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**David Kennedy: The Dark Sides of Virtue**

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ONE  
The International Human  
Rights Movement:  
Part of the Problem?

There is no question that the international human rights movement has done a great deal of good. It has freed individuals from great harm, provided an emancipatory vocabulary and institutional machinery for people across the globe. It has raised the standards by which governments judge one another, and by which they are judged, both by their own people, and by the elites we refer to collectively as the “international community.” A career in the human rights movement has provided thousands of professionals a sense of dignity and confidence that one sometimes can do well while doing good. The literature praising these, and other, accomplishments is vast. Among well-meaning legal professionals in the United States and Europe—humanitarian, internationalist, liberal, compassionate in all the best senses of these terms—the human rights movement has become a central object of devotion.

But are there also dark sides? This chapter develops a short list of hypotheses about the possible risks, costs, and unanticipated consequences of human rights activism. These are all familiar to human rights activists; they circulate in the background of conversations as worries, cynical doubts. The best human rights practitioners often assess their work in just these terms. Sometimes, of course, critical reflection can itself become part of the problem. If the costs turn out to be low or speculative, any time spent fleshing them out is time lost to the project of using human rights for emancipation—although

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having “been through” criticism might also strengthen the movement’s ability to be useful. Periodic hand-wringing might do more to stabilize the humanitarian’s confidence than to undermine it, even where it turns out the costs far outweigh the benefits. But in the end, one cannot think pragmatically about human rights work without some such list of possible costs in mind.

In the first instance, thinking pragmatically about humanitarianism means taking care that humanitarian intentions are realized—that the purposes of human rights are achieved. This chapter focuses on pragmatism in this sense—assuming the goals and intentions of humanitarian action are clear, how can we improve our ability to assess whether humanitarian work in fact contributes more to “the solution” than to “the problem”? Doing so requires careful evaluation of the benefits and the harms of our humanitarian endeavors. The list of hypothetical harms developed here might serve as a checklist.

Difficult as such assessments can be to make, they get us only partway. The problem and the solution will not look the same to everyone. Nor will the costs and benefits of humanitarian action. For those who feel the death penalty deters, its abolition is a cost which effects a distribution from victims to criminals. Although I speak in this chapter of costs and benefits (or the “problem” and the “solution”) as if we shared the aspiration for a more humanitarian, progressive, and egalitarian global society, it would be more accurate to think of these “benefits” as distributions of power, status, and means toward those who share these objectives and away from those who don’t.

A pragmatic assessment of humanitarian activity also requires attention to these distributional consequences. Doing so will take us to the special difficulties of representation—advocacy *on behalf of* particular groups or individuals—and of political commitment in humanitarian work, as well as to the intensely human problems raised by the ambivalent and contradictory feelings we bring to assessing these choices. The chapters which immediately follow address these human and political difficulties more directly. The politics of international humanitarianism preoccupies the later chapters on humanitarian policy making. Here, I develop a list of possible costs, as a first step toward pragmatism about humanitarian action.

A checklist of possible downsides is not a general critique of human rights. Benefits and harms must be analyzed in particular cases, under specific conditions, at particular times. The cases and conditions may be extremely specific (pursuing this petition will make this magistrate less likely to grant this other petition) or quite general (articulating social welfare needs as individual “rights” makes people everywhere more passive and isolated). Indeed, benefits are often cast in immediate and local terms—these people out of this prison, those people provided with housing, this country’s political process opened to elections, monitored in this way, these individuals spared the death penalty—while costs tend to be expressed more generally, as indictments of the human rights “idea.” Most likely, however, these general costs will also be more or less intense in different times and places.

Toting up the costs and benefits is no simple thing. It is as easy to give human rights too much of the blame for costs as it is too much credit for benefits. Sometimes, of course, the costs of human rights—as a vocabulary and as a movement—arise when they are *misused*, *distorted*, or *co-opted*. Or the benefits and burdens of human rights might, in the event, be swamped by the effects of other powers. That said, we should be suspicious if costs are *always* attributed to people and forces outside the movement, just as we should be suspicious of claims that everything bad which happens was somehow always already *inherent* in the vocabulary used by unwitting human rights advocates. And it will be terribly hard to isolate the effects of “human rights”—humanitarians will also speak other languages, or use the human rights movement and its vocabulary to get in the door before speaking instrumentally or in more exclusively ethical terms. Ultimately, we must also compare whatever assessment we make of the human rights vocabulary against the costs and benefits of *other* emancipatory vocabularies which might be used to the same ends.

In the end, of course, different observers will weigh the costs and benefits of human rights activism in different ways. Imagine an effort to use the vocabulary and political capital of the international human rights movement to end capital punishment in the Caribbean. It might well turn out that leading corporate lawyers acting pro bono in London define the problem and solution differently than do lawyers working with nongovernmental groups in London, and differ-

ently again from lawyers and organizers in the Caribbean. For some the anti-death penalty campaign might seem a distraction from more pressing issues, might occupy the field, might, if the campaign is successful, even legitimate other governmental (in)action or other social conditions which kill more people in the Caribbean. There might be a struggle within the movement about the usefulness of the vocabulary, or within the vocabulary about the conditions and costs of its deployment in particular places. Some people might use the death penalty and the human rights vocabulary to generate interest in other issues or other vocabularies—others might use it to close off broader inquiries. Wherever you are located, if you are thinking pragmatically about devoting scarce institutional resources to furthering or limiting the effort to bring human rights to bear on the instance of Caribbean death penalty, it will be necessary to come to some conclusion, however tentative and general, about how these conflicts and divergent effects will net out.

And the factors influencing the pragmatic humanitarian making such an assessment will not, by any means, all be empirically proven, or even provable. To count as a cost (or benefit), effects must be articulated only in terms plausible enough to persuade people seeking to pursue human rights to take them into account. People will evaluate risks, costs, and benefits differently. Some people are most influenced by ethical criticism, others by political, philosophical, even aesthetic objections. Others focus on the bad effects not so much of what the human rights movement does, as what it leaves undone. Costs might include what happens to potential victims and violators of human rights, or to innocent bystanders. They might include what happens to other elites—people doing good things weakened, doing bad things strengthened—or which affects participants in the human rights movement itself: professional deformations of various kinds which might be subject to ethical, political, or philosophical criticism and then count as a cost of the endeavor.

