in UN decision-making, and often a specific lack of confidence in UN secretaries-general. We see little basis for such concern. Developing and approving a mandate for UN operations will, for as far into the future as we can imagine, be a Security Council responsibility, with the P-5 members, at least, having veto power. Although secretaries-general will presumably have executive powers, we see no need for these powers to be greater – or otherwise different – than those needed for the management of UN operations under the present arrangement of relying on seconded forces.

In the present political mood of the United States the proposal outlined in the preceding pages may well appear to be sheer fantasy. But the underlying reality of violent intrastate conflict remains, and we cannot simply persist in looking the other way; the ‘CNN effect’ and the activities of a host of nongovernmental organizations prevent such an option.

The U.S. stakes in enhancing rather than undermining the capacities of the UN are of two kinds. The first is that the United States is the one power with

global involvements; serious conflict anywhere is likely to involve the United States if it persists, and even more likely to involve the country if it spreads. Yet the United States has neither the capacity nor the mandate to act alone as a global policeman.

The second reason why the United States has a stake in strengthening the UN is its deep commitment to securing a liberal world order based on a global free market. The United States sees such an order as the key to achieving a minimum harmony of interests between rich and poor countries, slowly diminishing the gap between rich and poor nations through free trade and growing prosperity. Such an order cannot flourish in a world rent by widespread violent conflict.

If the United States cannot alone bear the burden of securing international order, then it must persuade others to help. The UN, backed by regional organizations – what might be called the formal international system – offers the best instrument for achieving this order, for only the formal international system has the political legitimacy to police the world.



# Poem by John Hollander

## *The Institute*

There was no need to put it on an island.  
Turning off an ordinary-looking side road,  
We'd walked through the usually well-guarded gate  
Unchallenged, and passed on  
Into some sort of paved courtyard  
That seemed to serve no purpose save to allow  
Our footsteps to reverberate choppily  
Against the walls of the enclosing wings  
Of the important main building.  
And knowing that we shouldn't be there at all,  
And if found out wouldn't be allowed to stay,  
And maybe something worse,  
We felt it somehow right, once we had entered,  
To avoid the lower levels  
And ride up to the offices, at the top,  
Of the Institute of Death  
Which in some unexplained way presided  
Over everything below it, just as  
The skull, that think-tank staffed  
With contentions and beset with  
Importuning ghosts, likewise presides  
Over the bodily frame it  
Can never escape. Once up there, though,  
We were to hear nothing but the oldest  
Story that we had already thought to have learned;  
Except perhaps, on the slow way down again, to know  
That whatever was to be, we  
Were not to exit through the varied grounds,  
As we should have liked, on gently paved walks,  
Between hedges, along water, or across the  
Many-petaled forest floor.

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# Fiction by Mary Morris

## *Exchanges*

Petrol and hay trucks speed past. French travelers, beginning their holiday season, zip by at ninety miles an hour. They go so fast, Sonia thinks. As Walt drives, she tries to recall the pictures Katrine sent. The snapshots of Katrine and Michel with their children, now grown, a scribbled note told them, and a poodle, named Gilbert, now dead, and the farmhouse, the garden, the cat, still living, whose name Sonia cannot recall. Katrine had written to her about the poor creature. “He is blind,” Katrine said, “but he is no trouble at all.”

Sonia doesn't want to think about the blind cat. Or a dead poodle. She is trying to remember what the house looks like. She wishes she'd downloaded the snapshots. She recalls the stone farmhouse, the view from the kitchen window. An aerial shot of the house (How did they

get that view?). But what if the images she has in her head bear no likeness to the actual house? What if it looks nothing like that at all?

It was Walt who'd discovered the website, Swap.com. He was scheming, looking for deals. “Look,” he said to her last winter, “this is the way to go.” When she'd first seen the logo for Swap.com, she'd imagined some sex site Walt had found, a way to invigorate their marriage. Then he explained it was for houses, not spouses.

Sonia and Walt hadn't been able to afford a real vacation in years, not the kind where you go to Europe and travel around. With Kiah in college and now Kezia in private school, they couldn't afford the hotels, restaurants every night. Besides they liked to take it easy, go slowly. They didn't like to pack and unpack every night. To do a room check every time you leave a place, only to discover that you've forgotten a nightgown that was a gift or a novel whose outcome will have to wait until you are home. Sonia doesn't like that feeling of waking up and not knowing where she is. It is better to stay put, in one place.

Once they'd posted their house, this trip had taken on a momentum of its own. A few emails had set it in motion. Katrine and Michel were looking for a

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New York holiday and soon it had seemed unstoppable. They'd exchanged letters, then photos of their kitchens, pets, even bicycles. And finally keys. Now Sonia takes the keys out of her bag. "Is this some high-tech form of the key bowl game?" She dangles them in front of Walt. "What if we don't like it?" Sonia says.

"We will."

"How do you know?"

He drums his fingers on the wheel. "I just do." The land they traverse is flat. Fields of wheat blow in the wind. It is like a yellow sea. The sun comes straight out of the clouds onto the haystacks. Monet would paint this scene. Sonia wishes she could relax the way Walt does as he hums, hands gently on the wheel. "God this is beautiful," he says. "This is great. I feel as if home is a million miles away."

But Sonia cannot look at the fields and the sun streaming down. All she can think about are those pictures. What if they aren't recent? What if the house is in disrepair? And now she doesn't know how she feels about strangers rifling through her medicine closet, searching for aspirin. Sleeping in her bed.

It occurs to Sonia that she really knows nothing about the people who will be arriving at her house as she arrives at theirs. They've never set eyes on Katrine and Michel. They'd wanted to, but it hadn't worked out because Katrine and Michel were going to Colorado first and Sonia and Walt would be driving around France.

It would have been better if they had met. It would have put her mind at ease. But Walt said it was all right. He said things would be fine. "Just call it my gut feeling."

Sonia and Walt had never done a swap before, never even contemplated one. They'd been urban pioneers, buying in a

rundown neighborhood, lovingly restoring their house to what it once was. How could they trust strangers with the rummage sale antiques they'd spent years stripping? Or the rare prints, dug out of flea market bins, that hung on the walls?

But Katrine wrote that they'd swapped dozens of times. They'd spent a week in Prague, a month in New Zealand, a whole summer in Greece when their kids were small. Katrine and Michel were both teachers who loved to travel and this was how they saw the world.

Sonia had asked timidly if anything "bad" had ever happened on one of their exchanges. Not exactly "bad," but unpleasant or unfortunate. Katrine had written back a funny email that made Sonia laugh. She said she has many antique cups and saucers and that once a Spanish family stayed with three small daughters and the little girls rearranged all the cups and saucers as if in some kind of mad tea party.

And they had swapped twice with a family from Sweden and the second time they had found several of their own possessions – a hand towel, a picture frame, nothing serious, nothing of "value," Katrine indicated – in the home of the Swedish people. Katrine had written how she'd "stolen" her own possessions back.

Even from a distance Sonia liked Katrine. She sensed her humor, her easy way. Her casualness. Sonia could be more casual. She had to have things right, just so. Walt and the girls teased her for that. Why does it always have to be so perfect? So what if something is out of place? Walt, who was hardly one for order, would moan, but Sonia could not help herself.

Disarray made her nervous. She hated old newspapers, clothes not put away. But somehow she felt she wouldn't mind this in Katrine. Sonia felt certain that if

they ever met, they would enjoy one another. They would be friends.

Sonia holds the little hand-drawn map Katrine made for them. It came with the keys and it is a scribble of windy roads, a few arrows. "Do you think anyone ever really arrives there?" Walt asks, glancing at the map. They had, in fact, tried to find Rambourgh in the atlas, but were unable. "It must be very small," Sonia reasons, staring at the quickly drawn lines on French lyc ee graph paper.

As they drive down the A-11, Sonia begins to relax. The air, the light, just being in France is taking a weight off her. She reaches for Walt's hand and, as he feels her grope for him, he grabs her. Takes hold of her before she can take hold of him. It is a reflex between them. He clutches at her like a drowning man, but it doesn't bother her as it does at home. She senses his excitement too.

It is an odd feeling, having a stranger's keys jingle in her pocket. She feels their heft. She imagines Katrine and Michel, opening the door to their Brooklyn brownstone, being pleasantly surprised to find the flowers and bottle of wine ("coals to Newcastle," Walt had said). The notebooks Sonia left with detailed household instructions on how the grill works, the best produce market nearby, take-out menus all carefully labeled ("best Chinese," "great Thai," "Don't miss!"). Brochures for concerts in the park, the subway maps.

They'd emptied closets and drawers to make room for the French people. They'd had a stoop sale, making almost two hundred dollars with what they were throwing out. "We should swap more often," Walt said when he saw the money.

When the girls were small, they had traveled all over Europe in vans, on Eurail passes. They backpacked through

Spain, stayed at youth hostels. One summer they'd rented a cottage in Italy, but now they can't afford much. Walt's law practice is mainly housing and tenants. "Couldn't you do landlords?" Sonia sometimes teases. In fact many of his clients are homeless people. He has fought for squatters' rights to abandoned buildings and often makes very little money at all. And Sonia teaches literature in the public schools.

Sonia considers herself "good at languages." She has an ear for them. In Spain people think she is Italian. In Italy she passes for French. She speaks enough German to order coffee and enough Russian to get them out of a taxi without being robbed. Her family marvels at how she can switch from one language to another, go from country to country as if each place is home.

