

“Two Sides of the Coin: Human Rights Pragmatism and Idolatry”

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Thank you. I am very much looking forward to our discussions and I am honored to have been asked to start the ball rolling.

Human rights is not only an idea. Over the last half century, we have amassed an enormous library of legal norms and aspirational declarations. A complex institutional practice has grown up in the shadow of those pronouncements to promote, defend, interpret, elaborate, implement, enforce and simply to honor them. It would be hard to date, but sometime not too long ago, human rights became a “movement.” It also became a governance practice.

If you are a diplomat, you can be assigned human rights as a specialty. We also have human rights networks, human rights courts, non-governmental organizations, citizens initiatives, government bureaus, international institutions, private foundations, military staffs, specialized journalists, authors, and media --- all in one or another way “doing” human rights. Diplomats denounce one another, citizens write letters and send checks, and a cadre of diverse professionals travels the world denouncing governments and promoting human rights.

And of course, human rights has also become an academic specialty – in law faculties, but also in departments of sociology, psychology, philosophy, political science, public health, and more.

In one way, of course, there is no doubt this has all been a real achievement. But my sense is that we meet at a moment of chastening. After 1989, the human rights and humanitarian agendas benefited from an enormous burst of energy and self-confidence, which in many ways is still with us. But we have all learned a great deal since then about the dilemmas, dark sides and disappointments of human rights as a tool for global governance.

The academic study of human rights has also shifted. In the first blush of enthusiasm, academic inquiry served largely as cheerleading from the bench. But those days are now past, and more serious academic engagement with the human rights experience is well underway in many fields.

This, it seems to me, is the real promise of our discussions here. Serious academic inquiry will also be critical inquiry, illuminating what has gone awry as well as what has been achieved. The human rights movement is up to it – indeed, it needs precisely this kind of serious interdisciplinary scrutiny.

My own work has borrowed eclectically and unsystematically from lots of disciplines -- from critical traditions in social theory, philosophy and literature, from institutional economics, and of course from critical and pragmatic traditions in American legal thought more generally.

But I have also learned a great deal from conversations with human rights practitioners, military lawyers, and professional humanitarians. Human rights professionals share all sorts of critical observations of their own practice with one another --- sometimes thoughtful, often quite cynical. Those who toil in the vineyards of human rights governance know what can go wrong. Our job should be to reflect on what they have learned and bring those largely private observations to light for discussion and shared evaluation.

This morning I would like to explore two related dangers of human rights work. First, the tendency toward idolatry, towards enchanting the tools and norms and practitioners of human rights, while remaining marginal to power, standing on the sidelines “speaking truth.” For this, the traditional remedy is pragmatism. The activist practice of human rights should become more pragmatic.

Second, the tendency toward pragmatism, towards participation in governance, with all the tools of policy analysis, instrumental reason and savvy evaluation of the costs and benefits of human rights initiatives that entails. For this, the traditional remedy is a return to ethics – and the dangers of idolatry.

There is no recipe or institutional roadmap to avoid these parallel difficulties, unfortunately. What we can hope for is a kind of professional, political and moral vigilance, discipline, and renewal. A posture for the humanitarian professional which is neither ethically nor instrumentally self confident, yet prepared to accept responsibility for the damage his or her initiatives will cause.

At the same time, we can say something about the institutional forms likely to encourage – and discourage – such a posture. I will end with some suggestions for political projects which might awaken the posture I have in mind, which I will illustrate by suggesting how we might think about the role of the UN Secretary General in light of these difficulties and dilemmas.

A. So, first, Human Rights and the problems of Idolatry.

The challenges of human rights work are parallel to those facing many other humanitarianisms participating in global governance.

By “humanitarianism,” I have in mind a set of widely shared commitments, which have been transformed over the last 30 or 40 years into concrete legal regimes and policy initiatives.

The commitments are quite familiar:

First, a commitment to engagement with the world, by our government, and, perhaps more importantly, by our citizenry. A commitment to multilateralism and to support for intergovernmental institutions. A broad renunciation of power politics, militarism and the aspiration to empire. A commitment to moral idealism and to projects of moral uplift, religious conversion, economic development, democracy.

And finally, a commitment to cosmopolitanism - to attitudes of tolerance, moderation of patriotism, and respect for other cultures and nations --- an aspiration that we might *rise above* whatever cultural differences divide our common humanity.