For some people, it matters (ethically, politically, philosophically, aesthetically) what the human rights movement *expresses*. If the human rights movement increases the number of descriptions in legal decisions or elsewhere of women as mothers-on-pedestals or as victimized care givers, that, for some people, is already a cost—ethically, aesthetically, politically. It is bad if women have been repre-

sented in too narrow or stereotypical a fashion, even if the only consequence is to pry loose some resources for redistribution to women. A number of the criticisms I have included here are of this type.

For other people, and I must admit, for me, nothing goes in the “costs” column until the human rights movement has a bad *effect*. A bad effect means influencing someone to act (or fail to act) or to think in a way which counts as a cost (again, ethically, politically, philosophically, aesthetically) for the person making the argument. Intensifying stereotypical representations of women might be thought to have an effect on at least some women, encouraging them to *become* narrower and more stereotypical or to think of themselves more narrowly than they otherwise might. We might imagine this happening to plaintiffs, to women using the human rights movement as a vehicle of self-expression and freedom, or to others who learn who they are from what the human rights movement says women are. And, of course, such representations would have an effect if they encouraged people in some positions of authority — judges, men, legislators, other women — to exclude women not meeting this stereotypical profile from benefits they would otherwise receive.

In building my own checklist of downsides, I have tried to eliminate criticisms that are altogether disconnected from effects — for example, the debate about whether human rights “really exist” or are “just” the product of efforts to articulate and use them. Although I find it hard to take too seriously the idea that rights *exist* in some way, let us assume that they do, and that the human rights movement is getting better and better at discovering and articulating them. If it turned out that doing so caused more misery than it alleviated, because human rights turned out to be more part of the problem than the solution, then, as a good-hearted legal professional, I would advocate our doing all we can to keep the existence of rights a secret. In a similar way, if it turns out that rights are “just” a fantasy, a social construction, and so forth, that tells us nothing about whether they are useful or not. If they are more useful than not, more power to the society which constructed them.

Traditional debates about whether human rights do or do not express a social consensus, in one society or across the globe, are similarly beside the point. Indeed, we could see them as updated ways of asking whether human rights really exist. Let us say they do express

a social consensus—how does this affect their usefulness? Perhaps being able to say they express consensus weakens them, thins them out, skews their usefulness in various ways; perhaps it strengthens them. To decide, as my grandmother used to ask, “whether that’s a good thing or a bad thing” we still need to know whether once strengthened or skewed or weakened or whatever they are useful, and if so for what and for whom.

Or take debate about whether human rights “talk” is or is not coherent. Let’s say the human rights vocabulary, institutional apparatus, even the soul of the human rights advocate are riddled with contradictions which would not stand up to logical scrutiny for a minute. Knowing only this does not move us any closer to an understanding of whether they are part of the problem or the solution. Perhaps ambivalent porosity is their secret strength—to the extent human rights is useful, we should then be grateful for the contradictions. Perhaps incoherence is a fatal weakness, but if human rights creates more problems than it solves, this would be all to the good.

I have also left out criticisms which could be answered by intensifying our commitment to the human rights movement—that rights are not adequately enforced, that the list of rights is underinclusive, that participation in the movement or in rights enforcement could be broader, that rights are poorly or unevenly implemented because of opposition from people outside the movement or the movement’s own lack of resources. Criticism of this sort is certainly important, but it sheds less light on whether the human rights idea and movement themselves are causing harm—unless it appears that these deficiencies will not, in fact, be solved by more commitment and resources and will have bad effects.

Here is my short list of pragmatic worries.

#### HUMAN RIGHTS OCCUPIES THE FIELD OF EMANCIPATORY POSSIBILITY

##### *Hegemony as Resource Allocation*

The claim here is that this institutional and political hegemony makes other valuable, often more valuable, emancipatory strategies

less available. This argument is stronger, of course, when one can say something about what those alternatives are—or might be. But there may be something to the claim that human rights has so dominated the imaginative space of emancipation that alternatives can now be thought only, perhaps unhelpfully, as negations of what human rights asserts—passion to its reason, local to its global. As a dominant and fashionable vocabulary for thinking about emancipation, human rights crowds out other ways of understanding harm and recompense. This is easiest to see when human rights attracts institutional energy and resources which would otherwise flow elsewhere. But this is not only a matter of scarce resources.

#### *Hegemony as Criticism*

Human rights also occupies the field by implicit or explicit delegitimation of other emancipatory strategies. As an increasingly dominant emancipatory vocabulary, human rights is also a mode of criticism, affecting other emancipatory projects which, by comparison, can seem “too” ideological and political, insufficiently universal or objective. Where this is so, pursuing a human rights initiative or promoting the use of human rights vocabulary may have fully unintended negative consequences for other existing emancipatory projects, including those relying on more religious, national, or local energies. Of course this takes us directly to a comparative analysis—how do we compare the gains and losses of human rights to the (potential) gains and losses of these other vocabularies and projects?

#### *Hegemony as Distortion*

To the extent emancipatory projects must be expressed in the vocabulary of “rights” to be heard, good policies which are not framed that way go unattended. This also distorts the way projects are imagined and framed for international consideration. For example, it is often asserted that the international human rights movement makes an end run around local institutions and strategies which would often be better—ethically, politically, philosophically, aesthetically.



Resources and legitimacy are drawn to the center from the periphery. A “universal” idea of what counts as a problem and what works as a solution snuffs out all sorts of promising local political and social initiatives to contest local conditions in other terms. But there are other lost vocabularies which are equally global—vocabularies of duty, of responsibility, of collective commitment. Encouraging people concerned about environmental harm to rethink their concerns as a human rights violation will have bad consequences if it would have turned out to be more animating, for example, to say there is a duty to work for the environment, rather than a right to a clean environment.

The “right to development” is a classic—and well-known—example. Once concerns about global poverty are raised in these terms, energy and resources are drawn to developing a literature and an institutional practice of a particular sort at the international level. Efforts which cannot be articulated in these terms seem less legitimate, less practical, less worth the effort. Increasingly, people of goodwill concerned about poverty are drawn into debate about a series of ultimately impossible legal quandaries—rights of whom, against whom, remediable how—and into institutional projects of codification and reporting familiar from other human rights efforts, without evaluating how these might compare with other deployments of talent and resources. Meanwhile, efforts which human rights does not criticize are strengthened. For example, neoliberal players who do not see development as a special problem may find it easier to take over international economic policy affecting global poverty.