As a girl, her goal, once she realized she had a gift, was to get away from the Hartford suburb where she was raised. When she met Walt, he drove a motorcycle and wore a black leather jacket, never mind that he was a student at Columbia Law. He moved into her one-bedroom rent-stabilized apartment where they lived for years. Sonia didn't look into the future. She pictured herself more easily in a Moroccan desert town than in Brooklyn, dustbusting after dinner.

At her wedding, as she danced with her father, he imparted his final lesson to her. "Remember, Sonia," he said, as she tried to follow his waltz step, "life is one big compromise."

They stop for gas. Unfamiliar with the pumps, Walt pours about a gallon of diesel into the tank before the station owner starts shouting at him. "Oh my god," Walt says, "I think I've ruined the car."

The station owner waves them away. "He thinks we're idiots," Sonia says with a laugh. In French she calls to him, "Can

you help us, please?” which he does, grumbling.

Walt shakes his head as they drive on. They follow a few twists and turns. The light is fading as they come to Ram-bourgh. It is a village of faux thatched-roof houses, farms; big columns of trees grace the main road.

At last they come upon it – the farmhouse covered in wisteria, hydrangeas in bloom all around, the yarrow and cornflowers, the daisies and black-eyed susans. They pull the car into the carport with pillars and a crumbling stucco facade. After unloading the car, they drag their suitcases to the back where there is the garden.

They haven't anticipated the garden. It is filled with figs, ripe and dropping from the trees, and plum trees, with tomatoes and green beans, with peaches and espaliers of pears and apples, onion and eggplant burst from the ground. Zucchini dangle from vines, the size of small wind instruments.

Sonia and Walt pause, gazing at the garden, the fields of bending wheat, the ramshackle farmhouse. “It's perfect,” Sonia says.

And all Walt can do is shake his head. “It is.”

It takes a while to open the door. The house has a musty smell from being closed for so long. It is a smell of darkness and something else – rotting fruit, old grain, pipe smoke. “We need to air it out,” Sonia says as she struggles to open the windows. They are closed with iron shutters and she leaves Walt tugging on these and takes a basket and heads to the garden.

As she hears Walt groaning, yanking the shutters open, she plucks an eggplant from the ground, admiring its purple flesh. She takes ripe tomatoes, onions, peppers. Why would anyone plant this

garden, then go away? Why would anyone ever want to leave?

When she goes inside to try and work the stove, she sees that Katrine has left little Post-its all over the house. Instructions on how to use the various appliances, all of which have been unplugged in the event of “dangerous storms.” What storms? Sonia wonders. No one had mentioned storms. Soon the appliances are humming. She is slicing tomatoes, eggplants, putting them in sizzling oil.

It is late when they sit down to their simple meal of wine, bread, cheese, and ratatouille. “I'll do better tomorrow night,” Sonia says. “We'll go to the market in Beaumont. I've read it's wonderful and they sell live animals.”

“I've always wanted a goat.”

They laugh, clicking glasses, proud that they made it this far. That they have reached this place. They have opened the shutters and made food from the garden. Sonia is savoring the dry red wine Katrine and Michel left them when she hears the mewing. On the windowsill just outside she sees the cat. She hasn't even thought about the cat since they arrived, but now he is on the ledge, begging to be let in.

Pet care was part of their exchange. She hadn't minded. They had left their dog, Muppet, and cat, Pumpkin, in the care of Katrine and Michel. Now the cat is on the sill. Katrine has left explicit directions about the cat. When he comes to the window, put a chair there so he doesn't fall and he can step inside to eat. Put food and water dish directly to right of chair.

Sonia opens the window and the cat with opaque green eyes stares at her with its blankness, then deftly places its paw on the chair and goes right to its dish. Sonia wishes she could remember the cat's name. It bothers her that she can

remember the name of the dead dog but not the living cat. She knows it is blind, but it doesn't act blind. "I think it can see," Sonia says to Walt.

He shakes his head. "Look at those eyes. Blind."

"I don't remember his name. It was with an M I think. Micky, Max."

"Let's call it Max." They watch as the cat eats, then jumps back onto the chair, waits for Sonia to open the window and disappears into the night.

When they get in bed, Walt's back hurts. The bed is too soft so they roll the mattress onto the floor and sleep there. The light in the bathroom flicks on and off so Sonia has to close the door. When she gets back in bed, Walt curls into her hip. In the distance she sees lightning, forked, coming down, but it is far away. It looks like the hand of God.

In the morning Sonia wakes early and slips out of bed. Making her way downstairs, she turns on the coffee, then starts sorting the wash. Everything is dirty. They have been traveling for two weeks already. When Walt pads down and finds her, separating colors from whites, she says, "I want to do the laundry. I want to set up house."

"Of course you do," he says.

Since it is market day, they drive to Beaumont where they are overwhelmed by the cheeses and meat, the baskets of peaches and squash. They buy beefsteaks, cut paper-thin by a butcher wearing an ironed blue shirt and silk tie. They sample creamy cheeses, wedges of nectarine. Walt picks spicy olives out of barrels, then buys an assortment from a North African man.

At the fish stand Walt stops to admire the piles of shrimp and mussels, the cod and Atlantic salmon, and Sonia feels the first wave of nausea. Walt does not notice her, gripping the pole. He suggests salmon, poached for lunch, but Sonia

won't go near it. "It won't be fresh," she tells him. "Remember how sick you were in Paris."

Walt shrugs. "I wasn't that sick." He points to the fish. "It looks fresh," he says. Then he puts his hand on her neck and feels its coldness. "What is it?" he asks. "What's wrong?"

"Just tired from the journey," she tells him. It is one of the things she wishes was different between them. She wishes he could read her mind. But he can't. He never can. He accepts her, as he always does, at her word.

As they drive through their hamlet, the car laden with groceries, a giant goose stands in the road. He stands firm, puffing himself up, honking. "Scary goose," Walt says, honking back, making Sonia laugh.

Walt honks again, but the goose doesn't budge. "You'll have to chase him," Sonia says.

Walt gets out of the car and struts up to the goose. He flaps his arms and makes a quacking sound. Sonia looks at him – a tall, big man who still has most of his hair. His waist is wider than it once was, his dark curls gray at the temples. Seeing this big man threatening the goose makes her laugh. Even as the goose spreads its wings and assumes a more threatening pose, she laughs and the darkness that came over her at the market passes.

At last the goose turns and walks off the road. When Walt gets back into the car, Sonia who is still laughing tells him her plan. "I'm going to do the laundry. Then I'll make you a nice lunch. How does that sound?"

"Sounds good to me."

As they unload the groceries, she is thinking they will eat outside on the patio beside the garden. She will make chicken breasts sautéed with mushrooms and shallots, sliced tomatoes, green beans, and white wine. As she



plans the menu, Sonia tries to figure out how the washing machine works. It is so tiny she can only put a few things in at a time. It looks as if it could just contain her head.

She asks Walt to put on his pajamas and she puts on hers, then does three loads of laundry. She washes all their underwear, their jeans, their sweats, all the clothes from the road trip. It is close to one o'clock when she hangs each article of clothing on the line in the sunshine. She stuffs clothespins in her mouth and snaps them on the clean linen.

The sun is warm on her face as she shakes out a white t-shirt with a flick of her wrists. She doesn't mind the moisture running down her arms. She is clipping the t-shirt to the line when she realizes she is being watched. It is not an entirely unpleasant feeling, but she knows she isn't alone. She turns and sees Max standing a little off to the side. He is staring straight at her with those blank green eyes. When she looks at him, he starts to purr so she puts down her wash and scratches him behind the ears.

As she does the laundry, taking it from the washer to the line, the cat follows her everywhere. It stays close at her side, rubbing his silken body against her leg as she hangs the clothes to dry. Sonia tries once more to remember the name of the cat, but it eludes her. "Here, Max," Sonia says and Max rubs up against her legs. "He can't be blind," she says to Walt as the cat tags behind her.

"He moves by his senses," Walt says, giving her a little squeeze, "just like me." To prove his point, Walt puts a book between Sonia and the cat and the cat stumbles on it when he follows her out the door.

For lunch she changes her mind about the green beans. They'll have them that evening with the beefsteaks. Instead she plucks the fixings for a salad from the

garden. She slices tomatoes while Walt washes every leaf. As he moves past her in the kitchen, his hands slide along her waist. They set the table outside and drink a whole bottle of wine over lunch, savoring each sip, then go upstairs and, thinking they will make love in this house for the first time, fall asleep instead.

They wake to forked lightning, terrible crashes like accidents happening all around them. Though it is still afternoon, they are surrounded by blackness. Sonia gazes out at the torrential rain, the wind ripping through the fields of wheat. "The appliances," Walt says, remembering the warning about dangerous storms.

"The laundry," Sonia groans.

She leaves Walt to unplug the washer, the stove, the computer, and rushes outside and tugs soaking underwear, shirts, jeans from the line. Dragging them in, she drapes wet laundry over every surface she can find. Over chairs and tables, on lamps and hooks. "Looks like a bordello," Walt says with a laugh as he returns from the utility room, screwdriver in hand.

"A scene from *Porgy and Bess*." Sonia steps back to admire.

Walt starts to hum, "Bess, you is my woman."

"The kids would love this moment," Sonia says.

"We have no clothes to wear."

"We have nowhere to go," she replies.

The last time they were in France it had rained as well. Then they'd had the girls with them. They were little and it was just a few years after Fred died. They hadn't planned to have Kezia, but after Fred they'd had another child. When they were in France last time, and it was, what, ten, fifteen years ago, so long ago, almost a lifetime, certainly another life, they had made a video with the kids about a weird French couple who mur-

ders people for no real reason. It had occupied the kids on days like this.

"I wish the girls were here," Sonia says.