An ambivalence about rulership -- engage the world, but in the name of a cosmopolitan tolerance, reform the world, while renouncing the tools of power politics --- built into the legal and institutional regimes we use to express these humanitarian sentiments has left us reluctant to face the darker sides of our initiatives.

We prefer to think of ourselves off to one side, speaking truth to power ---- or hidden in the policy apparatus advising *other people* -- the princes -- to humanize *their* work.

In fact, humanitarian voices are increasingly powerful on the international stage --- often providing the terms through which global power is exercised, wars planned and fought.

Human rights has elbowed economics aside in our development agencies, which now spend billions once allocated to dams and roadways on court reform, judicial training and 'rule of law injection. The UN High Commissioner for Refugees designs and manages asylum and immigration policies with governments around the world.

The difficulties for global humanitarianism of all sorts arise from a reluctance to acknowledge the extent to which humanitarians have become rulers. Have become participants, rather than observers and critics, of global governance. To be responsible partners in governance, humanitarians will need to take responsibility for the costs as well as the benefits of their work.

The demand is familiar -- abandon faith all who would rule. We don't want idolaters at the wheel -- anymore than we want rule by priests or mullahs.

Before thinking about human rights in these terms, I should stress that there is no question the human rights movement has done a great deal of good, freeing individuals from great harm, and raising the standards by which governments are judged. It has cast light on catastrophic conditions in prisons around the world. All that is true.

At the same time, human rights professionals I have known rarely place the costs of their accomplishments center stage -- where they can be assessed and either refuted or taken into account.

Let me offer a brief list of the sort of costs I have in mind, all of which will be familiar.

I worry that the international human rights movement can occupy the field, crowding out other, often more effective, ways of pursuing social justice --- local or religious traditions.

I worry that human rights -- given its origins, its spokesmen, its preoccupations -- has so often been a vocabulary of the center against the periphery, a vehicle for, rather than an antidote to empire.

It is nothing new to point out how *narrowly* the human rights tradition views human emancipation --- focusing on what governments do to individuals, on participatory rather than economic or distributive issues, on legal, rather than social, religious or other remedies. Problems which are hard to formulate as rights claims for individuals --- collective problems, economic problems, problems of poverty or health --- are easy to overlook.

Emancipating people as *rights holders*, moreover, stresses their individual claims, their personal relationship with the state. This can encourage a politics of queue jumping among the disadvantaged, propagating attitudes of victimization and entitlement, while making cross alliances and solutions which involve compromise and sharing more difficult.

I am concerned that human rights so often legitimates and excuses government behavior -- setting standards below which mischief seems legitimate. It can be easy to sign a treaty --- and then do what you want. But even compliance may do more harm than good --- a well implemented ban on the death penalty, for example, can easily leave the general conditions of incarceration unremarked. Can make life-without-parole more legitimate, more difficult to challenge.

Human rights criticism can get us into things on which we are not able to follow through --- triggering intervention in Kosovo, Afghanistan --- even Iraq --- with humanitarian promises on which it cannot deliver. The universal vocabulary of human rights can seem to promise the existence of an "international community" which is simply not available.

By defining justice as a relationship to the state, rather than a condition in society, human rights can distract our attention from background norms and economic conditions which often do far more damage --- focus on the very real problems of refugees, for example, can make it more difficult to contest the closure of borders to economic migration.

Perhaps most disturbingly, the international human rights movement often acts as if it knows what justice means, always and for everyone --- all you need to do is adopt, implement, interpret these rights. But justice is not like that. It must be built by people each time, struggled for, imagined in new ways.

These are all well known worries. But they are terribly difficult to take into account --- to weigh and balance against the real upsides of human rights work.

It is easy for good hearted people, humanitarians in the best senses, to get carried away with human rights. It can be all too easy to say “let us at least begin” --- let us light the first candle.

The attitude ---let us at least begin --- is only possible if we do not see the human rights activist or policy maker exercising power, governing.

Normally, of course, such an attitude in government would be completely irresponsible. Imagine a proposed road work --- before the government builds the first mile, we expect them to have looked into the costs as well as the benefits.

I have often spoken with human rights advocates who are proud of one or another of the movement’s real achievements – when you ask them “what costs were associated with that success?” they rarely have a worked out response – it is as if human rights improvements had no costs.

This kind of magical thinking should be raise a red flag for those, like ourselves, who come to human rights from other academic fields. We should be on guard when someone seeks to recruit us to a project that only has up sides.