#### HUMAN RIGHTS VIEWS THE PROBLEM AND THE SOLUTION TOO NARROWLY

##### *Narrow in Many Ways*

People have made many different claims about the narrowness of human rights. Here are some: the human rights movement foregrounds harms done explicitly by *governments* to individuals or

groups—leaving potentially more severe harms brought about by private groups or indirect governmental action largely unaddressed and more legitimate by contrast. Even when addressing private harms, human rights focuses attention on *public* remedies—explicit rights formalized and implemented by the state. One criticizes the *state* and seeks *public* law remedies, but leaves unattended or enhanced the powers and felt entitlements of private actors. Human rights implicitly legitimates ills and delegitimizes remedies in the domain of private law and nonstate action.

### *Insulating the Economy*

When combined, these ideas about human rights often define problems and solutions in ways unlikely to change the economy. Human rights foregrounds problems of *participation* and *procedure*, at the expense of distribution. As a result, existing distributions of wealth, status, and power can seem more legitimate after rights have been legislated, formal participation in government achieved, and institutional remedies for violations provided. However useful saying “that’s my right” is in extracting things from the state, it is not good for extracting things from the economy, unless you are a property holder. Indeed, a practice of rights claims against the state may actively weaken the capacity of people to challenge economic arrangements.

Whether progressive efforts to challenge economic arrangements are weakened by the overwhelming strength of the “right to property” in the human rights vocabulary or by the channeling of emancipatory energy and imagination into the modes of institutional and rhetorical interaction which are described as “public,” the imbalance between civil/political and social/economic rights is neither an accident of politics nor a matter which could be remedied by more intensive commitment. It runs deep in the philosophy of human rights, and seems central to the conditions of political possibility that make human rights an emancipatory strategy in the first place, and to the institutional character of the movement.

*Foregrounding Form*

The strong attachment of the human rights movement to the legal formalization of rights and the establishment of legal machinery for their implementation makes the achievement of these forms an end in itself. Elites in a political system—international, national—which has adopted the rules and set up the institutions will often believe and insist that they have addressed the problem of violations with an elaborate, internationally respected and “state of the art” response. This is analogous to the way in which holding elections can come to substitute for popular engagement in politics. These are the traditional problems of form: form can hamper peaceful adjustment and necessary change, can be overinclusive or underinclusive. Is the right to vote a floor—or can it become a ceiling?

*Backgrounding the Background*

The emphasis on human rights can leave unattended the wide array of laws that do not explicitly condone violations, but that certainly affect their frequency and may in fact be doing more harm than the absence of rights. These background laws, left with clean hands, can seem more legitimate. Moreover, to maintain the claim to universality and neutrality, the human rights movement pays little attention to background social and political conditions which will determine the meaning a right has in particular contexts, rendering the evenhanded pursuit of “rights” vulnerable to all sorts of distorted outcomes.

Even very broad social movements of emancipation—for women, for minorities, for the poor—have their vision blinkered by the promise of recognition in the vocabulary and institutional apparatus of human rights. They will be led away from the economy and toward the state, away from political and social conditions and toward forms of legal recognition. It has been claimed, for example, that promoting a neutral right to religious expression in Africa without acknowledging that traditional religions and imported evangelical

sects have sharply different cultural, economic, and political authority will dramatically affect the distribution of religious practice. Even if we limit our thinking to the *laws* which influence the distribution of wealth, status, and power between men and women, the number of those laws which *explicitly* address “women’s issues,” still less “women’s rights,” would form an extremely small and relatively unimportant percentage. However much the human rights movement reaches out to address other background considerations affecting the incidence of human rights abuse, such “background” norms remain, well, background.

#### HUMAN RIGHTS GENERALIZES TOO MUCH

##### *Universal Goods and Evils*

The vocabulary and institutional practice of human rights promotion propagates an unduly abstract idea about people, politics, and society. A one-size-fits-all emancipatory practice underrecognizes particularity and reduces the possibility for variation. This claim is not that human rights are too “individualistic.” Rather, the claim is that the “person,” as well as the “group,” imagined and brought to life by human rights agitation is both abstract and general in ways which have bad consequences.

Sometimes this claim stresses the loss of a preexisting diversity of experience—human rights limits human potential as the plurality of experience is poured into the mold of its terms. Others who make this argument worry less about the loss of a prior, more authentic or diverse *real* experience. They worry about limiting our picture of emancipation to that provided by this particular vocabulary as compared to others which generalize less or differently.

##### *Becoming Free Only as an Instance of the General*

To come into understanding of oneself as an instance of a preexisting general—“I am a ‘person with rights’”—exact a cost: a loss

of awareness of the unprecedented and plastic nature of experience, or a loss of a capacity to imagine and desire alternative futures. We could term this “alienation.” The human rights movement proposes itself as a vocabulary of the general good—as knowledge about the shape of emancipation and human possibility, which can then simply be “applied” and “enforced.” As an emancipatory vocabulary, it offers answers rather than questions, answers which are not only outside political, ideological, and cultural differences, but also beyond the human experience of specificity, against the human capacity to hope for more, and in denial of the tawdry and uncertain quality of what we know and dream about justice and injustice. Rather than enabling a discussion of what it means to be human, of who is human, of how humans might relate to one another, it crushes this discussion under the weight of moral condemnation, legal adjudication, textual certainty, and political power.

*Not Just Bad for Victims*

The articulation of concrete good and evil in abstract terms is limiting not only for victims. The human rights vocabulary makes us think of evil as a social machine, a theater of roles, in which people are “victims,” “violators,” and “bystanders.” At its most effective, human rights portrays victims as passive and innocent, violators as abnormal, and human rights professionals as heroic. Only the bystanders are figured in ambivalent or uncertain terms. To enter the terrain of emancipation through human rights is to enter a world of uncivilized deviants, baby seals, and knights errant. There is a narrowing here—other evils and other goods receive less attention. Privileging the baby seals delegitimizes the suffering of people (and animals) who are, if anything, more typical in the complexity of their ethical and political posture, and renders the broader political culture less able to understand and engage with more ambivalent characters. But this vocabulary also exacts a cost from those who fit most easily into its terms. However many carefully elaborated “rights” we offer to violators, we—and they—will find it difficult to recover a complex sense for their human possibility and ambivalent experi-

ence. Differences among “victims,” the experience of their particularity and the hope for their creative and surprising self-expression, are erased under the power of an internationally sanctified vocabulary for their self-understanding, self-presentation, and representation as “victims” of human rights abuse.