"Me too." Walt puts his arm around her.

They shiver in the cold house. They spend the rest of the day in their pajamas, the only dry clothes they have. They cannot go anywhere because everything else is wet. They crawl into bed early and in the morning the storm hasn't stopped. Their clothes are still damp. Walt thinks about shaving, but doesn't bother. Already his beard is dark, stubbly. They can't remember the last time they didn't dress in the morning and find they don't mind.

Walt builds a fire because now it is cold and, since they are housebound, Sonia tries to learn where everything is. She opens each cabinet and drawer, even those which she probably doesn't need to open. The objects of the house fascinate her. The failing houseplants whose tentacles reach across counters and into drawers, cactuses struggling for light, the silk flowers that Walt sniffs, thinking they are real. She sees the cup and saucer collection the Spanish girls rearranged and the collection of egg cups from all over the world. All Sonia can think is how much Katrine has to dust.

She studies the paintings on the wall. The bad landscapes, the oils of wide-eyed children, old women with hands held up in despair, the statues of headless men. And the one she can hardly bare to look at of the screaming souls. It is a painting of hell. When Sonia looks more closely at these paintings, she realizes they are all signed KB. Katrine Beauce.

Still, though she cannot explain this, she feels oddly at home.

In the afternoon the rain subsides and they put jackets over their pajamas and walk through the hamlet. An old farmer dressed all in blue waves at them. They pass a small flock of sheep and Walt bleats at them. They bleat back. When Sonia tries it, they are silent. "Who can explain this?" Sonia says. Ahead of them they see the goose, back at his command post in the middle of the road. "Let's go through the fields," Walt says, "I don't feel like running into that guy again."

They cut through a farmer's field, soaking their shoes and pajama legs and come to a road. On the side of the road a male pigeon flaps his wings around a female. In the lull of the storm he is trying to entice her. Walt flaps his arms at Sonia, imitating the pigeon. She looks at Walt in the middle of the road, arms flapping, doing his mating dance.

She starts to laugh, and he flaps harder. "Interested?" he asks.

She smiles, wishing she were. Then Sonia thinks that the neighbors might be watching. "Please, Walt. I'm sure people can see us."

As the wind picks up and brings a new rush of rain, they head home. They turn on the news. All over France there is torrential rain. In Normandy a man walked out of his house and disappeared into a forty-foot hole of mud. They learn that they are trapped in a weather pattern all over France. Something off the North Atlantic that shows no indication of shifting.

Katrine and Michel have left their password and Walt gets the computer going. He goes to Yahoo weather and together they stare at the little rain clouds, pouring down for the next five days. All the major cities have rain clouds over their heads.

They check the weather map for all of Europe to see if they can't go somewhere else. "According to this," Walt says, "the nearest place would be Uzbekistan."

The road to Illiers-Combray is a straight shot from the farmhouse. They'd planned to bicycle but decide to drive instead. The next morning they find some jeans, t-shirts, and cotton sweaters they left by the fire. Though the clothes are still damp, they put these on. Then they rush to the car to escape the driving wind.

For months Sonia dreamed of this pilgrimage to Combray. She reread the first volume in the original. She imagined riding bikes to Proust's aunt's house on a sunny day, but for now the car will have to do. She is anxious to see the rooms where the young Proust used to sit up at night, watching the images the magic lantern made on his wall. She once contemplated writing her doctoral dissertation on Proust and involuntary memory, but then she met Walt. She had gotten pregnant. They were going to marry anyway.

As the car whizzes along the highway, Sonia stares out at the sodden fields. All that golden sunshine is gone. Now just this grayness. With her finger she traces her breath on the window as she once did as a child. Walt says nothing, but gazes at the road. Ahead of them Sonia spots a flicker of red. They zip past a small bouquet of flowers, a vase of them beside a cross along the side of the road. A memorial. "Someone died on this road," Sonia says. "Recently, I think." Walt nods with a sigh.

She is about to say something to him. She opens her mouth, then closes it again. Instead she touches his arm and looks into the rearview mirror until the flicker of red recedes.

Everything is closed in Combray – the museum, the shops, even the old church. Even the fine restaurant the guidebook recommends. They go into a smoky bar where some men are shooting pool. They order ham sandwiches and red wine which makes them sleepy.

In the back of the bar three young men dressed in navy peacoats are playing pool. They listen to the sound of balls cracking. The bartender bends across the bar, chatting with a woman who is smoking a Galoise. Sonia leans over, taking Walt's hand. There is a conversation she needs to have with him.

It should not be so difficult to say these things, but Sonia has been waiting for the right moment. Sitting across from him in restaurants, at home over dinners, there's always some other conversation they are having – about the food or a new way to mortgage the house or something about the girls. But the real conversation seems to elude her.

But now the fish market, the red vase by the road, the fact that it is just the two of them, it seems to Sonia as if the time is right. She recalls the odor of the fish, how she thought she would faint. What was it she'd read once? The whole family was playing Trivial Pursuit and the question was: What sense is the most closely associated with memory? The answer was smell.

She knew the answer right away. She thought then that she would tell that to Walt, years ago. I knew the answer was smell. The words that have been on the tip of her tongue for so long are there now. It is like a burning. She will dip her face close to his and speak. "If I tell you something, promise you won't be mad."

"Depends on what," Walt, the lawyer, replies.

"Well, then I can't tell you." She sighs.

"Try me," he says.

Her mind drifts to that flash of red by the side of the road. "I miss the girls," she says. She has changed the subject without telling him.

"Now, why would I be angry at that?" He pats her hand.

"I didn't think you would..."

"Ready? Come on, let me distract you. How about a nap in front of that cozy fire."

As soon as they are finished with their wine, Sonia says, "Yes, let's go home."

**T**hey drive swiftly back to Rambourgh as if they have an appointment there. But once inside, Sonia can't wait to get warm. She feels as if she can't bear the chill. Upstairs she opens a closet where Katrine keeps her things. There are shelves filled with sweatshirts and pants, bulky sweaters. She takes down a sweatshirt and a pair of jeans. Slipping them on she is surprised at how easily they fit. A little snug perhaps, but she can wear them.

Sonia realizes that even after her own clothes are dry it will be pointless to wear them. They are all summer clothes, not suited to this cold. She decides to wear Katrine's clothes instead. She wants to feel merino wool, flannel next to her skin.

For dinner that night she puts on a pair of black slacks, a pink sweater. Walt comments, "I haven't seen you in that sweater before. Is it new?"

"I'm glad you like it," she says. "Yes, it is."

Home recedes. When she takes a corkscrew out of the drawer, she asks herself, "Where is my corkscrew?" She plays this little game with herself, trying to recall where she put things, but she finds she cannot recall much.

That night over dinner Sonia says to Walt, "Wouldn't it be nice if we could just stay here?"

"Stay here?" Walt asks. "You mean never leave."

Sonia nods. "I don't know if I mean never, but I mean just stay where we are. For a long time."

Walt shakes his head, sips his wine. "Well, it's a nice vacation, but I'll be ready to get back."

"Of course," Sonia says, brushing her hair with her hand. She catches a glimpse of herself in the window and there on the sill is the cat. "Oh, there's Max."

Before she can finish, Walt is opening the window to let him in. Deftly Max leaps from the sill onto the chair, then heads for his bowl. Without looking at them, he eats.

After dinner as Walt does the dishes Sonia notices for the first time that in Katrine's house there are no pictures of the family, no children, not like her house which is nothing if not wall to wall pictures. Her own home is full of faces, looking out of frames, frozen in time. Even the picture of Fred. What a stupid name for a baby. Fred. It is a name for a cat, a goldfish. Even now she can't say his name.

That night as they slip into bed, Walt is shivering. "I don't know what it is, but I can't seem to get warm." Sonia puts a hand to his brow.

"You are a little clammy," she says. "Let me find the extra blankets."

She heads for the linen closet and begins digging into the shelves. The blankets seem to be tucked away and she has to remove some towels. A small box comes out as well. On it is the picture of a naked man's torso and the words in French, "Ideal Companion."

Gently she opens the lid and finds pills and condoms, the implements of birth control. Sonia gazes into the box. It had not occurred to her that Katrine was that much younger than she. That she would

still be using birth control. Or in fact that they would be having sex in her bed. She had imagined Katrine and Michel in her bathtub, on the toilet, asleep in bed, but not making love. To the best of her knowledge no one besides Sonia and Walt has ever made love in their bed.

Sonia and Walt used to have sex daily, sometimes twice a day when they were young. And then Fred died, and Kezia was born. It was after Kezia was born that Sonia found herself repulsed by Walt's body – the flatness of his rear end, the sour smell of his mouth, the roughness of his hands. She found ways to avoid him and he in turn found ways to avoid her.

Even here in France in this house where they have been for almost a week, it occurs to Sonia, not with any emotion but as a statement of fact, that they have yet to make love.

Now she thinks of Katrine, a woman she has never met, making love to a man she doesn't know, in her bed – a bed that has not experienced real urges in many years, but has become more a place of exhaustion and avoidance. The thought of the two of them – two strangers to her – makes her feel slightly aroused. She wants something she can hardly name. She can see their dark bodies on her sheets, her Egyptian cotton sheets with their stains.

As she heads back into the bedroom, there is a crash of lightning. Another storm is upon them. She places the blankets carefully across their bed. "Walt," she whispers, her voice throaty, moist. She touches his chest. Then crawls in beside her husband who has fallen asleep in her absence.

**I**n the morning the rain subsides but a cold wind blows from the north. The light in the bathroom flicks on and off. There is a strange sulphur-like smell.