Indeed, the most significant challenges for the human rights movement in the years ahead will be to understand what it means to be a participant in governance, and not just a critic of it.

We will need to focus on the quotidian routines of humanitarian work, more than on the sporadic and symbolic moments of success. The prisoner of conscience released is an easily visible success, for which human rights advocates should be proud. Incarceration legitimated is less visible, an ongoing and routine effect that is far more difficult to pinpoint and assess.

At the same time, pragmatism also has its own limits.

The modern law of force represents a triumph for grasping the nettle of costs and benefits and infiltrating the background decision-making of those it would bend to humanitarian ends.

B. Consider the tradition of humanitarian law or the law *in* war.

Associated most prominently with the International Committee of the Red Cross, the law in war has always prided itself on its pragmatic relationship with military professionals. The most significant codifications have been negotiated among diplomatic and military authorities.

Of course, reliance on military acquiescence limits what can be achieved --- military leaders outlaw weapons which they no longer need, which they feel will be potent tools only for their adversaries, or against which defense would be too expensive or difficult. Narrowly drawn rules permit a great deal --- and legitimate what is permitted.

Recognition of these costs is one reason pragmatism here has also meant *antiformalism* – principles and standards replacing rules.

Since at least 1945, a vocabulary of *principles* has grown up alongside tough-minded military bargains over weaponry. The detailed rules of the Hague or Geneva have morphed into standards --- simple ideas which can be printed on a wallet-sized card and taught to soldiers in the field.

“The means of war are not unlimited, each use of force must be necessary and proportional” --- these have become ethical baselines for a universal modern civilization.

The move to principles has allowed the law in war to infiltrate the vocabulary of the military profession while blending smoothly with human rights.

As a framework for debate and judgment, this new law in war embraces the unavoidability of trade-offs, of balancing harms, of accepting costs to achieve benefit --- an experience common to both military strategists and humanitarians.

Take civilian casualties. Of course, civilians *will* be killed in war.

During the NATO bombardment of Belgrade -- justified by the international community’s humanitarian objectives in Kosovo --- strategists discussed the targeting of the civilian elites most strongly supporting the Milosevic regime. If bombing the bourgeoisie would have been more effective than a long march inland toward the capital, would it have been proportional, necessary -- humanitarian -- to place the war’s burden on young draftees in the field rather than upon the civilian population who sent them there? Some argued that targeting civilians supporting an outlaw -- if democratic -- regime would also extend the Nuremberg principle of individual responsibility. Others disagreed, of course. But the terms of their disagreement were provided by shared principles.

Limiting civilian death has become a pragmatic commitment -- *no unnecessary damage, not one more civilian than necessary*. All we need to do is figure out just what is necessary. It is in this spirit that targets in the recent Iraq conflict were pored over by lawyers.

The range of complex strategic possibilities opened up by this idea – for those inside and outside the military – is broad indeed.

We might say that the old distinction between combatants and civilians has been relativized. What, in any event, can it *mean* for the distinction between military and civilian to have *itself* become a principle? The “principle of distinction” – there is something oxymoronic here – either it is a distinction, or it is a principle.

Of course, it is but a short step from here to “effects based targeting” – and the elimination of the doctrinal firewall between civilian and military, belligerent and neutral. But, thinking in humanitarian terms, why *shouldn't* military operations be judged by their effects, rather than by their adherence to narrow rules that might well have all manner of perverse and unpredictable outcomes?

Something else is disturbing. You may remember American Major General James Mattis, poised to invade Falluja last year. He concluded his demand that the insurgents stand down with these words: “We will always be humanitarian in all our efforts. We will fight the enemy on our terms. May God help them when we’re done with them.”

It is troubling, of course, that this so often has been a vocabulary for judgment of the center against the periphery. When the Iraqi insurgent quoted on the same page of the New York Times as Major General Mattis threatened to decapitate civilian hostages if the coalition forces did not withdraw, he was also threatening innocent civilian death --- less of it actually --- but without the humanitarian promise.

When the poor deviate from the best military practices of the rich, we face a hard choice. Either their struggle is illegitimate -- or their deviance is excused because we see them as ‘backward’ --- not yet up to the demands of humanitarian civilization.

In 1996, I traveled to Senegal as a civilian instructor with the U.S. Naval Justice School to train members of the Senegalese military in the laws of war and human rights. At the time, the training program was operating in 53 countries, from Albania to Zimbabwe.