*Even Bad for Advocates*

To come into experience of oneself as a benevolent and pragmatic actor through the professional vocabulary of human rights representation has costs for the advocate. Coming into awareness of oneself as the representative of something else—heroic agent for an authentic suffering elsewhere—mutes one’s capacity for empathy or solidarity with those cast as victims, violators, and bystanders, and stills the habit of understanding oneself to inhabit the world one seeks to affect. This claim is often put in ethical terms which focus on the advocate’s character: human rights promotes emancipation by propagating an unbearably normative, earnest, and ultimately arrogant mode of thinking and speaking about what is good for people, abstract people, here and there, now and forever. This is bad for people in the movement. It can demobilize them as political beings in the world while encouraging their sanctimony, shrinking their sense of the potentially possible and desirable to fit a uniform size.

HUMAN RIGHTS PARTICULARIZES TOO MUCH

*Emancipating the “Right Holders”*

The specific way human rights generalizes is to consolidate people into “identities” on the basis of which rights can be claimed. There are two issues here: a focus on *individuals* and a focus, whether for individuals or groups, on *right-holding identity*. The focus on individuals and people who come to think of themselves merely as individuals blunts articulation of a shared life. The focus on discrete and

insular right-holding identities blunts awareness of diversity, of the continuity of human experience, of overlapping identities. Together these tendencies inhibit expression of the experience of being part of a community.

Again we find two types of claims. For some, the key point is that human rights reduces and distorts a more promising *real* experience, of more malleable, less-bounded identities. A focus on right holders may blunt access to a general will or foreclose our access to identities and social arrangements which have no corresponding right or privilege. For others, the point is that compared to other vocabularies, human rights renders those who use it inarticulate about and less capable of both solidarity and more open-ended possibility. Either way, the human rights movement intensifies a sense of entitlement—the stable sense that one is what one is and has what one has—at great cost to collective political life and the sense that one’s life is part of a more diverse community.

### *Strengthening the State*

Although human rights advocates express relentless suspicion of the state, human rights places the state at the center of the emancipatory process, structuring liberation as a relationship between an individual right holder and the state. However much one may insist on the priority or preexistence of rights, in the end rights are enforced, granted, recognized, implemented, and their violations remedied by the state. By consolidating human experience into the exercise of legal entitlements, human rights strengthens the national governmental structure and equates the structure of the state with the structure of freedom. To be free is . . . to have an appropriately organized state. We might say that the right holder imagines and experiences freedom only in the role of *citizen*. This encourages autochthonous political tendencies and alienates the “citizen” from both his or her own experience as a person and from the possibility of alternative communal forms.

*Encouraging Conflict and Discouraging Politics  
among Right Holders*

Encouraging each person and group wishing to be free to tally the rights he/she/it holds so that they may be asserted against the state reduces intergroup and interindividual sensitivity. A right or entitlement is a trump card. In emancipating itself, the right holder is, in effect, queue jumping. But recognizing, implementing, and enforcing rights is distributional work. Encouraging people to imagine themselves as right holders, and rights as absolute, makes the negotiation of distributive arrangements among individuals and groups less likely and less tenable. There is no one to triage among rights and right holders—except the state. The absolutist legal vocabulary of rights makes it hard to assess distribution among favored and less-favored right holders and forecloses development of a political process for trade-offs among them, leaving only the vague suspicion that the more privileged got theirs at the expense of the less privileged.

*“Refugees” Are People Too*

For fifty years, the human rights movement and the legal departments of the great international institutions have struggled for legal recognition of the status of “refugee.” As we will see in chapter 7, by certifying individuals as refugees, they have helped to generate millions of people who think of themselves precisely as “refugees.” Certification formalizes the person’s disconnection from both the state of origin and the state of ultimate destination, cutting the international refugee establishment itself off from engagement with the causes of refugee flows and from participation in their ultimate and lasting solution. The thirty-year stillborn effort to codify a “right to asylum” as an entailment of refugee status illustrates the difficulty of using a legal entitlement to guarantee a satisfactory solution—illustrates it so strikingly that we should question whether the effort to define the identity and rights of “the refugee” is more part of the problem than the solution.



HUMAN RIGHTS IS LIMITED BY ITS RELATIONSHIP  
TO WESTERN LIBERALISM*Tainted Origins*

Although there are lots of interesting analogies to human rights ideas in various cultural traditions, the particular form these ideas are given in the human rights movement is the product of a particular moment and place: post-Enlightenment, rationalist, secular, Western, modern and capitalist. This strand of Western liberalism has marked the ideology, ethics, aesthetic sensibility, and political practice of the human rights movement. From a pragmatic point of view, of course, tainted origins are irrelevant. That human rights *claims* to be universal but *is really* the product of a specific cultural and historical origin says nothing—unless that specificity exacts costs or renders human rights less useful than something else. The human rights tradition might itself be undermined by its origin—be treated less well by some people, be less effective in some places—just as its origin might, for other audiences, accredit projects undertaken in its name. This is the sort of thing we might strategize about. Perhaps we should downplay the universal claims or look for parallel developments in other cultural traditions.

The movement's Western liberal origins become part of the problem (rather than a limit on the solution) when particular difficulties typical of the liberal tradition are carried over to the human rights movement. The global expression of emancipatory objectives in human rights terms can narrow humanity's appreciation of these objectives to the particular forms they have taken in the nineteenth- and twentieth-century Western political tradition. One cost would be the loss of more diverse and local experiences and conceptions of emancipation. Even within the liberal West, other useful emancipatory vocabularies (including those of socialism, Christianity, the labor movement, and so forth) are diminished by the consolidation of human rights as the international expression of *the* Western liberal tradition. Costs would be incurred whenever the human rights tradition seemed to carry with it particular downsides of the liberal West.