Sonia has to get out. She says to Walt, "Let's go somewhere. Let's go back to Combray."

But Walt is cold. "I'm freezing."

Sonia opens the closet and finds some warm jackets that belong to Katrine and Michel. "Here," she says, "we can wear these."

"I don't know..." Walt looks at her askance.

"I think it's all right."

Today the church where Proust's aunt worshipped is open and Sonia and Walt slip in. It is a cold, gray church with hard wooden pews, a miserable place and after briefly walking through it Sonia wants to leave. They walk the streets of Combray, passing a store that says it sells "the best tripe in all of France."

"Ugh," Walt says, "I can't imagine what the best tripe tastes like."

Following the signs to Proust's house, they come to a blue fence with a gate that is open. They step into the small courtyard where there's a group of what appears to be two families from Scandinavia. The guide asks if they'd like to join them and they say they will. Everyone agrees that the tour can be conducted in English. Sonia and Walt get their tickets and follow the guide into the house where Proust spent his boyhood summers, the ones he immortalized in his giant novel.

They pass through bedrooms with tiny beds, sitting rooms, a dining room, until they come to the room where Proust slept as a boy. In English the guide explains involuntary memory. How Proust discovered that some memories surge up. That they surface despite ourselves.

Under a glass bowl there is a cup of tea and a madeleine cookie and the guide explains how Proust as a grown man dipped the madeleine into the tea and recalled his joyous summers in Combray. Sonia who has been quiet, contempla-

tive through the tour, suddenly speaks up. "It wasn't madeleine," she says. "He made that up. In the first draft it was something else – fruitcake or something."

The guide looks at Sonia and so does the rest of the group. "Fruitcake?" the guide says, shaking his head.

Walt points to his temple, making the crazy sign. "Fruitcake," he says.

Afterwards Sonia is furious with Walt. "That wasn't funny."

"Well, you can't go around correcting French guides."

Across the street they see a sign for an Italian restaurant. Inside people are eating. The lights are bright and welcoming. "Let's get something," Sonia says. They go in and sit for a while, waiting to be served. After a few minutes the restaurant owner comes back, a short man with stubby fingers who says to them in French with an Italian accent that he is in a bad mood and won't serve them. Then he laughs, because of course it a joke. "Of course, I will serve you," he says.

They order spaghetti with meat sauce and small salads on the side, a carafe of red wine. As Sonia is sipping her wine, she overhears someone at the next table say this is the worst July in history. That it has never been this cold. "What're they saying?" Walt asks.

"They're saying it will be beautiful tomorrow." Walt smiles, holding her hand across the table. He is such an easy man to lie to, Sonia thinks. He is such a good man to be married to. When they first met, she loved to ride on his motorcycle, her hands around his waist. "I'm so big," he told her once, "if we were ever in an accident together, I'd take the hit."

Their food takes a long time and as they are waiting Sonia notices that there are clippings all over the walls. She thinks they must be restaurant reviews

and this buoys her spirits since she imagines it must mean the food is good. But then she looks more closely.

It is the same newspaper clipping copied dozens of times and tacked all over the walls. The headlines read "N'Oubliions Pas Cybelle et Virginie." Then there is a picture of a young couple, a girl with long blond hair, a boy with a black mustache and leather jacket, beside a big motorcycle.

All over the walls are pictures of the girl and the newspaper clippings. The restaurant is a living shrine. The restaurant owner approaches their table with his rheumy eyes. "I see you are looking at the pictures. This is my daughter. She was an angel. She never gave us any trouble. They were going to be married, but they died on the road from Ram-bourgh." Sonia thinks of the memorial she saw, the red flowers in the gray gloom. "The son, he won't come home. He doesn't care. But the girl, she lived right here. She helped me in the kitchen." The man's eyes glaze over.

The restaurant owner sits with them while they eat. Sonia translates for Walt who keeps rolling his eyes. As soon as they have finished, as soon as they can, they leave. "Let's get out of here," Walt says, paying the bill. He sees Sonia drifting into one of her "moods," as he calls them. A place he can't seem to retrieve her from.

Sonia thinks about the restaurant owner with the rheumy eyes and the son who is no good. Their son would have been good. They would have named him Alex or Bernard. Not Fred. They would have thought it through more carefully. If he had lived, he would have been a good son. He would have come home for dinner on Friday nights. Sometimes when the phone rings, she imagines his voice on the other end. He is calling to ask her advice, to tell her about his day.

More than once Walt has caught her talking to herself when in fact she was speaking to Fred.

She has never told Walt what happened after the baby died. She could never bring herself to say it. Though she knows he will forgive her, there is the unimaginable possibility he might not. For years the words have sat poised, ready to fly out. She checks herself as the gray roadside zips by. She is looking straight ahead as they pass that flicker of red.

When they reach home, Max is waiting for them. At least he appears to be waiting. He is sitting in the driveway. As the car approaches, he curls his back and begins to purr.

Looking at him, Sonia remembers that his name is not Max. It is an M-word, but not Max. Then she says to herself, "Mort. That's it. Come here, Mort." And the cat turns its head, staring up at her with its green eyes the color of algae on ponds.

"Come here, Mort," and the cat purrs, rubbing itself against her calf.

Though it is hard to believe, the sun comes out the next morning. Sonia re-washes most of their clothes that have a mildewed smell and hangs them to dry in the sun. In the distance she sees the threshers, hurrying to cut the wheat. The sound of farm machinery encroaches on their calm.

In the kitchen she finds Walt scanning the guidebook. "Let's do something today," he says.

"Like what? What would you like to do?"

"We could drive to Chartres."

"Oh, yes, let's go."

It is an easy shot on the road, due north from Rambourgh. As Walt drives she reads to him from the guidebook.

She tells him about the construction of the cathedral in two different styles and the rose window. She doesn't drive stick so she always reads to him the history of the town where they are going, what they will see. "Isn't there a maze on the floor?" Walt asks, as he negotiates passing a hay truck.

Sonia scans the guide. "It isn't a maze," she says. "It's a labyrinth."

"What's the difference?"

"A maze is a puzzle meant to trick you. A labyrinth is a pattern meant to focus you."

Walt shakes his head. "You know everything."

"Actually it says that in the guidebook."

Half an hour later she walks into the huge, dark vault of the cathedral. She had not anticipated the floor, the shafts of light – blue, crimson, rose, mauve, the green of forests – bolts of light pouring in from the windows. Or the labyrinth on the floor which she had read about but did not expect those penitents on their knees, working their way through the circuits. The grandmothers hobbling, the mothers scaring their children, the young men on bloody knees, all scraping along the floor of the cathedral.

Sonia watches a priest in a corner in a confession booth, his hands folded above the head of an Indian boy. Though she cannot hear what the priest is saying, she sees the family kneeling in front of the priest, their hands reaching across the boy. She imagines what he tells them or what he would tell her. If you are good, you can be forgiven; if you pray, you will be forgiven. If you get on your knees and crawl in the name of God, you will be forgiven.

One day she put her baby down for a nap and returned to find him dead. It was not her fault, the doctor had said. It

was no one's fault. "This could happen to anyone," he'd told them. A few weeks after his funeral she had gone to the farmer's market and a young man with dark eyes was selling smoked bluefish, scallops and squid, bottom feeders.

"Mrs. Richards," the boy said. He looked vaguely familiar, though, as with the cat, she could not recall his name.

"Andrew. Andrew Rose. I was in your Spanish class a few years ago." Andrew Rose. She remembered his dark hair and eyes. He had been a student of negligible gifts, but he had looked at her intently during class. Now he was selling fish at the farmer's market.

Sonia didn't even like fish. But he asked if she could wait. He came over to her with a cup of apple cider. He told her he was a musician, but he made money at the market on Saturdays. She asked him what time he got off work and would he like to meet for coffee.

They met for coffee, then lunch, then Andrew took her back to his apartment in Prospect Heights. She had never been to a place like that before – a fifth floor walk-up along a dingy staircase, a room papered in heavy metal posters, and she made love to him not once or twice but many times on his unmade bed. She had two or three orgasms each time with his finger and his tongue and finally his penis and she was oddly nothing to him and he was nothing to her.

She would return after her Saturdays with Andrew's cum on her and think to herself: Please have Walt notice that I am different than I was before. Please have him see that I am not the same woman I was but he doesn't see and never saw beyond his own grief and his work. She just wanted him to notice that she was somehow altered and when he didn't, when life went on as it always had, Sonia found she had lost her taste for fish and for Andrew. One thing led to

another. She stopped going to the farmer's market.

From somewhere in the cathedral a strange music is heard, haunting, as if from another time. Walt has wandered outside to take pictures and then he comes back searching for Sonia and finds her standing in a circle of light. "I saw the two towers. The one Gothic and the other Romanesque. That's how long it took to build this . . ."

Sonia nods, and Walt's gaze follows hers to the labyrinth in the floor. Its pathway is illumined by the reflected light from the rose window – shards of blue, scarlet, pale gold that shimmer. It has not taken Sonia long, gazing into the labyrinth, to understand. There are no circles. No easy paths of return. Only these complex puzzles and never coming back to where you began.

Sonia falls to her knees. "What is it?" he asks. "What are you doing?"

"I'm going to do the labyrinth," she tells him.

"What do you mean?"

She points to the floor where the pilgrims and penitents are crawling. "I'm going to do it."

Sonia begins to crawl, one leg in front of the next. She makes her way slowly around the first circuit. There are ten more to go. Walt sees her wincing. There is a trickle of blood when she scrapes her knees.