The training message was clear: humanitarian law is not a way of being nice. By internalizing human rights and humanitarian law, you will make your force interoperable with international coalitions, suitable for international peacekeeping missions. To use the sophisticated weapons we sell, we explained, your military culture must have parallel rules of operation and engagement to our own.

Most importantly, we insisted, humanitarian law will make your military more effective - - will make your use of force something you can sustain and proudly stand behind.

We explained that if you want to play on the international stage, you must place an imaginary CNN webcam on your helmet, or, better, just over your shoulder. Not because force must be limited and not because CNN might show up -- but because only force which can imagine itself to be seen can be enduring. An act of violence one can disclose and be proud of is ultimately stronger, more, *legitimate*.

This was a lesson apparently lost on those who considered the interrogation of “high

value targets” in our own war on terror. Nevertheless, the Senegalese had learned – as Secretary Rumsfeld now seems to be learning – what was required for a culture of violence to be something one could proudly stand behind. What was required, in a word, for warfare to be civilized.

But there is a deeper problem. Even in the best of times, the promise of weighing and balancing is rarely met.

If you ask a military strategist ---precisely how many civilians can you kill to offset how much risk to one of your own men? --- you will not receive a straight answer. When the Senegalese asked us, we’d say – “it’s a judgment call.” Indeed, there is no background exchange rate for civilian life. What you find instead are rules kicking the decision up the chain of command as the number of civilians increases, until the decision moves offstage from military professionals to politicians.

In the early days of the Iraq war, coalition forces were frustrated by Iraqi soldiers who advanced in the company of civilians. Corporal Mikael McIntosh reported that he and a colleague had declined several times to shoot soldiers in fear of harming civilians. “It’s a judgment call.” he said, “if the risks outweigh the losses, then you don’t take the shot.” He offered an example: “There was one Iraqi soldier, and 25 women and children, I didn’t take the shot.”

His colleague, Sergeant Eric Schrupf chipped in to describe facing one soldier among two or three civilians, opening fire, and killing civilians: “We dropped a few civilians, but what do you do. I’m sorry, but the chick was in the way.”¹

There is no avoiding decisions of this type in warfare. The difficulty arises when humanitarian law transforms *decisions* about whom to kill into *judgments*.

If you ask leading humanitarian law experts how many civilians you can kill for this or that, you will also not get an answer.

Rather than saying “it’s a judgment call,” however, they are likely to say something like “you just can’t target civilians” --- thereby refusing to engage in the pragmatic assessments necessary to make that rule applicable in combat.

In psychological terms, it is hard to avoid interpreting this pragmatism-promised-but-not-delivered as a form of denial. A denial --- by humanitarians and soldiers --- of their participation in the machinery of war.

¹Quoted in The New York Times, March 29, 2003 in Dexter Filkins, “Either Take a Shot or Take a Chance,” page A1 and B4.

The strength and significance of the military's *own* culture of discipline can be difficult for civilians to grasp. It part bureaucratic necessity, part instrumentalism, central to the effectiveness of the mission and to the safety of colleagues. All this is wrapped in honor, integrity, in a culture set off from civilian life, a higher calling.

Although military discipline is a social production, it is also, and perhaps more importantly, a work on the self. The United States Army runs a recruitment commercial which implores "see your recruiter, become an army of one." The promise is power, to be sure. But also discipline -- self-discipline. If you join, you will be transformed inside --- *you* will become an army, coordinated, disciplined, your own commanding officer, your own platoon, embodying within yourself the force of hundreds because of the work you will do, and we will do, on you.

Of course, there is opportunity for individual judgment, error. Soldiers who run amok.

We remember the pilots who flew beneath the Italian ski-lift, slicing the cables. Or the precision guided missile fired in Kosovo with the tail fins put on backwards -- spinning ever further from its programmed target until it exploded in a crowded civilian marketplace. The American pilots who bombed their Canadian allies. Or, for that matter, My Lai, the abuse of prisoners in Baghdad, and all the other tales of atrocity in war.

But it is not clear humanitarianism offers any more workable limits than military discipline -- indeed, it may be the opposite.

When soldiers are tried for breach of military discipline, their defense is often *stronger* under the vague standards of international humanitarian law than under national criminal or military law.