*Downsides of the West*

That the emancipations of the modern West have come with costs—alienation, loss of faith, environmental degradation, immorality—has long been a theme in critical writing. Criticizing human rights as part of the Western liberal package is a way of asserting that at least some of these costs should be attributed to the human rights tradition. This might be asserted in a variety of ways. If you thought secularism was part of what is bad about the modern West, you might assert that human rights shares the secular spirit, that as a sentimental vocabulary of devotion it actively displaces religion, offering itself as a poor substitute. You might claim that the enforcement of human rights, including religious rights, downgrades religion to a matter of private and individual commitment, or otherwise advances the secular project. To the extent human rights can be implicated in the secular project, we might conclude that it leaves the world spiritually less well off.

Critics have linked the human rights project to liberal Western ideas about the relationships among law, politics, and economics. Western Enlightenment ideas which make the human rights movement part of the problem rather than the solution include the following: the economy *preexists* politics, politics *preexists* law, the private *preexists* the public, just as the animal preexists the human, faith preexists reason, or the feudal preexists the modern. In each case, the second term is fragile, artificial, a human creation and achievement, and a domain of choice, while the first term identifies a sturdy and natural base, a domain outside human control.

Human rights encourages people to seek emancipation in the vocabularies of reason rather than faith, in public rather than private life, in law rather than politics, in politics rather than economics. The human rights vocabulary helps draw the lines between these spheres. In each case, it underestimates what it takes as the natural base and overestimates our ability to instrumentalize what it takes as the artificial domain of emancipation. Moreover, human rights is too quick to conclude that emancipation *means* progress forward from the natural passions of politics into the civilized reason of law. The

urgent need to develop a more vigorous human politics is sidelined by the effort to throw thin but plausible nets of legal articulation across the globe. Work to develop law comes to be seen as an emancipatory end in itself, leaving the human rights movement too ready to articulate problems in political terms and solutions in legal terms.

The posture of human rights as an emancipatory political project which extends and operates within a domain above or outside politics—a political project repackaged as a form of knowledge—delegitimizes other political voices and makes less visible the local, cultural, and political dimensions of the human rights movement itself. As liberal Western intellectuals, we think of the move to rights as an escape from the unfreedom of social conditions into the freedom of citizenship, but we repeatedly forget that there can also be a loss—a loss of the experience of belonging, of the habit of willing in conditions of indeterminacy, of innovating collectively in a way unchanneled by an available program of rights.

### *The West and the Rest*

The Western/liberal character of human rights exacts particular costs when combined with the highly structured and unequal relations between the modern West and everyone else. Human rights has been an overwhelmingly one-way street—criticism of the periphery by the center. It is not clear that the problems addressed by the human rights movement are or should be at the top of the third world's agenda. Neither is it clear that an interventionist international human rights movement is or should be at the top of the first world's agenda *for itself*.

Moreover, the form of legal and political modernization promoted by the human rights movement in third world societies is too often based only on a fantasy about the modern/liberal/capitalist West. The insistence on more formal and absolute conceptions of property rights in transitional societies than are known in the developed West is a classic example of this problem—using the authority of the human rights movement to narrow the range of socioeconomic choices available in developing societies in the name of “rights” which do not exist in this unregulated or uncompromised form in any developed Western democracy.

At the same time, the human rights movement contributes to the framing of political choices in the third world as oppositions between “local/traditional” and “international/modern” forms of government and modes of life. This effect is strengthened by the presentation of human rights as part of belonging to the modern world, but coming from some place outside political choice, from the universal, the rational, the civilized. By strengthening the articulation of third world politics as a choice between tradition and modernity, the human rights movement impoverishes local political discourse, often strengthening the hand of self-styled “traditionalists” who are offered a commonsense and powerful alternative to modernization for whatever politics they may espouse.

#### HUMAN RIGHTS PROMISES MORE THAN IT CAN DELIVER

##### *Knowledge*

Human rights promises a way of knowing—knowing just and unjust, universal and local, victim and violator, harm and remedy—which it cannot deliver. Justice is something which must be made, experienced, articulated, performed each time anew. Human rights may well offer an index of ways in which past experiences of justice achieved have retrospectively been described, but the usefulness of this catalog as a stimulus to emancipatory creativity is swamped by the encouragement such lists give to the idea that justice need not be made, but can be found or simply imported. One result is a loss of the habit of grappling with ambivalence, conflict, and the unknown. Taken together, belief in these various false promises demobilizes actors from taking other emancipatory steps and encourages a global misconception of both the nature of evil and the possibilities for good.

##### *Justice*

Human rights promises a legal vocabulary for achieving justice outside the clash of politics. Such a vocabulary is not available: rights conflict with one another, rights are vague, rights have excep-

tions, many situations fall between rights. The human rights movement promises that “law” — the machinery, the texts, the profession, the institution — can resolve conflicts and ambiguities in society by resolving those within its own materials, and that this can be done on the basis of a process of “interpretation” which is different from, more legitimate than, politics. And different in a particularly stultifying way — as a looser or stricter deduction from a past knowledge rather than as a collective engagement with the future. In particular, the human rights movement fetishizes the judge as someone who functions as an instrument of the law rather than as a political actor. This is simply not possible — not a plausible description of judicial behavior — given the porous legal vocabulary with which judges must work and the likely political context within which judges are asked to act.

Many general criticisms of law’s own tendencies to overpromise apply in spades to human rights. The absoluteness of rules makes compromise and peaceful adjustment of outcomes more difficult. The vagueness of standards makes for self-serving interpretation. The gap between law in the books and law in action, between legal institutions and the rest of life, hollows promises of emancipation through law. The human rights movement suggests that “rights,” rather than people taking political decisions, can bring emancipation. This demobilizes other actors and other vocabularies, and encourages emancipation through reliance on enlightened, professional elites with “knowledge” of rights and wrongs, alienating people from themselves and from the vocabulary of their own governance. These difficulties are more acute in the international arena, where law is ubiquitous and unaccompanied by political dialog.