She has only gone twice around when he reaches for her, gathers her up into his arms. "It's all right," he tells her, "whatever it is. Let me take you home."

Gazing out the window as they drive back to Rambourgh, Sonia formulates exactly what it is she needs to say. It is not that she slept with a boy who smelled of fish in a dirty room that she has been wanting to tell Walt. It is that somehow this boy became confused in



her mind with the boy who died and she wanted that boy more than anything. She desired what she could never have and for months she couldn't stop wanting that boy. Or the feeling of wanting him. Even now, years later.

How could she tell this to anyone, let alone her husband?

When they get home the sunlight streams down as it did when they first arrived. Sonia touches the laundry and it is dry. She begins taking it down, putting it fresh and clean into the basket. The sun is suddenly hot, baking, and Sonia looks around. There is no one to see her, just a blind cat, the garden, the miles of wheat.

She slips out of her shirt, then her shorts. She takes off her sandals. She undoes her bra and steps out of her underwear. In the warm sunlight she feels the weight of her hips, the tug of her breasts. She does not remember when she has been naked in daylight like this before.

Sonia takes a sheet off the line, dry and white. She carries it into the middle of the garden where she spreads it among the figs and the eggplant. She lies on her back, legs spread, arms at her sides. When the shadow crosses the sun, she does not move. She knows it is not a cloud but a man and she can feel his presence. She does not want him to speak or say anything and, as if he can read her mind, he does not. Walt kneels above her, his mouth to her breasts. His tongue on her lips, slowly down her thighs. The sun warms her as he slides across her body until he is inside of her and she is hot, sweating as if she is being candled from within.

Afterwards, Sonia lies in the sun in the garden, surrounded by the smell of fruit and ripe vegetables. Above her head bees buzz, and the words on the tip of her tongue fall away. She drifts off in as

peaceful a sleep as she can recall. She feels Walt slip away from her, drape a sheet across her. Then, perhaps hours later, she wakes to the ringing of the phone.

She races naked to the phone and when she picks it up, the voice on the other end is throaty and deep. At first she thinks it is a man. It is a raspy voice. Katrine calling to see how everything is. "Oh, it is glorious," Sonia tells her. "Thank you so much. I hope you are having a good time."

"Oh, it is so hot here. We didn't know it would be so hot."

"Yes, well, that can happen in New York..."

"Oh, but we never imagined.... Anyway it isn't much longer. We will be home soon."

Sonia hadn't really thought this part through. It was near the end. They would have to give back the house. And she doesn't want to. And she is hurt that Katrine does not mention their house and how well they had arranged things for them before they arrived. She does not sound grateful or even friendly. And there is something else. Katrine's throat is gravelly. It is a smoker's voice.

"Well, there are a few more days.... Well, perhaps next time we could meet."

"Yes," Katrine sighs. "But not in summer. So how is Mort?"

"Mort," Sonia says, "is fine."

Hearing Katrine say his name unsettles her. There is a note of finality in it. She realizes she will never meet Katrine. That was never part of the deal. This is just a temporary arrangement. Nothing more. Suddenly Sonia feels as if she has forgotten something. Left some little thing undone.

That night as they lie on their mattress on the floor, Sonia sits up, her face pressed to Walt's. "I have something to tell you."

Walt puts his fingers across her lips.

“It’s all right,” he tells her.

“But,” Sonia protests.

“Whatever you have to tell me,” Walt says, “I already know.”

A few days later she is airing the rugs, scrubbing the sinks while Walt vacuums the car. She wants to leave everything spic and span. She empties the fridge as if it were her house. When Walt is putting back the metal shutters, Sonia looks for Mort. She calls and calls, but he does not appear. She fills his bowl with food and water and walks away.

When she stuffs the linens into the washing machine, she finds the cat sleeping in a laundry basket. “Mort,” she says. Sonia pauses, realizing the obvious. How could this have escaped her? Mort means dead. Why would anyone name his cat dead?

Mort gazes up at her with his vacant eyes. In a matter of hours Sonia and Walt will be gone but already she sees what awaits her. She envisions dirty linen and unmade beds. Rooms reeking of smoke and rotting meat. Nothing where it belongs. Shooing the cat away, she wonders what will be missing.



Wendy L. Freedman

*on the age of  
the universe*

How did the world begin? How old is it? Do mysterious and invisible forces determine its fate? Surprisingly enough, such questions are now at the forefront of scientific research.

Over the past century, old ideas about the cosmos and our place in it have been dramatically overturned. We now know that the Sun does not occupy the center of the universe, and that in addition to our own Milky Way, space is filled with hundreds of billions of other galaxies. Even more astonishingly, we know that the universe itself is expanding everywhere, and that as space expands, galaxies are being swept apart from each other at colossal speeds.

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*Wendy L. Freedman, a Fellow of the American Academy since 2000, has been appointed as the next director of the Carnegie Observatories in Pasadena, California, where she is presently a faculty member and astronomer. For almost a decade she has been one of three principal investigators using the Hubble Space Telescope to determine the rate at which the universe is expanding. With a group of Carnegie Astronomers, she has recently begun a project to study dark energy.*

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In the last few years, tantalizing hints have begun to appear that the expansion of the universe is even accelerating. These results imply the existence of a mysterious force able to counter the attraction of gravity. The origin and nature of this force currently defy explanation. But astronomers have reason to hope that ongoing research will soon resolve some of the deepest riddles of nature.

It was Edwin Hubble, a Carnegie Astronomer based in Pasadena, California, who first learned that the universe was expanding; in 1929, he discovered that the farther away from our Milky Way galaxies are, the faster they are moving apart. A few years before, Albert Einstein in his general theory of relativity had published a mathematical formula for the evolution of the universe. Einstein's equations, like Hubble's observations, implied that the universe must once have been much denser and hotter. These results suggested that the universe began with an intense explosion, a 'big bang.'

The big bang model has produced a number of testable predictions. For example, as the universe expands, the hot radiation produced by the big bang will cool and pervade the universe – thus we should see heat in every direction we look. Big bang theory predicts that by today the remnant radiation should have cooled to a temperature of only 3 degrees above absolute zero (corresponding to a temperature of -270 degrees Celsius). Remarkably, this radiation has been detected. In 1965, two radio astronomers, Arnold Penzias and Robert Wilson, discovered this relic radiation during a routine test of communications dishes, a discovery for which they were awarded the Nobel Prize.

The current expansion rate of the universe, known as the Hubble constant,

determines the size of the observable universe and provides constraints on competing models of the evolution of the universe. For decades, an uncertainty of a factor of two in measurements of the Hubble constant existed. (Indeed, determining an accurate value for the Hubble constant was one of the main reasons for building the Hubble Space Telescope.) However, rapid progress has been made recently in resolving the differences. New, sensitive instruments on telescopes, some flying aboard the Hubble Space Telescope, have led to great strides in the measurement of distances to galaxies beyond our own.

In theory, determining the Hubble constant is simple: one need only measure distance and velocity. But in practice, making such measurements is difficult. It is hard to devise a means to measure distances over cosmological scales accurately. And measuring velocity is complicated by the fact that neighboring galaxies tend to interact gravitationally, thereby perturbing their motions. Uncertainties in distances and in velocities then lead to uncertainties in their ratio, the Hubble constant.

Velocities of galaxies can be calculated from the observed shift of lines (due to the presence of chemical elements such as hydrogen, iron, oxygen) in the spectra of galaxies. There is a familiar analogous phenomenon for sound known as the Doppler effect, which explains, for instance, why the pitch of an oncoming train changes as the train approaches and then recedes from us. As galaxies move away from us, their light is similarly shifted and stretched to longer (redder) wavelengths, a phenomenon referred to as redshift. This shift in wavelength is proportional to velocity.

Measuring distances presents a greater challenge, which has taken the better part of a century to resolve. Most dis-

tances in astronomy cannot be measured directly because the size scales are simply too vast. For the very nearest stars, distances can be measured using a method called parallax. This uses the baseline of the Earth's orbit, permitting the distance to be calculated using simple, high-school trigonometry. However, this technique currently can be applied reliably only for relatively nearby stars within our own galaxy.

In order to measure the distance of more remote stars and galaxies, astronomers identify objects that exhibit a constant, known brightness, or a brightness that is related to another measurable quantity. The distance is then calculated using the inverse square law of radiation, which states that the apparent brightness of an object falls off in proportion to the square of its distance from us. The effects of the inverse square law are easy to see in everyday life – say if we compare the faint light of a train in the distance with the brilliant light as the train bears down close to us.

To get a sense of the (astronomical) scales we are talking about, the nearest star to us is about 4 light-years away. One light-year is the distance that light can travel within a year moving at the enormous speed of 186,000 miles per second. At this speed, light circles the Earth more than 7 times in 1 second. For comparison, the 'nearby' Andromeda galaxy lies at a distance of about 2 million light-years. And the most distant galaxies visible to us currently are about 13 billion light-years away. That is to say, the light that left them 13 billion years ago is just now reaching us, and we are seeing them as they were 13 billion years ago, long before the Sun and Earth had even formed (4.6 billion years ago).

Until recently, one of the greatest challenges to measuring accurate distances was a complication caused by the pres-

ence of dust grains manufactured by stars and scattered throughout interstellar space. This dust, located in the regions between stars, absorbs and scatters light. If no correction is made for its effects, objects appear fainter and therefore apparently, but erroneously, farther away than they actually are. Fortunately, dust makes objects appear not only fainter, but also redder. By making measurements at more than one wavelength, this color dependence provides a powerful means of correcting for the presence of dust and allowing correct distances to be derived.