Indeed, the standards of self-defense, proportionality and necessity are so broad that they are routinely invoked to refer to the *zone of discretion* rather than limitation. I have spoken to numerous Navy pilots who describe briefings filled with technical rules of engagement and military law. After the lawyer leaves, the commanding officer summarizes in the empowering language of international law --- "just don't do anything you don't feel is necessary, and defend yourself --- don't get killed out there."

We need to remember, moreover, what it means to say that compliance with international law "legitimizes."

It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, justified.

I was struck that Iraq war reporting was filled with anecdotes about soldiers overcome by remorse at having slaughtered civilians --- and being counseled back to duty by their officers, their chaplains, their mental health professionals, who explained that what they had done was necessary, proportional, and therefore just.

After the Gulf War, it was widely acknowledged that the decision to take down the electrical grid by striking the generators had left power out for far longer than necessary, contributing to unsanitary water supply and the unnecessary death of many tens of thousands from cholera. Military planners now readily admit this was a mistake --- and they have revised their procedures accordingly. In Kosovo, and now Iraq, such a devastating blow to the electrical grid was not struck. But they will *not* say that the Gulf War strike lacked proportionality or necessity, or that it was excessive given what they knew then and what they were trying to achieve. These legal standards remain the solid ground on which their acts, and the deaths of many thousands, can remain legitimated.

C. So, what can be done?

I certainly hope the humanitarian impulse will continue to mobilize people to become partners in rulership. My hope is for a more responsible, and more effective humanitarianism.

How are the twin perils of idolatry and instrumental reason to be avoided?

Ultimately, responsible rulership must be practice of each humanitarian professional. Much will depend on the professional style and sensibility of those who do this work, and their willingness to welcome, rather than obscure, the hard choices of governance.

We should encourage aspiring humanitarians to embrace the exercise of power and to develop an enhanced appetite for political conflict, and for the responsible exercise of human freedom – rather than the ethical self-confidence of idolatry or the evasions of instrumental reason.

Try, for example, to imagine a humanitarianism not as a codification of what we know justice to be, but as a lexicon for criticizing the pretenses of justice as it is.

But it is not all professional posture and moral mental health. We will need to construct new modes of politics, a new global governance.

I would like to recruit human rights and humanitarian professionals to the project of building a new global politics – rather than alternately denouncing and legitimating the old.

Things like “governance” do change. In Foucault’s terms, there was the gallows and then there was the prison timetable.

Or, if you prefer, for a long time an “economy” is an input-output cycle to be managed, harnessed for national growth or development, and then suddenly an “economy” is a market of individuals responding to price signals, allocating resources to their Pareto-Optimal destinations through exchange.

In rough terms, on a global level, we might think of two past moments of new

governance: new ways to govern, but also new meanings for “politics,” new identities for subjects and rulers, for law, for the state, and for things like “culture.”

Sometime between 1789 and 1900 – and as late as 1960 for much of the colonial world – governance was consolidated on a global basis around the national sovereign state. People were organized into territorial states, granted citizenship, and government was defined as what national public authorities did. Building a national public politics across the planet had a strong emancipatory dimension – slaves, women, workers, peasants, colonial dominions obtained citizenship in relationship to the new institutional machinery of a national politics. New governance – called “*government*,” centered on Parliament, and offered new identities for sovereigns and subjects, status dissolved into nation and contract.

The twentieth century also remade global politics – it was no longer all nations all the time. Law infiltrated the political. Sovereignty, like property, was disaggregated into bundles of rights. Corporatism, administration, public/private partnerships, management – boundaries eroded, merged. Federalism, power sharing, subsidiarity, devolution. Interdependence, social solidarity, policy management.

In short – a politics of *governments* was replaced by a process of *governance*.

How might we remake global politics for the 21st century? I fear human rights is not the way forward --- it focuses too longingly at the perfection of a politics already past its prime.

A new politics would make people again become political citizens. How will they experience the responsible freedom of discretion? How will they contest decisions affecting them. What could a transnational public capacity mean?

I worry that the human rights revolution is a delay and diversion on this important project.

The West does seem to be up against some pretty daunting challenges. There is an internal demographic challenge, particularly in Europe and the ex-Soviet Union, which will force a reckoning with immigration or security or both.