### *Community*

The human rights movement shares responsibility for the widespread belief that the world’s political elites form a “community” which is benevolent, disconnected from economic actors and interests, and connected in some diffuse way through the media to the real aspirations of the world’s people. The international human rights movement promises the ongoing presence of an entity, a “community,” which can support and guarantee emancipation. This

fantasy has bad consequences not only when people place too much hope in a foreign emancipatory friend who does not materialize. The transformation of the first world media audience, as that audience is imagined by the media, into the “international community” is itself an astonishing act of disenfranchisement. This submerges alternative political sites—diplomacy, national legislatures, grass-roots movements—and vocabularies which may be more useful, more likely to emancipate, more likely to encourage habits of engagement, solidarity, and responsibility, more open to surprise and reconfiguration.

### *Neutral Intervention*

The human rights vocabulary promises Western constituencies a neutral and universalist mode of emancipatory intervention. This leads these constituencies to unwarranted innocence about the range of their other ongoing interventions and unwarranted faith in the benign nature of a human rights presence. Thinking their interventions benign or neutral, they intervene more often than they otherwise might. Their interventions are less effective than they would be if pursued in other vocabularies.

### *Emancipator as Emancipation*

Human rights offers itself as the measure of emancipation. This is its most striking—and misleading—promise. Human rights describes itself as a universal/eternal/human truth and as a pragmatic response to injustice—there was the holocaust and then there was the genocide convention, women everywhere were subject to discrimination and then there was the Convention on the Elimination of All Forms of Discrimination Against Women. This posture makes the human rights movement *itself* seem redemptive—as if doing something *for human rights* was, in and of itself, doing something *against* evil. It is not surprising that human rights professionals consequently confuse work on the movement for emancipatory work in society. But there are bad consequences when people of goodwill mistake work on the discipline for work on the problem.

Potential emancipators can be derailed—satisfied that building the human rights movement is its own reward. People inside the movement can mistake reform of their world for reform of the world. What seem like improvements in the field’s ability to respond to things outside itself may only be improvements in the field’s ability to respond to its own internal divisions and contradictions. Yet we routinely underestimate the extent to which the human rights movement develops in response to political conflict and discursive fashion among international elites, thereby overestimating the field’s pragmatic potential and obscuring the field’s internal dynamics and will to power.

Think of the right to development, born less in response to global poverty than in response to an internal political conflict within the elite about the legitimate balance of concerns on the institutional agenda and to an effort by some more marginal members of that elite to express their political interest in the only available language. The move from a world of “rights” to “remedies” and then to “basic needs” and on to “transnational enforcement” reflected less a changing set of problems in the world than a changing set of attitudes among international legal elites about the value of legal formalism. The result of such initiatives to reframe emancipatory objectives in human rights terms is more often growth for the field—more conferences, documents, legal analysis, opposition and response—than decrease in violence against women, poverty, mass slaughter and so forth. This is harmful when it discourages political engagement or encourages reliance on human rights for results it cannot achieve.

THE LEGAL REGIME OF “HUMAN RIGHTS,” TAKEN AS  
A WHOLE, DOES MORE TO PRODUCE AND EXCUSE  
VIOLATIONS THAN TO PREVENT AND REMEDY THEM

*Treating Symptoms*

Human rights remedies, even when successful, treat the symptoms rather than the illness, and this allows the illness not only to fester,

but to seem like health itself. This is most likely where signing up for a norm—say, against discrimination—comes to substitute for ending the practice. But even where victims are recompensed or violations avoided, the distributions of power and wealth which produced the violation may well come to seem more legitimate as they seek other avenues of expression.

*Humanitarian Norms Excuse Too Much*

We are familiar with the idea that rules of warfare may do more to legitimate violence than to restrain it—as a result of vague standards, broad justifications, lax enforcement, or prohibitions which are clear but beside the point. The same can often be said about human rights. The vague and conflicting norms, their uncertain status, the broad justifications and excuses, the lack of enforcement, the attention to problems which are peripheral to a broadly conceived program of social justice—all these may, in some contexts, place the human rights movement in the uncomfortable position of legitimating more injustice than it eliminates. This is particularly likely where human rights discourse has been absorbed into the foreign policy process.

*Humanitarian Norms Justify Too Much*

The human rights movement consistently underestimates the usefulness of the human rights vocabulary and machinery for people whose hearts are hard and whose political projects are repressive. The United States, the United Kingdom, Russia—but also Serbia and the Kosovar Albanians—have taken military action, intervened politically, and justified their governmental policies on the grounds of protecting human rights. Far from being a defense of the individual against the state, human rights has become a standard part of the justification for the external use of force by the state against other states and individuals. The porousness of the human rights vocabulary means that the interventions and exercises of state authority it



legitimizes are more likely to track political interests than its own emancipatory agenda.

*Background Norms Do the Real Damage*

The human rights regime, like the law concerning war, is composed of more than those legal rules and institutions which explicitly concern human rights. The human rights movement acts as if the human rights legal regime were composed only of rights and of institutions for their implementation. In fact, the law concerning torture, say, includes all the legal rules, principles, and institutions which bear on the incidence of torture. The vast majority of these rules—rules of sovereignty, institutional competence, agency, property, and contract—facilitate or excuse the use of torture by police and governments.

THE HUMAN RIGHTS BUREAUCRACY IS ITSELF  
PART OF THE PROBLEM

*Professionalizes the Humanitarian Impulse*

The human rights movement attracts and demobilizes thousands of good-hearted people around the globe every year. It offers many thousands more the confidence that these matters are being professionally dealt with by those whom the movement has enlisted. Something similar has occurred within academic life—a human rights discipline has emerged between fields of public law and international law, promising students and teachers that work in the public interest has an institutional life, a professional routine, and status. Professionalization has a number of possible costs. Personnel are lost for other humanitarian possibilities. As the human rights profession raises its standards and status to compete with disciplines of private law, it raises the bar for other pro bono activities which have not been as successful in establishing themselves as disciplines, whose

practices, knowledge, and projects are less systematic, less analogous to practice in the private interest. Professionalization strengthens lawyers at the expense of priests, engineers, politicians, soothsayers, and citizens who might otherwise play a more central role in emancipatory efforts. At the same time, professionalization separates human rights advocates from those they represent and those with whom they share a common emancipatory struggle. The division of labor among emancipatory specialists is not merely about efficient specialization. We need only think of the bureaucratization of human rights in places like East Timor that have come within the orbit of international governance—suddenly an elaborate presence pulls local elites away from their base, or consigns them to the status of local informants, the elites turning their attentions like sunflowers to Geneva, New York, to the Center, to the Commission. To the work of resolutions and reports.