Currently, the most precise method for measuring distances is based on the observations of stars named Cepheid variables. The atmospheres of these stars pulsate in a very regular cycle, on time-scales ranging from 2 days to a few months. The brighter the Cepheid, the more slowly it pulsates, a property discovered by astronomer Henrietta Leavitt in 1908. This unique relation allows the distance to be obtained, again using the inverse square law of radiation – that is, it allows the intrinsic brightness of the Cepheid to be predicted from its observed period, and its distance from Earth to be calculated from its observed, apparent brightness.

High resolution is vital for discovering Cepheids in other galaxies. In other words, a telescope must have sufficient resolving power to distinguish individual Cepheids from all the other stars in the galaxy. The resolution of the Hubble Space Telescope is about ten times better than can be generally obtained through Earth's turbulent atmosphere. Therefore galaxies within a volume about a thousand times greater than accessible to telescopes from Earth could be measured for the first time with Hubble. With it, distances to galaxies with Cepheids can be measured relatively simply out to the

nearest massive clusters of galaxies some 50 to 70 million light-years away. (For comparison, the light from these galaxies began its journey about the time of the extinction of the dinosaurs on Earth.)

Beyond this distance, other methods – for example, bright supernovae or the luminosities of entire galaxies – are employed to extend the extragalactic distance scale and measure the Hubble constant. Supernovae are cataclysmic explosions of stars near the end of their lives. The intrinsic luminosities of these objects are so great that for brief periods, they may shine as bright as an entire galaxy. Hence, they may be seen to enormous distances, as they have been discerned out to about half the radius of the observable universe. Unfortunately, for any given method of measuring distances, there may be uncertainties that are as yet unknown. However, by comparing several independent methods, a limit to the overall uncertainty of the Hubble constant can be obtained. This was one of the main aims of the Hubble Key Project.

This project was designed to use the excellent resolving power of the Hubble Space Telescope to discover and measure Cepheid distances to galaxies, and to determine the Hubble constant by applying the Cepheid calibration to several methods for measuring distances further out in the Hubble expansion. The Key Project was carried out by a group of about 30 astronomers, and the results were published in 2001. Distances measured using Cepheids were used to set the absolute distance scale for 5 different methods of measuring relative distances. The combined results yield a value of the Hubble constant of 72 (in units of kilometers per second per megaparsec, where 1 megaparsec corresponds to a distance of 3.26 million light-years),

with an uncertainty of 10 percent. (The previous range of these measurements was 40 to 100 in these units.) Unlike the situation earlier, all of the different methods yield results in good agreement to within their respective measurement uncertainties.

The Hubble constant is the most important parameter in gauging the age of the universe. However, in order to determine a precise age, it is important to know how the current expansion rate differs from past rates. If the universe has slowed down or speeded up over time, then the total length of time over which it has been expanding will differ accordingly. Is the universe slowing down (as expected if the force of gravity has been retarding its expansion)? If so, the expansion would have been faster in the past before the effects of gravity slowed it down, and the age estimated for the universe would be younger than if it had always been expanding at a constant rate.

Indeed, this deceleration is what astronomers expected to find as they looked further back in time. The calculation for a Hubble constant of 72 and a universe with a slowing expansion rate yields an age for the universe of about 9 billion years. This would be fine, except for one not-so-small detail from other considerations: the measured ages of stars.

The best estimates of the oldest stars in the universe are obtained from studying globular clusters, systems of stars that formed early in the history of our galaxy. Stars spend most of their lifetimes undergoing the nuclear burning of hydrogen into helium in their central cores. Detailed computer models of the evolution of such stars compared with observations of them in globular clusters suggest they are about 12 or 13 billion years old – apparently older than the

universe itself. Obviously, this is not possible.

The resolution of this paradox appears to rest in a newly discovered property of the universe itself. A wealth of new data over the past few years has begun to evolutionize cosmology. Probably the most surprising result is the increasing evidence that instead of decelerating as expected, the universe is accelerating! One implication is the existence of a form of energy that is repulsive, acting against the inward pull of gravity. Astronomers refer to this newly discovered universal property of the universe as ‘dark energy.’

Before the expansion of the universe was discovered, Einstein’s original mathematical equation describing the evolution of the universe in general relativity contained a term that he called the cosmological constant. He introduced this term to prevent any expansion (or contraction) of the universe, as it was thought that the universe was static. After Hubble discovered the expansion, Einstein referred to the cosmological constant as his greatest blunder. He had missed the opportunity to predict the expansion.

However, a recent discovery suggests that, although the universe is expanding, the term in Einstein’s equation may have been correct after all: it may represent the dark energy. In a universe with a Hubble constant of about 70, and with matter contributing one-third and dark energy providing approximately two-thirds of the overall mass plus energy density, the resulting estimated age for the universe is 13 billion years, in very good agreement with the ages derived from globular clusters.

It is too soon yet to know whether the existence of dark energy will be confirmed with future experiments. But to the surprise of an initially skeptical community of astronomers and physicists,

several independent observations and experiments are consistent with this theory. Perhaps most exciting is the prospect of learning more about an entirely new form of mysterious energy, a property of the universe that to date has evaded all explanation.

The dark energy observed is smaller by at least 10 billion, billion, billion, billion, billion, billion times than the best theories of elementary particle physics would predict from first principles. Hence, by studying the behavior of the universe, astronomers are posing new challenges to fundamental physics. It is often the case in science that as old questions are resolved, novel, perhaps even more exciting, questions are uncovered. The next decade promises to be a fruitful one in addressing profound questions about the nature of the universe we live in.

Daniel C. Dennett

*on failures of  
freedom & the  
fear of science*

Allen Funt was one of the great psychologists of the twentieth century. His informal demonstrations on *Candid Camera* showed us as much about human psychology and its surprising limitations as the work of any academic psychologist. Here is one of the best (as I recall it many years later): he placed an umbrella stand in a prominent place in a department store and filled it with shiny new golf-cart handles. These were pieces of strong, gleaming stainless-steel tubing, about two-feet long, with a gentle bend in the middle, threaded at one end (to screw into a threaded socket on your golf cart) and with a handsome spherical plastic knob on the opposite end. In oth-

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*Daniel C. Dennett, a Fellow of the American Academy since 1987, is University Professor, Austin B. Fletcher Professor of Philosophy, and director of the Center for Cognitive Studies at Tufts University. The ideas in this note are further elaborated in "Freedom Evolves," which Viking Penguin will publish this spring. His other books include "Brainstorms" (1978), "Elbow Room" (1984), and "Darwin's Dangerous Idea" (1995).*

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er words, about as useless a piece of stainless-steel tubing as you could imagine – unless you happened to own a golf cart missing its handle. He put up a sign. It didn't identify the contents but simply said: "50% off. Today only! \$5.95." Some people purchased them, and, when asked why, were quite ready to volunteer one confabulated answer or another. They had no idea what the thing was, but it was a handsome thing, and such a bargain! These people were not brain-damaged or drunk; they were normal adults, our neighbors, ourselves.

We laugh nervously as we peer into the abyss that such a demonstration opens up. We may be smart, but none of us is perfect, and whereas you and I might not fall for the old golf-cart-handle trick, we know for certain that there are variations on this trick that we have fallen for, and no doubt will fall for in the future. When a psychologist demonstrates our imperfect rationality, our susceptibility to being moved in the space of reasons by something other than consciously appreciated reasons, we fear that we aren't free after all. Perhaps we're kidding ourselves. Perhaps our approximation of a perfect Kantian faculty of practical reason falls so far short that our proud self-identification as moral agents is a delusion of grandeur.

Our failures in such cases are indeed failures of freedom – failures to respond as we would want to respond to the opportunities and crises life throws at us. They are ominous, because the ability to be moved by consciously appreciated reasons is indeed one of the varieties of free will worth wanting. Notice that Funt's demonstration would not impress us if his subjects were not people but animals – dogs or wolves or dolphins or apes. That a mere beast can be tricked into opting for something shiny and alluring but not what the beast truly wants

– should truly want – is hardly news to us; we expect 'lesser' animals to live in the world of appearances. We aspire to a 'higher' ideal.

As we learn more and more about our own animal weaknesses and the way the technologies of persuasion can exploit them, it can seem as if our vaunted autonomy is an unsupportable myth. "Pick a card, any card," says the magician, and deftly gets you to pick the card he has chosen for you. Salespeople know a hundred ways to get you off the fence so that you buy that car, that dress. Lowering one's voice, it turns out, works very well: "*I see you in the green number.*" (You might want to remember that the next time a salesperson whispers at you.)

Notice that there is an arms race here, with ploy and counter-ploy balancing each other out. I've just somewhat diminished the effectiveness of the whispering trick against those of you who remember my exposure of it.

It is easy enough to discern the ideal of rationality that serves as the background for this battle: *Caveat emptor*, we declare, let the buyer beware. This policy presupposes that the buyer is rational enough to see through the blandishments of the seller, but since we know better than to believe this myth taken neat, we go on to endorse a policy of *informed consent*, prescribing the explicit representation in clear language of all the relevant conditions for one agreement or another. Then we also recognize that such policies are subject to extensive evasion – the fine-print ploy, the impressive-sounding gobbledygook – so we may go on to prescribe still further exercises in spoon-feeding information to the hapless consumer.

At what point do we abandon the myth of 'consenting adults' in our 'infantalizing' of the citizenry? When we learn certain messages have been tai-

lored to particular groups or particular individuals – each group targeted with specific images, stories, aids, and warnings – we may be tempted to condemn these tactics as paternalistic, and as subversive to the ideal of free will in which we are Kantian rational agents, responsible for our own destiny. But at the same time we should acknowledge that the environment we live in has been being updated ever since the dawn of civilization, elaborately prepared, made easy for us, with multiple signposts and alerts along the way, to ease the burdens on us imperfect decisionmakers. We lean on the prostheses that we find valuable – that’s the beauty of civilized life – even if we tend to begrudge those that others need.