And there are twin challenges from the rest of humanity. The challenge posed by economic success in the third world – by the hundreds of millions of Chinese and Indian individuals who have emerged from poverty into our industrial present. Speaking loosely, and to put it in the starkest terms, with economic globalization and the continued loss of public capacity, large swaths of the world will, in twenty years, have whatever social security system, whatever environmental regime, whatever labor law, whatever wage rate prevails in China.

And there is the parallel challenge posed by economic failure in the third world – by the revolution of rising frustrations among the hundred of millions of individuals who can see in, but for whom there seems no route through the screen except through rebellion and spectacle.

If you put these threats together, we confront an accelerating social and economic dualism. A rumbling fault line between two global architectures, between an insider and an outsider class, between leading and lagging sectors, both *within and between* national economies and political units.

This is not a clash of cultures, of modernity and tradition or secular and religious, still less of Weberian Protestantism and Islamic fundamentalism. It is a clash between different modes of being in relation to the twentieth century culture of economic, political and social management. Two modes of being, both present not just between and within national societies, but also within us.

What would “new governance” mean in such a moment?

Heterogeneity, in a word. Focus on the dislocations and ruptures between overlapping regimes in our governance system, and on the *lack* of fit between our legal and institutional procedures and the unfolding of social life.

Heterogeneity poses obvious challenges to any universal ethics. But it threatens the universalism of instrumental or pragmatic styles of governance as well. This is easy to see in a world of asymmetric warfare. In every post-colonial conflict, military discipline has broken down, precisely because the idea of a universal metric for calculating proportional, necessary, or humane became unsustainable.

Attentiveness to heterogeneity might also serve as an antidote for the rationalizing tendency to interpret everything in functional terms, *as if* it had been designed or could be seen to work as a *response to a problem*. It might help us resist the intellectual practice I call “as if pragmatism” – writing and speaking *as if* things had been designed by a benign spirit responding to general needs and expressing general will.

Within the nation state -- even within the European Union – we struggle for a rich political life of legal, economic, social and cultural solidarity. We think of international life more harshly – a world of military power and economic competition, in which all we can hope for is stability, ameliorated by modest humanitarian initiatives. We would ask how this might be changed.

Some players do mobilize the international regulatory regime more effectively than others – how might this power and competence be more widely shared.

In economic affairs, the institutional question would be this – who will inherit the failure of the Washington Consensus? The collapse of state socialism was inherited by the banks, the Americans, the international financial institutions. But after neo-liberalism, who? How, for example, might nation-state – or global cities -- be strengthened as a shield for the weak, as a substantive guarantor of policy diversity, as an arena for democratic political life?

As confidence in the “market shocks” of neo-liberal policy and structural adjustment

ebbs, how might the space for diverse national or local strategies and experiments be fostered?

The world is increasingly divided. Not only between rich and poor nations, but also between advancing and declining economic sectors, regions, and social groups. Globalization can sever links – supply chains, social networks, traditional patterns of credit – that might moderate these divisions. How might positive linkages between leading and lagging sectors be preserved and new links forged?

How, for example, might the flow of capital and goods be managed alongside the flow of labor. Could we structure a grand bargain linking the free movement of labor, capital and goods. How can borders be secured without disrupting the productive flow of migrant labor, of remittances, of social bonds, of technological and economic know-how?

Our humanitarian and human rights traditions focus on crisis and abuse and excess, and on easily visible political and humanitarian disasters, or short term interventions.

How might we strengthen our capacity to address the quotidian, the background worlds of ongoing injustice? Or to sustain long term engagement with one another?

These are all enormous issues. Nevertheless, let me offer a couple of utopian heuristics to suggest what a true “new governance” might mean – or at least the scale of the effort required:

Imagine a generalized promise of political, social, economic and cultural inclusion, along the lines of the trade regime’s promises of Most Favored Nation or National Treatment. The EU has made an open promise to societies on its borders for a generation, changing regimes in from Greece and Portugal to the new states of the East. The World Bank tells us that nothing concentrates the mind or facilitates development as surely as promise of inclusion in a rich man’s club.

What if the EU had responded to the challenge of terrorism as they responded to the fall of the Berlin Wall -- offering to change regimes from Eastern Turkey to Western Pakistan the European way? What would accession negotiations mean to Morocco, Jordan, Tunisia, Israel and Palestine, for Egypt? Does Darfur have a future in the European home? In NAFTA, in the United States – what is the right response to genocide beyond criminal courts and humanitarian aid and transitional justice?