### *Downgrades the Legal Profession*

Sometimes the concern here is for the legal profession itself. The human rights movement degrades the legal profession by encouraging a combination of both sloppy humanitarian arguments and overly formal reliance on textual articulations which are anything but clear or binding. This combination degrades the legal skills of those involved, while encouraging them to believe that their projects are more legitimate precisely because they are presented in (sloppy) legal terms. Others have argued that human rights offers the profession, particularly at its most elite sites, a fig leaf of public interest commitment to legitimate the profession's everyday contributions to global emiseration. This legitimation effect is strengthened to the extent that other legal fields—and particularly commercial legal fields—come to seem outside politics by contrast. For this, the sloppiness of human rights practice is itself useful—marking a line between the politically redemptive profession of human rights advocacy and the apolitical workaday world of other legal professionals.

*Encourages False Solidarity*

Of course there are many different types of people in the human rights movement and bureaucracy—different generations, different nationalities, different genders. To be a male human rights lawyer in Holland in your thirties is to live a different life altogether from that of a female human rights lawyer in Uruguay in her sixties. The human rights vocabulary encourages a false sense of the unity among these experiences and projects. As a vocabulary for progressive elite solidarity, human rights is particularly hamfisted, making it more difficult to articulate differences in the projects of, say, male and female Palestinian human rights lawyers, Americans and Nigerians, or inter-governmental civil servants and grass-roots activists.

*Promotes Bad Faith*

One thing these professionals do share, however, is a more or less bad faith relationship to their professional work. Every effort to use human rights for new purposes, to “cover” new problems, requires that they make arguments they know to be less persuasive than they claim. Arguments about their representative capacity—speaking for a consensus, a victim, an international community—and about the decisiveness of the vocabularies they invoke. Professional bad faith accumulates the more the movement tries to torque its tools to correct for its shortcomings—to address background conditions which affect the incidence of abuse as if they were themselves violations, for example. We need only think of the earnest advocate redescribing torture or the death penalty or female genital mutilation as a problem of “public health” to feel the movement’s characteristic professional deformations at work.

Speaking law to politics is not the same thing as speaking truth to power. The human rights professional’s vocabulary encourages an overestimation of the distinction between its own idealism and the

hard realpolitik motivations of those it purports to address. Professional human rights performances are, in this sense, exercises in desolidarization. One intensifies the “legal” marks in one’s expression as if one thought this would persuade an actual other person who one imagines, paradoxically, to inhabit an altogether different “political” world. In this, the human rights intervention is always addressed to an imaginary third eye—the bystander who will solidarize with the (unstated) politics of the human rights speaker because it is expressed in an apolitical form. This may often work as a form of political recruitment—but it exacts a terrible cost on the habit of using more engaged and open-ended political vocabularies. The result is professional narcissism guising itself as empathy and hoping to recruit others to solidarity with its bad faith.

### *Perils of “Representation”*

The professionalization of human rights creates a mechanism for people to think they are working “on behalf of” less fortunate others, while externalizing the possible costs of their decisions and actions. The representational dimension of human rights work—speaking “for” others—puts the “victims” both onscreen and off. The production of authentic victims, or victim authenticity, is an inherently voyeuristic or pornographic practice which, no matter how carefully or sensitively it is done, transforms the position of the “victim” in his or her society and produces a language of victimization for him or her to speak on the international stage. The injured-one-who-is-not-yet-a-victim, the “subaltern” if you like, can neither speak nor be spoken for, but recedes instead before the interpretive and representational practices of the movement. The remove between human rights professionals and the people they purport to represent can reinforce a global divide of wealth, mobility, information, and access to audience. Human rights professionals consequently struggle, ultimately in vain, against a tide of bad faith, orientalism, and self-serving sentimentalism.

*Irresponsible Intervention*

The people who work within the human rights field have no incentive to take responsibility for the changes they bring about. Consequences are the result of an interaction between a context and an abstraction — “human rights.” At the same time, the simultaneously loose and sanctified nature of the vocabulary and the power of the movement itself opens an enormous terrain for discretionary action — intervening here and not there, this way and not that, this time and not that time. There is no vocabulary for treating this discretion as the responsible act of a person, a situation creating intense psychic costs for human rights professionals themselves, but also legitimating their acts of unaccountable discretion. Belief in the nobility of human rights places blame for whatever goes wrong elsewhere — on local politicians, evil individuals, social pathologies. This imposes ethical, political, and aesthetic costs on people in the movement — but also on those elsewhere in the elite who must abide them, and in those who, as the terrain of engagement and the object of representation, become the mirror for this professional self-regard.

THE HUMAN RIGHTS MOVEMENT STRENGTHENS  
BAD INTERNATIONAL GOVERNANCE

*Weakest Link*

Even within international law, the modes of possible governance are far broader than those most familiar to human rights professionals. The human rights movement is the product of a particular moment in international legal history, which foregrounded rules rather than standards, and institutional rather than cultural enforcement. If we compare modes of governance in other fields we find a variety of more successful models — a standards-based environmental regime, an economic law regime embedded in private law, and so forth. The attachment to rights as a measure of the authenticity, universality, and above all as the knowledge we have of social justice

binds our professional feet, and places social justice issues under the governance of the least effective institutional forms available.

### *Clean Hands*

More generally, international governance errs when it imagines itself capable of governing, “intervening” if you will, without taking responsibility for the messy business of allocating stakes in society — when it intervenes only economically and not politically, only in public and not in private life, only “consensually” without acknowledging the politics of influence, only to freeze the situation and not to improve it, “neutrally” as between the parties, or politically/economically but not culturally. The human rights movement offers the well-intentioned intervenor the illusion of affecting conditions both at home and abroad without being politically implicated in the distribution of stakes which results, by promising an available set of universal, extrapolitical legal rules and institutions with which to define, conduct, and legitimate the intervention.