We are actually wonderfully rational. We are rational enough, for instance, to be really good at designing ploys for playing mindgames on each other, seeking out ever more subtle chinks in our rational defenses, a game of hide-and-seek with no time-out or time limit. Once we recognize that this is an arms race, an evolving culture of manipulative ploys and enlightened counter-ploys, we can fend off the absolutism that sees only two possibilities: either we are perfectly rational – or we are not rational at all. That absolutism fosters the paranoid fear that science might be on the verge of showing us that our rationality is only an illusion, however benign the illusion from some perspectives. That fear in turn lends spurious attractiveness to any doctrine that promises to keep science at bay, our minds sacrosanct and mysterious.

For example, how do we manage to get here (rational, moral agency) from there (the amoral unfreedom of an infant)? A sane answer will not postulate a miraculous leap of self-creation; instead, it will invoke the Darwinian themes of luck,

environmental scaffolding, and gradualism: with a little bit of luck, and a little help from your friends, you put your considerable native talent to work, and bootstrapped your way to moral agency, inch by inch. A proper human self is the largely unwitting creation of an interpersonal design process in which we encourage small children to become communicators and in particular to join our practice of asking for and giving reasons, and then reasoning about what to do and why.

For this to work, you have to start with the right raw materials. You won’t succeed if you try it with your dog, for instance, or even a chimpanzee, as we know from a series of protracted and enthusiastic attempts over the years. Some human infants are also unable to rise to the occasion. The first threshold on the path to personhood, then, is simply whether or not one’s caregivers succeed in kindling a communicator. Those whose fires of reason just won’t light for one reason or another are consigned to a lower status, uncontroversially. It’s not their fault, it’s just their bad luck.

While we’re on the topic of luck, let’s first try to calibrate our scales. Every living thing is, from the cosmic perspective, incredibly lucky simply to be alive. Most – 90 percent and more – of all the organisms that have ever lived have died without producing viable offspring, but not a single one of your ancestors, going back to the dawn of life on Earth, suffered that normal misfortune. You spring from an unbroken line of winners going back billions of generations, and those winners were, in every generation, the luckiest of the lucky, one of a hundred or a thousand or even a million. So however unlucky you may be on some occasion today, your presence on the planet testifies to the role luck has played in your past.

Above the first threshold, people exhibit a wide diversity of further talents, for thinking and talking, and for self-control. Some of this difference is 'genetic' – due mainly to differences in the particular set of genes that compose their genomes – and some of it is congenital but not directly genetic (due to their mother's malnutrition or to fetal alcohol syndrome, or drug addiction, for instance). And some of it has no cause at all, the result of chance. None of these differences in your legacy are factors within your control, of course, since they were in place before you were born. And it is true that the foreseeable effects of some of them are inevitable, but not all – and less and less each year.

It is also not in any way your own doing that you were born into a specific milieu – rich or poor, pampered or abused, given a head start or held back at the starting line. And these differences, which are striking, are also diverse in their effects: some inevitable and some evitable, some leaving lifelong scars and others evanescent in effect. Many of the differences that survive are, in any event, of negligible importance to what concerns us here: a second threshold, the threshold of moral responsibility – as contrasted, say, with artistic genius. Not everybody can be a Shakespeare or a Bach, but almost everybody can learn to read and write well enough to become an informed citizen.

Consider, for instance, the affliction known as *not knowing a word of Chinese*. I suffer from it, thanks entirely to environmental influences early in my childhood (my genes had nothing – nothing directly – to do with it). If I were to move to China, however, I could soon enough be 'cured,' with some effort on my part, though I would no doubt bear deep and unalterable signs of my deprivation, readily detectable by any native Chinese

speaker, for the rest of my life. But I could certainly get good enough in Chinese to be held responsible for actions I might take under the influence of Chinese speakers I encountered.

When W. T. Greenough and F. R. Volkmar in their classic 1972 article for *Science* first demonstrated that rats given a rich environment of toys and exercise gear and opportunities for vigorous exploration had measurably more neural connections, and larger brains, than rats raised in a bare, restrictive environment, some parents and educators went overboard in their eagerness to herald this important discovery, and then began to worry themselves sick over whether junior was getting enough of the right kinds of crib toys. In fact we've known forever that a child raised alone in a bare room with no toys at all will be seriously stunted, but nobody has yet shown that the difference between having two toys and having twenty toys or two hundred toys makes any noticeable long-term difference in how the infant's brain develops. It would be extremely hard to show because so many confounding intervening influences, some planned and some fortuitous, would do and undo the crucial effect a hundred times a year as each child matured.

Still, we should do the difficult research as best we can, since it is *possible* that one condition or another is playing a larger role than suspected – and hence is a more appropriate target at which to aim our efforts of avoidance. But we can already be quite sure that most if not all of these differences in starting conditions vanish into the statistical fog as time passes. Like coin tosses, there may be no salient causation to be discerned in the outcomes. Once we have disentangled these factors to the extent that this is possible with careful scientific study, we will be able to say with some

Note by  
Daniel C.  
Dennett

deserved confidence which interventions are apt to counteract which shortcomings, and only then will we be in a good position to make the value judgments that everybody is aching to make.

In his recent book *Hooking Up*, Tom Wolfe deplores the use of Ritalin (methylphenidate) and other methamphetamines to counteract attention deficit hyperactivity disorder in children. He does this without pausing to consider the mass of evidence that indicates that *some* children have a readily correctable – evitable – dopamine imbalance in their brains that gives them a handicap in the self-control department just as surely as myopia does:

... an entire generation of American boys, from the best private schools of the Northeast to the worst sludge-trap public schools of Los Angeles and San Diego, was now strung out on methylphenidate, diligently doled out to them every day by their connection, the school nurse. America is a wonderful country! I mean it! No honest writer would challenge that statement! The human comedy never runs out of material! It never lets you down!

Meantime, the notion of a self – a self who exercises self-discipline, postpones gratification, curbs the sexual appetite, stops short of aggression and criminal behavior – a self who can become more intelligent and lift itself to the very peaks of life by its own bootstraps through study, practice, perseverance, and refusal to give up in the face of great odds – this old-fash-

ioned notion (what's a *bootstrap*, for God's sake?) of success through enterprise and true grit is already slipping away, slipping away ... slipping away ...

I wonder if Wolfe would commend a bracing regimen of eye exercises and courses in Learning to Live with Short-Sightedness in lieu of eyeglasses for the myopic. He ends up declaiming the twenty-first-century version of that old chestnut: if God had meant us to fly, he would have given us wings. So rattled is he by the imaginary bogey of genetic determinism that he cannot see that the bootstrapping he yearns to protect, the very fount of our freedoms, is enhanced, not threatened, by demythologizing the self.

Scientific knowledge is the royal road – the only road – to inevitability. Perhaps here we see the outlines of a secret fear that lies behind some of the calls to keep science at bay: not that science will take away our freedom, but that it will give us too much freedom. If your child doesn't have as much 'true grit' as your neighbor's child, perhaps you can buy him some artificial grit. Why not? It's a free country, and self-improvement is one of our highest ideals. Why should it be important that you do all your self-improvement the old-fashioned way?

These are very important questions, and their answers are not obvious. They should be addressed directly, not distorted by ill-advised attempts to smother them.

Bonnie Costello

*on poetry & the  
idea of nature*

What is nature.  
Nature is what is . . . .  
But is nature natural.  
No not as natural as that.

– Gertrude Stein, *The Geographical  
History of America*

Is nature a social and historical construct? Or does it have primacy over all our human arrangements? Is it in fact the source of those arrangements? Does the mind mirror nature, or enact it? Recent developments in cognitive science,

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evolutionary biology, and environmental studies point to a paradox perhaps best expressed in poetry: that we are creatures of nature *and* that nature is our construction. We arrange the physical world as landscape and invest it with meaning, but we do so in part for evolutionary reasons, according to deep biological, as well as social, need. Our built environments reflect changes in the history of taste and power, but our history is also geographically determined. We ‘control nature,’ but it continually subverts and even inverts our intentions.

In his poem “The Comedian as the Letter C,” Wallace Stevens sets some useful terms for thinking about the diminished thing we call Nature, by telling the story of a journey from one proposition to another. “[M]an is the intelligence of his soil,” pronounces Stevens’s Crispin as he sets out for the New World. Once there, he founds a colony dedicated to the opposite premise: “his soil is man’s intelligence. / That’s better. That’s worth crossing seas to find.”

For many modern poets, this journey is never done. The urge toward aesthetic value and significance, and toward mastery of nature by mind and culture, has repeatedly contended with a principle of humility toward the earth, and with the search for a ‘cure of the ground,’ as the locus of significance and the proper source of moral and aesthetic order. The poem’s paired precepts define a central tension not only in Stevens’s work, but also in American poetry before and after it – above all in the writing of W. S. Merwin and Marianne Moore.

In Stevens’s poem, the precepts remain linked, if only in a syntactic knot. Indeed, the two propositions together can be thought of as one formulation, not a dialectical synthesis but a chiasm, contradictory and unstable in its reciprocity. This formulation does not re-

solve dualism and stop poetic production in holistic paradox. Rather, it urges on relational thinking. “Man is the intelligence of his soil,” Stevens’s poetry tells us, and “the soil is man’s intelligence.” Stevens’s chiasm brings us back to our beginnings.