What if every national and regional unit made an open-ended offer of inclusion – statehood in Brazil, in the US, in Mexico. Or if statehood were no longer exclusive – if Massachusetts could do some kind of a deal with Canada, Alberta with Montana, New York with Dubai – or Rye, and so on.

Or imagine that every human was born not only with a national passport, but with a once-in-a-lifetime five year non-renewable residence permit for any country of his or her choice? It could be regulated, managed, limits could be set, but imagine the global recognition of a birthright to mobility.

Or imagine, and here I borrow a friend's utopian heuristic for American cities and suburbs, that each person on the planet were allocated three votes, and could cast them in any election they cared about in the world – again, it could be managed, regulated. But it would be a new politics, without even departing from the democratic preoccupation with voting or the 20th century identification of politics with the institutional sites of public authority.

Or imagine expanding the grand jury from crime to global policy. It is customary now before war is declared – or before a cruise missile is fired – to ask lawyers to pore over the targets and scrutinize the justification, and to ask foreign policy professionals to debate the implications in fancy journals and on Sunday morning television. We now invite the soft experts of the military industrial complex, the financial class, and the human rights community, to join in.

But imagine empanelling a Policy Jury of citizens, global citizens, not to consult or participate or dialog, but to *decide*. If, behind closed doors, the experts could convince the policy jury by majority vote, let the missiles fly.

I sketch these ideas not because they would work or even be good ideas, but to signal the scale of what would, in my view, be necessary before we could speak of global “new governance,” 21st century style.

D. But let me end with a more modest proposal --- for a reorientation in the role of the UN Secretary General, to relax his exposure to the dilemmas of universal ethics and universal reason.

That the next Secretary General's main tasks will be institutional management and quiet diplomacy is certain. That he will also seek – or find thrust upon him -- a more public role as the moral voice of the “international community” seems unavoidable, and will certainly often be valuable. There is no doubt that the global media will sometimes treat the Secretary General of the United Nations as a kind of secular pope or Hollywood idol. Speaking from this “bully pulpit,” the Secretary General can certainly focus attention on issues, crises and ethical failures that might otherwise fall off the global agenda. His geopolitical vision can shape the world's political architecture, particularly where his vision of multilateralism and the role of the United Nations is clear and compelling.

Kofi Annan has often played this role with real skill, establishing himself in the eyes of many as the ethical voice for humanitarian and multilateral values on the global stage. A few weeks ago, I was at a conference in New York assessing Annan's term to see what can be learned for his successor. The experts convened there agreed that he had been most successful as a “normative entrepreneur,” particularly in the human rights field, strengthening the sense among global elites that there is an “international community” whose ethical consensus deserves respect, and that human rights and international law provide its common vocabulary.

In my view, however, the next Secretary General should be cautious about playing this role. The dangers that come with this terrain are real, and easy to overlook.

It is no longer plausible – if it ever was – to imagine an “international community” speaking with a single ethical voice.

Moreover, the world’s most pressing problems are diverse – and will yield only to complex, heterogenous cocktails of policy at national and international levels.

They will not yield to universal rules – still less to ethical nostrums.

We should not pin all our cosmopolitan and multilateral hopes on the United Nations system. The multilateral order is far more plural, heterogenous, shifting --- the United Nations is one site among many.

Even the most successful inter-governmental projects require coordination, communication, and the juxtaposition of diverse multilateralisms. Shifting coalitions of the willing – and the coerced – are our future.

The United Nations can be the symbolic point for many things – but natural disasters, transnational pollution, global problems of health, unemployment, development will yield only to diverse solutions.

Even human rights --- a human rights community that is tightly coordinated, converged on the UN will not be nearly as effective as one that speaks in diverse ways, to different audiences and experiments with different ideas about what justice might become.

Such multiple solutions, local solutions, are difficult for a Secretary General to advance so long as he remains committed to the priority of his own institutional system and to the natural superiority of universal norms.

But imagine a Secretary General who declined the opportunity to pose as the world’s “leading diplomat and ethical spokesman.” Who left that to Condeleeza Rice and Pope Benedict – and perhaps to Bill Gates. We can all see that the United Nations is not a world government. But it is also not – nor should it try to become -- a global religion.

Imagine the Secretary General as an entrepreneur for new ideas about the range and constellation of policies through which those with public capacity – in diverse configurations at many levels --- might address the most pressing of our global problems.