### *Fantasy Government*

International governance is often asked to do globally what we fantasize or expect national governments to do locally — allocate stakes, constitute a community, articulate differences and similarities, provide for the common good. The human rights movement, by strengthening the habit of understanding international governance in legal rather than political terms, weakens its ability to perform what we understand domestically to be these political functions. The conflation of the law with the good encourages an understanding of international governance — by those within and without its institutions — that is systematically blind to the bad consequences of its own action. The difficulty the human rights movement has in thinking of itself in pragmatic rather than theological terms — in weighing and balancing the usefulness of its interventions in the terms like those included in this list — is characteristic of inter-

national governance as a whole. The presence of a human rights movement models this blindness as virtue and encourages it among other governance professionals by presenting itself as insurance of international law's broader humanitarian character.

### *Governing the Exception*

Human rights shares with the rest of international law a tendency to treat only the tips of icebergs. Deference to the legal forms upon which human rights is built—the forms of sovereignty, territorial jurisdictional divisions, subsidiarity, consensual norms—makes it seem natural to isolate aspects of a problem which “cross borders” or “shock the conscience of mankind” for special handling at the international level—often entrenching the rest of the iceberg more firmly in the national political background. The movement's routine polemical denunciations of sovereignty work more as attestations to sovereignty's continuity than as agents of its erosion, limiting the aspirations of good-hearted people with international and global political commitments. The notion that law sits atop both culture and politics demobilizes people who come to understand their political projects as “intervention” in a “foreign” “culture.” The human rights vocabulary, with its emphasis on the development of law itself, strengthens the tendency of international lawyers more broadly to concern themselves with constitutional questions about the structure of the legal regime itself rather than with questions of distribution in the broader society.

### HUMAN RIGHTS PROMOTION CAN BE BAD POLITICS IN PARTICULAR CONTEXTS

It may be that this is all one can say—promoting human rights can sometimes have bad consequences. All of the first nine types of criticism suggested that human rights suffered from one or another design defect—as if these defects would emerge, these costs would be incurred, regardless of context. Perhaps this is so. But so long as

none of these criticisms has been proven in such a general way (and it is hard to see just how they could be), it may be that all we have is a list of possible downsides, open risks, bad results which have sometimes occurred, which might well occur. In some context, for example, it might turn out that pursuing emancipation as entitlement could reduce the capacity and propensity for collective action. Something like this seems to have happened in the United States in the last twenty years—the transformation of political questions into legal questions, and then into questions of legal “rights,” has made other forms of collective emancipatory politics less available. But it is hard to see that this is always and everywhere the destiny of human rights initiatives. We are familiar, even in the United States, with moments of collective emancipatory mobilization achieved, in part, through the vocabulary of rights. If we come to the recent British Human Rights Act, it seems an open question whether it will liberate emancipatory political energies frozen by the current legislative process and party structure, or will harness those political possibilities to the human rights claims of depoliticized individuals and judges. The point of an ongoing pragmatic evaluation of the human rights effort is precisely to develop a habit of making such assessments. But that human rights promotion can and has had bad consequences in some contexts does seem clear.

*Strengthens Repressive States and Antiprogressive Initiatives*

In some places, human rights implementation can make a repressive state more efficient. Human rights institutions and rhetoric can also be used in particular contexts to humanize repressive political initiatives and co-opt to their support sectors of civil society which might otherwise be opposed. Human rights can and has been used to strengthen, defend, legitimate a variety of repressive initiatives, by both individuals and states: to legitimate war, defend the death penalty, the entitlements of majorities, religious repression, access to (or restriction of) abortion, and more. The recent embrace of human rights by the international financial institutions may serve both functions—strengthening states which will need to enforce harsh struc-



tural adjustment policies while co-opting local and international resistance to harsh economic policies, and lending a shroud of universal/rational inevitability to economic policies which are the product of far narrower political calculations and struggles. As deployed, the human rights movement may do a great deal to take distribution off the national and international development agendas, while excusing and legitimating regressive policies at all levels. These difficulties are particularly hard to overcome so long as the human rights movement remains tone deaf to the specific political consequences of its activity in particular locations, on the mistaken assumption that a bit more human rights can never make things worse. This makes the human rights movement particularly subject to capture by other political actors and ideological projects. We need only think of the way the move to “responsibilities” signaled by the Universal Declaration on Human Responsibilities of 1998 was captured by neoliberal efforts to promote privatization and weaken the emancipatory potentials of government.

### *Condemnation as Legitimation*

Finally, in many contexts, transforming a harm into a “human rights violation” may be a way of condoning or denying rather than naming and condemning it. A terrible set of events occurs in Bosnia. We could think of it as a sin and send the religious, as illness and send physicians, as politics and send the politicians, as war and send the military. Or we could think of it as a human rights violation and send the lawyers. Doing so can be a way of doing nothing, avoiding responsibility, simultaneously individualizing the harm and denying its specificity. Thinking of atrocity as a human rights violations captures neither the unthinkable nor the banal in evil. Instead we find a strange combination of clinically antiseptic analysis, throwing the illusion of cognitive control over the unthinkable, and hysterical condemnation. Together, they assert the advocate’s distance from the quotidian possibility of evil. Renaming Auschwitz “genocide” to recognize its unspeakability, enshrining its status as “shocking the conscience of mankind” can also be a way of unthinking its everyday

reality. In this sense, human rights, by criminalizing harm and condensing its origin to particular violators, can serve as denial, apology, legitimation, normalization, and routinization of the very harms it seeks to condemn.

So that is the list. As I said at the outset, some of these worries seem more plausible to me than others. I would worry about some of these costs more than others. The generation which built the human rights movement focused its attention on the ways in which evil people in evil societies could be identified and restrained. More acute now is how good people, well-intentioned people in good societies, can go wrong, can entrench, support, the very things they have learned to denounce. Answering this question requires a pragmatic reassessment of our most sacred humanitarian commitments, tactics, and tools.

Whatever the history of human rights, we do not know its future. Perhaps these difficulties will be overcome, avoided. But we will not avoid them by avoiding their articulation, discussion, and assessment—by treating the human rights movement as a frail child, in need of protection from critical assessment or pragmatic calculation. At this point these remain suspicions, intuitions, hunches by people who have seen the human rights movement from one or another point of view. Each person involved in international human rights protection will have his or her own view about which, if any, of these doubts are plausible and worth pursuing. As a profession, we would do ourselves good by opening conversation about worries of this sort, and thinking further about how they should affect our understanding of the human rights project as a whole.