Within the romantic legacy, the phrase ‘modern nature’ can only seem dissonant. Nature is given, not invented, thus it is independent of history and becomes a potential donor of presence. Insofar as nature is exposed to modernity it seems diminished, since modernity represents fragmentation, historical transformation, technology, and rationality.

In *The Lice*, W. S. Merwin began an explicit protest against modernity’s destruction of primordial nature and primitive community. His career-long interest in ontological and mythic questions of origin has shaped and directed his more recent interest in ecology. For Merwin modern consciousness is unhappy consciousness. He would call us back from our alienation to the eternal values and presences that lie in our original connection to the earth. In *Opening the Hand* (1983) he asks, “What is Modern,” and implies that the encroachment of modernity into all corners of experience has left us in spiritual and sensorial poverty. He ponders:

Are you modern

is the first  
tree that comes  
to mind modern  
does it have modern leaves

The poem avoids question marks not just because Merwin has eschewed all punctuation, but also because his questions are rhetorical. He already knows what is modern – and he doesn’t like it.

The poem begins with an appeal to experiences that might lie outside history

– elemental human traits that might tie us to nature. That “first” tree ties us specifically to Eden, and its power as a symbol relates to its permanence as a phenomenon. Ideally the tree that enters Adam’s prelapsarian mind is one with the tree in nature and should not be categorically different from the tree that enters the reader’s mind. So it must be absurd to think of “modern” leaves, since the cycles of nature are ahistorical. If the tree in the mind is “modern,” it is only because we have cut ourselves off from eternal being and allowed images to supplant experience.

The second stanza draws on this essential, timeless humanity and sets it against the condition of the modern:

Who is modern after hours  
at the glass door  
of the drugstore  
or  
within sound of the airport

or passing the  
animal pound  
where once a week I  
gas the animals  
who is modern in bed

Modernity for Merwin means separation (glass door), anesthesia (drug store), dislocation (airport), and routine violence toward nature (gassed animals). Have these structures ruined the primitive, essential human experiences – love, sex, death, home, mere being? In accepting these conditions we lose our humanity, the poem implies. Without access to nature we are cut adrift after-hours, when the institutions we have built to serve us now master us. And as we turn from the flow of Being, to reifications of history (“is today modern”), Merwin implies, our attention to transitory over eternal values leaves consciousness bankrupt.

Merwin's longing for an original, given nature reverberates throughout his poetry, and is most apparent in his poem "Native." The poet's cultivation of native palms and flowers in Hawaii exemplifies his lonely role as protector of a nearly vanquished nature. His routine trip to his nursery organizes the writing and becomes an occasion to reflect on centuries of thoughtless despoliation of the land, and to remark on the many forms of alienation that mark modernity, alienation within which, alas, his nurturing love must operate. That a human measurement of time ("this year that is written as a number"), rather than an organic cycle, frames the poet's relation to the land, is already cause for lament. The "names in Latin" (not the Hawaiian "ohia"), the "plastic pots" and "chicken wire," even formal education, all mark our modern separation from nature and place. Merwin is clearly aware of the irony involved in converting practices that have eroded the landscape to purposes of preservation ("the shelves made of wood / poisoned against decay"), but about such irony he can only shake his head. The "flying music" and "shining gods" might be considered human creations, but here they emerge from nature, from the flowers that "open late" in memory of the time when man's spirit was one with the earth. The funeral blossoms "in the shade of the leaves I have put there" remind him of all that is lost.

Myths of origin are crucial to how we imagine ourselves in the present. A longing for the past can serve, as Raymond Williams has shown, to liberate us from the conditions of the present, to help us resist and eventually change the way things are. Protest and mourning are perennial moods of lyric, and their work helps us appreciate our power and its limits in the world we inhabit. Yet our

restless productivity calls for other poetic responses to nature which focus more on the present and changing environment and promote a lively engagement with the physical world that requires neither plunder nor submission.

For Marianne Moore, in contrast to Merwin, nature is a process, and the poet a participant. Moore's poetry predates the environmental movement by several decades, but it shares some of its prominent themes: a disdain for human rapacity, plunder, and anthropocentrism; a celebration of nature's variety, economy, and ingenuity. She too evokes the pre-social "days of prismatic color" when "Adam was alone," and laments humanity's abuses of Creation, its fall into complexity and error.

But she understands Eden in Biblical rather than secular terms, and recognizes that if human civilization is evidence of the Fall, the way out of the errors of civilization is not in a return to origins, but through the instruments evolved by the Fall – through art, reason, science, even technology. Her emphasis is not on nostalgia or elegy but on exuberant survival and regeneration, through adaptation and restless transformation – of the natural world and the human world.

The poetry emerging from these values couldn't be farther from the primitive; it is syntactically, prosodically, conceptually, and metaphorically complex – and unabashed in its assertion of poetic authority and artifice. But the natural world is not merely important for its emblematic function. In "Nevertheless," for instance, Moore pays tribute to nature's "fortitude" and demonstrates it in poetry, as in Creation. Here the referential world of nature abundantly thrives, and the made world of poetry thrives alongside it; they cooperate even as they remain independent:

Note by  
Bonnie  
Costello

You've seen a strawberry  
that's had a struggle; yet  
was, where the fragments met,  
  
a hedgehog or a star-  
fish for the multitude  
of seeds. What better food  
  
than apple-seeds – the fruit  
within the fruit – locked in  
like counter-curved twin  
  
hazel-nuts? Frost that kills  
the little rubber-plant-  
leaves of *kok-saghyz*-stalks, can't  
  
harm the roots; they still grow  
in frozen ground. Once where  
there was a prickly-pear-  
  
leaf clinging to barbed wire,  
a root shot down to grow  
in earth two feet below;  
  
as carrots form mandrakes  
or a ram's-horn root some-  
times. Victory won't come  
  
to me unless I go  
to it; a grape-tendrill  
ties a knot in knots till  
  
knotted thirty times, – so  
the bound twig that's under-  
gone and over-gone, can't stir.  
  
The weak overcomes its  
menace, the strong over-  
comes itself. What is there  
  
like fortitude! What sap  
went through that little thread  
to make the cherry red!

Most of the poem is given over – more  
numerously and more precisely than  
Merwin's – to natural images. Moore  
harvests this cornucopia from a world

she closely observes and loves. Yet no-  
where but in the imagination do all these  
objects coexist. Like a Dutch still-life  
painter, she gathers them from the tem-  
perate zones, the tropics, the desert, the  
sea, the animal and vegetable worlds,  
and then transplants them here in the  
soil of her imagination. Nature's abun-  
dance and metamorphic energy stimu-  
lates a similar profusion in the poet.  
Moore knows the names too (her Rus-  
sian "*kok-saghyz*" equals Merwin's  
Hawaiian "ohia"), but things do not  
have static identities and thus original  
names are not privileged. The mythic  
associations of "mandrake" and "ram's  
horn" require no resurrected gods to  
manifest their potency here.

Like the nature it describes, the po-  
em's language submits to no obstacle  
but winds its images in counter-point  
(or "counter-curve") to all the other or-  
ders claiming our attention. The uncon-  
ventional stanza form, with an odd line  
and a couplet in each three-line syllabic  
unit, makes the poem both solid and dy-  
namic. Meanwhile, the poem does not  
follow a linear course as Merwin's does,  
but darts from fruit to seed, seed to root,  
root to tendrill, and back to fruit – a forti-  
tude less of single-minded thought than  
of tied knots, like the natural process it  
describes. The imagination here is active  
and intervening, shaping the lines ac-  
cording to syllables, not to the syntax or  
intonation of voice, creating its own ki-  
netic energy to add to nature's ampli-  
tude. We are intensely aware of the po-  
et's uncomplacent presence, not as a  
voice but as a maker, though the "I" is  
far less present than in Merwin's poem.

History cannot vanquish this nature  
precisely because it is a process rather  
than a state. Origins have little import  
here, where apple-seeds are like hazel-  
nuts and strawberries like hedgehogs.  
And poetry is less a representation or ad-



vocacy of nature than a participation in its dynamic. Moore leaves both nature and language other than where she found them. Metaphor adds its own changes to those botanical metamorphoses the poem celebrates descriptively.

Moore has not ignored the referential truth of man's incursion into the world she beholds. "[B]arbed wire" suggests a human presence in the physical world, but not an oppressive one. Man-made objects redirect rather than obstruct nature's course. How did the prickly-pear leaf attach itself to the barbed wire in the first place? Was it transported by the wind? Or perhaps it was carried there in the hide of cattle or the wool of sheep. Regardless, the prickly pear did not arise from native soil but rather set roots down, establishing identity, a determined opportunist willing to go below the surface.

An entrepreneurial society might well recognize itself in a poetry that identifies with the protean, adaptive, transgressive, and generative impulses of nature; its tendency to relocate, move in, fill space, and adapt to or disrupt what has been erected. But such poetry may nevertheless be profoundly environmentalist in effect: it can invite our alliance with those natural processes against the stagnating immobilities of culture that obstruct creative ongoing.

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*Inside back cover*: A true color image of Messier 100 (M100), a spiral galaxy within the nearest massive cluster of galaxies, the Virgo cluster. Embedded within its majestic spiral arms are myriads of newly formed stars, some of which are the rare, luminous stars known as Cepheid variables. The high resolution afforded by the Hubble Space Telescope allows astronomers to measure Cepheids to much greater distances than previously possible. See Wendy L. Freedman on *The age of the universe*, pages 122 – 126. Image © NASA and Space Telescope Science Institute (STScI).



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