The ethical challenge for the next period will be to dissolve the hubris of a universal ethics, and to communicate modestly across ethical divisions, heightening our sense for the plural and heterogenous moral possibilities *within* the west, the rest, the center, the periphery.

The twin difficulties of idolatry and instrumental reason are evident when we mix rights and policy balancing. When we balance the importance of property rights against the needs of sick people for access to effective medicines at reasonable cost, we choose property. We allow “sovereignty” and non-interference and local control to become powerful ethical counterweights

to social justice, environmental stewardship and mutual responsibility. And, of course, we have allowed national self-defense and security to legitimate, ethically and normatively, the suffering and death of many thousands in war.

We know that normative principles travel in pairs, at the global as at every other level. Rights conflict. Principles conflict. The most revered texts in the human rights canon are vague and open to interpretation. As a result, it is unlikely that any articulation of a global normative consensus will escape being perceived by those who disagree – and people *will* disagree --- as partial, subjective, selective. These are the wages of speaking universally in a plural world.

They are compounded where the spokesman is also a diplomat and civil servant. There has, in fact, always been something of a mismatch between the Secretary General's institutional role and the aspiration to articulate a universal moral vision. We must remember that the Secretary General is also a statesman and civil servant. He works for the Member States and will be needed for a range of complex diplomatic initiatives. It is difficult to speak ethically in the morning and diplomatically in the evening.

Moreover, the moral authority and political legitimacy necessary to be the conscience of the international community must be carefully husbanded and deployed shrewdly, strategically -- - neither too often nor too rarely. The Secretary General's ethical pronouncements must rise above the banal, but he must also be careful lest they be too controversial. When he speaks ethically, he must seek to unite, not divide the international community. He must be seen to call the international community to its best self, reminding it of values and virtues which are, at least in aspiration, universally shared. And all the while, he must retain the confidence of the permanent members of the Security Council, the major donors, the group of 77, and all the other political partners he will need to be successful as an institutional manager and diplomat.

Taken together, this is not the recipe for inspired moral guidance. Indeed, much about the Secretary General's other institutional roles ill suits him to seek comparative advantage in ethics.

Indeed, the crisis in confidence that has crashed on the UN Human Rights Commission is not only about the appalling human rights record of governments that have served on the Commission. It also reflects the limits of turning the articulation and development of human rights over to *governments* in the first place. That governments would want to judge one another, to chastise their enemies and praise their friends, in a widely shared ethical vocabulary is not surprising. What is surprising is that the human rights community has been so enthusiastic about their taking up the task.

The limits of a diplomatic ethics parallel the limits of any established church: not good for the government, not good for the church.

There are, moreover, real dangers to universal normative entrepreneurialism, regardless of who steps forward as spokesman. Expressing the ethical conviction of the international community can suggest that there is, in fact, an "international community" ready to stand behind

one's pronouncements. It can lead people to intervene, multilaterally or otherwise, where there is no stamina, in fact, to follow through. It can crowd out other local or religious terms for articulating global justice concerns – or consign them to opposition as the “other” of a universal civilization.

In the human rights field, the years after the end of the Cold War witnessed great optimism about the potential for harmonizing the work of all kinds of diverse international, national and local social justice institutions under the umbrella of the United Nations. It can certainly be useful to coordinate the global response to humanitarian disasters, just as it can be useful to build a common ethical vocabulary among those seeking social justice and humanitarian objectives in diverse cultural, economic and political situations. But convergence can be taken too far. It is also useful to have diverse capacities, institutions with diverse political affiliations and different vocabularies for social justice, in approaching both disasters and more quotidian injustice.

In my view, the moral challenge is not to interpret all the world's cultures into the harmonious terms of a universal ethical canon, but to build bridges, conversations, cooperation, understanding, respect among the world's quite different ethical worlds. For the Secretary General – or the international legal professional --- to play *this* role, he or she must pull back from the ethical self-confidence that goes with speaking for the universal. Just as he must pull back from the misplaced idea that universal problems will yield to universal reason, universal norms, universal solutions.

One size truly does not fit all. Enchanting the norms and institutions of the UN – or human rights – system are poor substitutes for the hard moral and political work of discovering what justice means each time and in each place anew.

The truth is that we do not know what justice will mean in a complex and changing world, anymore than we agree on the terms through which it should be sought. Neither we, nor the next Secretary General, nor our human rights catalog should pretend otherwise.

Thank you.